



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit  
Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/18/0142**

**Re: Property at 22F Abbotsford Street, Dundee, DD2 1DA (“the Property”)**

**Parties:**

**Mr Bruce Smith, Ms Carolyn Bain, Ms Jaimie Bain, Ms Saiorse Bain, 26 Newhall Gardens, Dundee, DD2 1TW; 26 Newhall Gardens, Dundee, DD2 1TW; 22A Abbotsford Street, Dundee, DD2 1DA; 22A Abbotsford Street, Dundee, DD2 1DA (“the Applicants”)**

**Mrs Shona Connolly, 38J Cramond Vale, Edinburgh, EH4 6RB (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the First and Second named Applicants’ applications be dismissed for want of jurisdiction and that the Third and Fourth named Applicants were entitled to an order for payment from the respondent in the sum of £1140.00**

**Background**

1. By application dated 15 January 2018 the Applicants applied to the Tribunal for an order under Rule 103 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. By Notice of Acceptance dated 26 February 2018 a Legal Member of the Tribunal with delegated powers accepted the Application.
3. A Case Management Discussion was held on 4 May 2018 at Dundee Carers Centre, Seagate House, 132-134 Seagate Dundee and was attended by

Bruce Smith and Jaimie Bain for the Applicants and by the Respondent. After hearing from the parties the Tribunal consented to an application by the Respondent to adjourn the Case Management Discussion to allow the Respondent to obtain legal advice; to submit further documents and to have her mother attend as a witness.

4. A further Case Management Discussion was arranged to take place on 10 August 2018. Due to intimation of this hearing on the Respondent by post being returned by the Post Office the Respondent did not attend and the hearing was further adjourned to a Case Management discussion at Seagate House Dundee on 27 September 2018.

### **Case Management Discussion**

5. The adjourned Case Management Discussion was held on 27 September 2018 at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee. It was attended by Mr Bruce Smith and Miss Jaimie Bain for the Applicants and by Miss Shona Connolly and Mrs Flora Connolly for the Respondent.
6. After some discussion it was accepted by the Applicants and the Respondent that neither Mr Bruce Smith nor Ms Carolyn Bain had ever been tenants of the property and that therefore they did not constitute tenants in terms of the Tenancy Deposit Scheme (Scotland) Regulations 2011("the 2011 Regulations") and therefore did not have any locus to apply to the Tribunal for an order under the regulations. The remaining two Applicants Miss Jaimie Bain and Miss Saiorse Bain did however have the right as former tenants to make the application. It was agreed that the application by Mr Bruce Smith and Ms Carolyn Bain should be dismissed and the application proceed in the name of Miss Jaimie Bain and Saiorse Bain.
7. It was agreed that the Respondent had not lodged the Tenancy deposit of £570.00 in an approved scheme in terms of Regulation 3 of the 2011 Regulations.
8. The Respondent accepted that the Terms of Regulation 9 of the 2011 Regulations were binding on the Tribunal and that it must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit and may order the landlord to pay the tenancy deposit into an approved scheme.
9. The Respondent's position was that there had been discussion with Mr Smith and as he as Guarantor had provided the funds for the deposit it had been agreed that the deposit should not be lodged in a scheme but retained by her instead. This was because if lodged in a deposit scheme it would have to be repaid to the tenant at the end of the tenancy. There was no provision within the 2011 Regulations for payment to be made to a third party. The Respondent said that the Applicants were all aware of this agreement.

10. Both Mr Smith and Miss Bain disputed that they had any knowledge of any agreement regarding the deposit being retained in the manner suggested by the Respondent. Their position was that they knew nothing about the tenancy Deposit Scheme until they were made aware of it after the tenancy had ended and they had asked for the deposit to be returned. They said they were unaware of the email exchange between the Respondent and Carolyn Bain that made reference to it not being possible to lodge the deposit in a scheme. They had not really read the Tenancy Agreement.
11. The Respondent accepted that the issues she had raised with regards to damage allegedly caused by her tenants during the tenancy was not a matter for the Tribunal to take into account in considering the amount to award the Applicants for the breach of Regulation 3. She indicated however that the damage and loss of rent might amount in total to about £8000.00 and she intended to seek recourse through the Sheriff Court or Tribunal against her Tenants and the Guarantor for the losses she had incurred.
12. The Applicants for their part said they would have been prepared to draw a line under the matter if they had their deposit returned to them in full. They did not accept that they had caused damage to the property.
13. Neither party sought to have the deposit paid into a deposit scheme in terms of Regulation 10 (b) of the 2011 Regulations.
14. The parties were agreed that they did not wish the application to be continued to a hearing and were content for the Tribunal to make a final decision based on the parties submissions at the Case Management Discussion. The parties agreed that neither party nor the evidence from any witnesses would be likely to provide the Tribunal with any more compelling evidence.

### **Findings in Fact**

15. The Respondent and Miss Jaimie Bain and Saiorse Bain entered into a series of Short Assured Tenancies in respect of the property that ran in total from 19 May 2015 until 19 October 2017.
16. The Respondent did not lodge the deposit of £570.00 paid to her by Mr Bruce Smith the Guarantor with an approved Tenants Deposit Scheme.
17. The Respondent as an accredited landlord was aware of the terms of the 2011 Regulations.
18. The Respondent had explained at least to Ms Carolyn Bain in an email her reason for not lodging the deposit in a scheme.
19. The deposit was not lodged in an approved scheme throughout the duration of the tenancy and was not returned to the Applicants at the end of the tenancy.

## **Reasons for Decision**

20. Whilst the Respondent might have been trying to assist the Guarantor, Mr Smith by not lodging the deposit in an approved scheme, as an experienced and accredited landlord she ought to have known of the importance of ensuring that tenants deposits are lodged timeously in an approved scheme.
21. Even if there is a lacuna in the Regulations it is not open to the Respondent to take it upon herself to ignore the legislation and there was a clear obligation to lodge the deposit in an approved scheme.
22. Given the length of time the Respondent retained the deposit it has to be considered to be a case at the upper end of the scale and an award of three times the deposit might well have been considered to have been appropriate. However I have taken into account the fact that the Respondent believed she was trying to assist the guarantor and with some hesitation I have restricted the amount of the award two times the amount of the deposit. AS neither party wished the deposit to be lodged with an approved scheme I have made no order in this respect.

## **Decision**

**The Tribunal dismisses the application by Mr Bruce Smith and Ms Carolyn Bain and finds the Applicants Miss Jaimie Bain and Ms Saiorse Bain entitled to payment of the sum of £1140.00 by the Respondent.**

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Graham Harding

27 September 2018  
Date