



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/0388**

**Re: Property at 7/3 Granton Medway, Edinburgh, EH5 1HQ (“the Property”)**

**Parties:**

**Miss Zuzanna Bartosz, 36 The Quilts, Edinburgh, EH6 5RL (“the Applicant”)**

**Mr Marcin Wala, 10/6 West Pilton Way, Edinburgh, EH4 4GW (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £900**

**Background**

By application, received by the Tribunal on 1 April 2019, the Applicant sought an Order for Payment in respect of the failure of the Respondent to lodge with an approved tenancy deposit scheme a deposit of £300 which she had paid in respect of a lease of the Property.

The application was accompanied by a copy of a Room Rental Agreement between the Parties dated 29 August 2018, providing for a deposit of £300, and confirmation from each of the approved tenancy deposit schemes, Mydeposits Scotland, Letting Protection Scotland and Safe Deposits Scotland that the deposit had not been registered with them.

**Case Management Discussion**

At a Case Management Discussion on 18 June 2019, the Respondent admitted that he had not lodged the deposit with an approved scheme, but told the Tribunal that he

had been unable to do so, because to do so required an e-mail address and telephone number for the Applicant and that the Applicant had failed to provide this information. The Applicant told the Tribunal that she had only been asked for this information on or about 7 November 2018. The Tribunal had adjourned the Case Management Discussion and had directed the Respondent to obtain and provide within 21 days confirmation in writing from a secure deposit scheme that a tenant requires to produce both an e-mail address and a telephone number, failing which a deposit cannot be secured, and a copy of any message (and translated into English) of any requests made by the Respondent to the Applicant for that information and the date on which the request was made.

The Respondent did not provide the Tribunal with any of the information required by the Direction.

The reconvened Case Management Discussion took place at George House, 126 George Street, Edinburgh, by way of a conference call. The Applicant participated in the conference call. The Respondent was not present or represented at the Case management Discussion.

The Applicant confirmed to the Tribunal that at no time prior to 7 November 2018 had the Respondent contacted her to say that he was unable to lodge the deposit without her e-mail address and telephone number.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 state that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a hearing.

Under Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations"), a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme and provide the tenant with the information required under Regulation 42 of the 2011 Regulations. Regulation 10 of the 2011 Regulations provides that if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Respondent had admitted that he had not lodged the deposit with an approved scheme. He had not suggested that this had been a mere oversight on his part. He had told the Tribunal that his failure to do so was due to the fact that, without an e-mail address and telephone number for the tenant, a deposit cannot be secured. He had been directed to provide to the Tribunal written confirmation from one of the secure deposit schemes that this was the case and had failed to do so and he had also failed to produce any evidence to suggest that, at the time that he ought to have lodged the deposit, he had asked the Applicant for her e-mail address and telephone number.

The Tribunal was of the view that the Respondent had not attempted to lodge the deposit and that he had sought deliberately to mislead the Tribunal. His failure was of the most egregious sort and this had to be reflected in the amount that the Tribunal ordered him to pay to the Applicant. The Applicant had been caused considerable inconvenience in having to participate in a second Case Management Discussion and the Tribunal, having considered carefully all the evidence before it

and the conduct of the Respondent, decided to award the maximum sum that it was authorised to do by Regulation 10 of the 2011 Regulations.

**Decision**

The Tribunal determined that the application should be granted without a hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £900.

**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.



Legal Member/Chair

24 July 2019  
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Date