

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/18/0948**

**Re: Property at 213/2 Dunnington Park South, Edinburgh, EH15 3EJ (“the  
Property”)**

**Parties:**

**Miss Stephanie Gordon, 1/6 Loganlea Drive, Edinburgh, EH7 6LS (“the  
Applicant”)**

**Mr A Ghafoor, 54 Main Street, Edinburgh, EH4 5AA (“the Respondent”)**

**Tribunal Members:**

**Lesley Johnston (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the Respondent should pay the Applicant  
compensation in the sum of £650.**

**Background**

The Applicant applies to this Tribunal in terms of Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘the Regulations’). The application is made to the Tribunal in terms of rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules for Procedure) Amendment Regulations 2017 (‘the Rules’).

The Application seeks an Order for Payment from the Tribunal in terms of regulation 10 in respect that the Respondent failed to pay the tenancy deposit into an approved tenancy deposit scheme.

## **The Hearing**

The case called on 11 October 2018 at 11.30am for a postponed Case Management Discussion ('CMD').

The case first called for a CMD on 15 August 2018 but was postponed due to neither party having attended the hearing, and there being insufficient information on which the Tribunal could make a decision.

The Respondent was cited to attend the postponed CMD by Sheriff Officers on 11 September 2018.

The Respondent lodged a written representation dated 27 September 2018 in advance of the hearing in which the Respondent stated that he had "prior arrangements" but relied on his written representation.

In respect that (i) no postponement request was received by the Tribunal and (ii) the Respondent was aware of the hearing and provided written representations, the Tribunal decided to proceed with the hearing in the Respondent's absence in terms of rule 29.

## **Background**

The Applicant and Respondent entered into a Private Residential Tenancy on 28 February 2018. In terms of clause 11 of the lease, the deposit was to be paid into My Deposits Scotland. My Deposits Scotland is an approved Scheme in terms of the 2011 Regulations.

The lease reiterated the Landlord's duty in terms of regulation 3 of the 2011 Regulations, namely that the deposit required to be paid into a tenancy deposit scheme within 30 days from the start date of the tenancy.

The Applicant submitted that the deposit of £650 was paid either on 28 February 2018 or just prior to that date. The deposit was paid together with the first payment of rent (£650). A total of £1,300 was paid to the Respondent.

The Applicant relies upon the following correspondence in support of her application that the deposit has not been paid into an approved scheme:

1. Email from My Deposits dated 5 April 2018 confirming that they do not hold a deposit in respect of the property
2. Email from Letting Protection Scotland dated 12 April 2018 confirming that they do not hold a deposit in respect of the property
3. An email from SafeDeposits Scotland dated 3 April 2018 confirming that they do not hold a deposit.

The Applicant provided documents at the hearing, not previously lodged with the Tribunal. The documents relate to correspondence between the Applicant and Respondent in the period prior to commencement of the lease; correspondence relating to the Applicant's complaint about the state of the property on commencement of the lease; and correspondence between the Respondent and Applicant up to 8 March 2018 relating to the Applicant's request for repayment of rent and the deposit owing to the state of the property and the Applicant's obligation to pay rent.

The Tribunal does not consider that the correspondence is relevant to determination of the application and does not therefore take account of the documentation in determining the application. In any event, the Applicant did not seek to rely upon the new documents exhibited to the Tribunal.

The Applicant submitted that on moving into the property, she found it to be in a bad state of repair. She therefore gave notice to the Respondent on 28 February 2018 that she wished to terminate the tenancy with immediate effect. She handed the keys back to the Respondent on 5 March 2018. The Respondent never moved into the property, due to the poor state of repair.

The Applicant submitted that following her notice of termination of the lease, the Landlord suggested that the lease had not terminated following the return of the keys. However, the Respondent now appeared to accept that the lease terminated on 5 March 2018.

The Applicant submitted that as at today's date, the Respondent has not yet returned the deposit funds. He has also retained the first payment of rent.

The Applicant therefore moved the Tribunal to grant the order on the basis that the Respondent has breached his duties under Regulation 3.

### **The Respondent's written submission**

By letter dated 27 September the Respondent made written representations to the Tribunal, in which he stated:

- that the deposit and first month rent had been paid by the Applicant to the Respondent "prior to the collection of keys";
- That the keys to the property were collected by the Applicant on 28 February 2018;
- That the Applicant informed Dunedin Property Management Limited on the same day that she considered the property to be unsuitable and was going to return the keys that afternoon;
- The keys were handed back on 5 March (delayed due to the extreme weather) "thus mutually agreeing that the lease signed by Miss Gordon was now considered to be terminated";

- That the Respondent advised the Applicant “that she would not be refunded her rent if we could not re-let the property within one month. In actual fact, we were unable to re-let the property until 1<sup>st</sup> May 2018.”
- The Applicant “did not leave a contactable address for written contact nor did she call the office for a return of her deposit.”;
- Since the lease terminated within 30 days from the start the Respondent was not obligated to pay the deposit into a scheme;
- The Respondent “considered the situation as “why submit a deposit for a tenancy that does not exist.” It did not make sense to take that action so instead waited on Miss Gordon to contact us with instructions for the return.”;
- The Applicant has not contacted the Respondent about return of the deposit prior to raising these proceedings

### **Findings in Fact**

1. The Applicant and Respondent entered into a Private Residential Tenancy in respect of the property at 213/2 Duddingston Park South, Edinburgh, EH15 3EJ on 28 February 2018
2. The Applicant paid a deposit of £650 and the first month’s rent in the sum of £650 (in total £1,300) prior to the commencement of the lease
3. The Applicant gave notice of her intention to terminate the lease on 28 February 2018
4. The Applicant handed her keys to the property back on 5 March 2018
5. The Respondent accepts that the lease ended on 5 March 2018
6. The lease terminated on 5 March 2018
7. The Respondent retained the first month of rent (£650)
8. The Respondent continues to hold the deposit of £650
9. The deposit has not been paid into an approved Scheme
10. The property has been leased to a new tenant from 1 May 2018
11. The Applicant applied to this Tribunal for an Order under Regulation 10 on 19 April 2018
12. The Landlord is not a local authority, registered social landlord or Scottish Homes
13. The Applicant and Landlord are not related

### **Reasons for Decision**

The tenancy is a ‘relevant tenancy’ for the purposes of regulation 3.

The Applicant has made an application to this Tribunal timeously in terms of regulation 9, having lodged the application not later than three months after the tenancy has ended.

In terms of Regulation 10, if the Tribunal is satisfied that the Landlord did not comply with any duty in regulation 3, the Tribunal must order the Landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit (Regulation 10(a)).

The Respondent accepts that he received the tenancy deposit; that it was not paid into an Approved Scheme; and that he has not yet repaid the Deposit to the Applicant.

The Respondent seeks to defend the proceedings on the basis that the tenancy ended on 5 March 2018, at which point the Applicant returned her keys to the Landlord. That being a date within 30 days from the start of the tenancy, he considered he did not have to pay the deposit into a scheme, but could continue to hold the deposit until the Respondent asked for it to be repaid.

Regulation 3 states that:

*“(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must within 30 working days of the beginning of the tenancy-*

- (a) Pay the deposit to the scheme administrator of an approved scheme; and*
- (b) Provide the tenant with the information required under regulation 42.*

*(2) The Landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.”*

There is nothing in the Regulations to suggest that the Landlord’s duty to pay the deposit into an approved scheme is discharged if the tenancy comes to an end within 30 days. The duty imposed upon the Landlord is to pay the deposit into an approved scheme within 30 days of the beginning of the Tenancy and for the deposit to remain in the scheme “until it is repaid” at the end of the tenancy.

Parties are in agreement that the tenancy commenced on 28 February 2018. The Landlord has therefore failed to pay the deposit into a scheme within 30 days of that date. Notwithstanding the fact that tenancy has ended, the Respondent has continued to hold the deposit.

The Tribunal considers that the Respondent is therefore in breach of his duty under regulation 3.

The Respondent having breached regulation 3, the Tribunal must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit (regulation 10).

The Tribunal has an “unfettered discretion” as to the amount of compensation payable (see *Fraser and Pease v Meehan* (2013 SLT (Sh Ct) 119 per Sheriff Mackie at p 121).

In considering the amount of compensation to award, the Tribunal takes account of the Respondent’s submission dated 27 September 2018.

The Tribunal does not consider the fact that the Applicant has not requested repayment of the deposit to be relevant mitigation in respect of the Landlord’s breach of regulation 3.

The Respondent was aware of his obligation to pay the deposit, his section 3 duties being outlined in the lease.

The Respondent has taken a conscious decision not to pay the deposit into an approved scheme, despite continuing to hold the deposit from 28 February 2018 to date.

The Tribunal is mindful that the purpose of the Regulations. The Regulations were introduced to protect the tenancy deposit and for parties to have access to the dispute resolution procedure should any issues arise on termination. From payment of the deposit to date, the deposit has been unprotected.

### **Decision**

In all the circumstances, the Tribunal therefore exercises its discretion and orders the Respondent to make payment of £650 to the Applicant, being a sum equal to the amount of the tenancy deposit.

### **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.**

Lesley Johnston

**Legal Member/Chair**

11 / 10 / 2018  
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**Date**