



**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/18/1508**

**Re: Property at 56 Harbour Place, Dalgety Bay, KY11 9GD (“the Property”)**

**Parties:**

**Mr Shaun O'Neill, Ms Joannagh Shanks, 87 Chandlers Rise, Dalgety Bay, KY11 9FL (“the Applicants”)**

**Cailean Property, 2/4 Bonnar Street, Dunfermline, KY12 7JQ (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants are entitled to payment by the Respondents in the sum of £975.00.**

**Background**

1. By application dated 11 June 2018 the Applicants complained to the Tribunal that the Respondents had failed to lodge the Applicants' tenancy deposit in an approved tenancy deposit scheme in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. In support of their application the Applicants provided a copy of the Tenancy Agreement and confirmation from My Deposits that their deposit had not been lodged in the scheme.
3. By Notice of Acceptance dated 23 August 2018 a legal member with delegated powers accepted the application and referred the matter to a Tribunal.

4. A Case Management Discussion was fixed to take place on 12 October 2018 at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy.
5. The Applicants were advised of the hearing by post and the Respondents were given intimation by Sheriff Officers.

### **The Case Management Discussion**

6. The Case Management Discussion took place at Fife Voluntary Action, Kirkcaldy on 12 October 2018. It was attended by Mr Shaun O'Neill on behalf of the Applicants and by Mr Colin Storrie on behalf of the Respondents.
7. It was agreed by the parties that the deposit of £650.00 had been paid by Ms Shanks to the Respondents at the commencement of her lease of the property in September 2016.
8. According to Mr Storrie although the deposit had been set up to be transferred to My Deposits in accordance with the provisions of the lease for some reason which was not clear the funds had never been transferred to My Deposits but had remained in the Respondents bank account throughout the duration of the tenancy. The error had only come to light in May 2018 when Mr Storrie had gone to apply to have the deposit released back to the Applicants.
9. According to Mr Storrie he could not provide any further explanation as to how the error had come about as the employee who had been responsible for transferring the funds was no longer in the company's employment. He said however that as a result of the problem coming to light the company had altered its systems so that there were now safeguards in place to ensure that the issue would not arise again in the future.
10. Mr Storrie said that as soon as the problem had come to light he had apologised to the Applicants and the deposit had been repaid in full immediately.
11. For the Applicants Mr O'Neill accepted that the representation made regarding the other issues that had occurred during the tenancy were broadly not relevant to the application other than showing a wider degree of negligence in managing the tenancy.
12. Mr Storrie did not think the other issues were at all relevant but accepted there had been issues with the owner of the property during the tenancy.
13. The parties were agreed that there had been a breach of Regulation 3 on the part of the Respondents and the Tribunal gave the parties the opportunity to either have the case continued to allow them to make submissions on the level of the award that the Tribunal should make or to have the matter dealt with at the Case Management Discussion. Both parties wished the matter to be dealt with without further delay.

14. For the Applicants Mr O'Neill submitted that an award of one and a half times the deposit would be an appropriate amount for the Tribunal to make.

15. For the Respondents Mr Storrie said that he was content to leave the level of the award to the discretion of the Tribunal.

### **Findings in Fact**

16. The parties entered into a Short Assured Tenancy Agreement.

17. The Respondents are a firm of Estate Agents and Letting Agents.

18. The initial agreement was between Ms Shanks and the Respondents and commenced in September 2016.

19. Ms Shanks paid a deposit of £650.00 to the Respondents in September 2016.

20. The Respondents failed to lodge the deposit in an approved tenancy deposit scheme.

21. The failure was not discovered until the tenancy came to an end in May 2018.

22. The Respondents subsequently repaid the deposit to the Applicants on 25 May 2018.

23. The Respondents were in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

24. The Applicants deposit was not in an approved scheme for a period of some 18 months.

### **Reasons for Decision**

25. Given that the facts were agreed and that it was accepted that the Respondents had breached Regulation 3 the Tribunal was left to decide what would be an appropriate amount to award the Applicants in terms of Regulation 10.

26. The Tribunal did not consider the information provided by the Applicants with regards to the other issues experienced by the Applicants during the tenancy to be relevant.

27. The Tribunal took account of the fact that the Respondents were a professional firm engaged in a property letting business and therefore not only should they be fully aware of the Tenancy Deposit Scheme Regulations they should have ensured that they had suitable systems in place to prevent any

oversights such as occurred in this case. It also seemed to the Tribunal that they should have identified the issue much sooner than they did.

28. The Tribunal acknowledged the fact that the Respondents did not seek to excuse their mistake and that they had taken steps to prevent future occurrences. They had also made prompt refund of the Applicants' deposit.

29. Taking everything into account the Tribunal agreed with the Applicants' suggestion that an award of one and a half times the deposit would be an appropriate amount to award the Applicants.

### **Decision**

30. The Respondents having been in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations) 2011 the Tribunal finds the Applicants entitled to an order for payment by the Respondents in the sum of £975.00.

### **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

**Legal Member/Chair**



**Date**

12 October 2018