



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/PR/18/1660**

**Re: Property at 49 Merchant Street, Aberdeen, AB42 1DU  
 (“the Property”)**

**Parties:**

**Miss Tracey Willox, 8 Willowbank Road, Aberdeenshire, AB42 2FG  
 (“the Applicant”)**

**Mr Gordon Farman, 2b, Glendale Gardens, Peterhead, AB42 1BA  
 (“the Respondent”)**

**Tribunal Members:**

**Susanne L M Tanner Q.C. (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicant the sum of NINE HUNDRED AND TWENTY FIVE (£925) Sterling (which sum includes, if cashed by the Applicant, a personal cheque in the sum of £675 already issued by the Respondent to the Applicant in October 2018).**

**1. Procedural Background**

- 1.1. The Applicant made an application to the tribunal on 2 July 2018 in terms of Rules 103 of the 2017 Rules. The Applicant enclosed certain documentation with the Application.

1.2. On 17 July 2018 the tribunal requested further information from the Applicant. The Applicant replied by letter of 18 July 2018 stating that the tenancy commenced in June 2016 and that the rent payable was £675 per calendar month. She stated that she did have a copy of the tenancy paperwork and that she had not contacted the Respondent to request this since making the Application. The Applicant provided the Respondent's name and address details and confirmed that the person referred to as "Jacqui" in the screen shots of text messages was the Respondent's wife who had been a point of contact for the Applicant in relation to the tenancy.

1.3. The Application was referred to the tribunal on 30 July 2018 and a Case Management Discussion (CMD) was fixed for 11 October 2018 at 11.30am. Both parties were notified of the date, time and place of the CMD by letters dated 26 September 2018. The Respondent was advised that if he wished to submit any written representations to the Application he should do so by 9 October 2018.

1.4. The Respondent sent representations to the tribunal's administration on 2 and 8 October, which were sent by the tribunal's administration to the Applicant.

1.4.1. In his email of 2 October 2018 he advised that due to health issues he would be unable to attend the CMD on 11 October 2018. He also admitted that he had forgotten to lodge the Applicant's deposit in an approved tenancy deposit scheme, advising that he had rented his own home to the Applicant and was not a professional landlord and was unaware of his obligation to do so. He further advised that he had returned the full deposit to the Applicant. He also stated that he had invited the Applicant to enter mediation in relation to repair costs for damage to his home (which is not the subject of the present Application).

1.4.2. On 8 October 2018 the Applicant sent further written representations in relation to the failure to lodge the deposit and other issues unrelated to the present Application. He stated that on receipt of the tribunal documentation on 27 September 2018 he immediately sent the Applicant a cheque for £675 which represented return of the full amount of the deposit. The remainder of the written representations relate to repairs issues and costs which are not the subject of the present Application.

## **2. The CMD: 11 October 2018, AB1, 48 Huntly Street, Aberdeen, AB10 1SH**

2.1. The Applicant attended at the CMD. She was accompanied by Scott McHardie, as her Supporter. He advised that he was a co-signatory to the tenancy documentation for the Property.

2.2. The Respondent did not attend the CMD.

2.3. The CMD proceeded in the absence of the Respondent.

### **3. Findings in Fact**

- 3.1. A tenancy of the Property began at the end of June 2016 in relation to which the Applicant and Mr McHardie were joint tenants and the Respondent was landlord.
- 3.2. In or about June 2016 tenancy documentation was signed by the Applicant and Mr McHardie and the Respondent.
- 3.3. In or about June 2016, the Applicant paid a deposit of £675.00 in cash to the Respondent in respect of the tenancy of the Property.
- 3.4. The Respondent did not issue the Applicant with a receipt in respect of her tenancy deposit.
- 3.5. The Respondent did not provide the Applicant with paperwork to show that the deposit was lodged with an approved tenancy deposit protection scheme.
- 3.6. The Respondent's wife Jacqui Farman and the Respondent were the Applicant's points of contact in respect of the tenancy.
- 3.7. The tenancy ended on or about 5 May 2018.
- 3.8. In May and June 2018, the Applicant repeatedly requested information from the Respondent's wife and the Respondent about whether her deposit was protected and what was happening in relation to repayment.
- 3.9. The Respondent has not provided any information to the Applicant about protection of the tenancy deposit.
- 3.10. The Respondent's wife has not provided any information to the Applicant on behalf of the Respondent in relation to protection of the tenancy deposit.
- 3.11. The Application to the tribunal was made on 3 July 2018.
- 3.12. The Application was referred to the tribunal on 30 July 2018.
- 3.13. A Case Management Discussion ("CMD") was fixed for 11 October 2018 and on 26 September 2018 parties were notified of the date, time and place of the CMD.
- 3.14. On 2 October 2018 the Respondent admitted in his communications with the tribunal that he had not lodged the Applicant's deposit in an approved scheme.
- 3.15. On or after 27 September 2018, the Respondent sent a personal cheque to the Applicant for the sum of £675.00.

- 3.16. At the same time as the cheque was sent to the Applicant the Respondent's wife sent a text to the Applicant advising that the cheque represented the return of the Applicant's full deposit and requested that the Applicant attended mediation in relation to a list of repairs and costs.
- 3.17. The Applicant has not yet cashed the Respondent's cheque for £675.00.
- 3.18. The Respondent did not lodge the Applicant's deposit with one of the approved tenancy deposit schemes.

#### 4. Reasons for Decision

- 4.1. In terms of Rule 17(4) the tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision. Both parties had been advised of this fact in the letter notifying the parties of the date, time and place of the CMD. The Respondent was unable to attend the CMD due to health issues but had submitted written representations to the tribunal which included his position in respect of the issue giving rise to the Application, namely an admission that he had not lodged the Applicant's deposit in an approved scheme.
- 4.2. At the CMD, the Applicant advised that:
- 4.2.1. she had paid a cash deposit of £675 to the Respondent on the day that the lease documentation was signed at the end of June 2016.
  - 4.2.2. the Respondent was present when the lease was signed and the deposit was handed over in the kitchen at 49 Merchant Street.
  - 4.2.3. she also paid a *pro rata* amount for the remainder of the first months' rent.
  - 4.2.4. no receipt was given to her by the Respondent in respect of the deposit payment.
  - 4.2.5. Mr McHardie was a co-tenant on the lease.
  - 4.2.6. she looked for but does not appear to have a copy of the lease.
  - 4.2.7. she has never been provided by or on behalf of the Respondent with any documentation in relation to the lodging of the deposit with an approved scheme.
  - 4.2.8. she cannot remember if any provision was included in the lease about deposit protection or the name of the scheme.
  - 4.2.9. the tenancy ended on 5 May 2018 and the Applicant and her family moved out on or about that date. The tenancy ended because the Respondent and his wife advised the Applicant that they were intending to sell the Property. The Applicant panicked and began looking for another property for her family. The Applicant managed to find another private let and messaged the Respondent's wife to advise that they had found another property and would be moving out.
  - 4.2.10. after the Applicant and her family moved out of the Property she repeatedly asked the Respondent and his wife in May and June 2016 if the Applicant was getting her deposit back and where the deposit was held. The Applicant lodged screen shots of text messages were lodged

which were sent to “Jacqui”, the Respondent’s wife and copy emails to the Respondent. The Applicant did not receive a reply from the Respondent’s wife or the Respondent in relation to protection of her deposit.

4.2.11. The Applicant thereafter contacted the four deposit protection companies by telephone to enquire as to whether her deposit had been lodged with any of them. All four companies confirmed over the telephone that they were not holding her deposit.

4.2.12. Last week (week commencing 1 October 2018) the Applicant received a cheque for £675 from the Respondent. At or about the same time Mrs Jacqui Farman, the Respondent’s wife, sent a text saying that they always wanted to be fair and there was a cheque on the way for the full deposit. The Respondent’s wife added that they want to go to mediation to speak about the repairs required to the house. The Respondent has provided a list to the Applicant which includes proposed costs of repairs plus a months’ rent, which totals about £3000.

4.2.13. The Applicant has not replied to the Respondent’s wife’s suggestion of mediation in relation to the claim for repairs and rent.

4.3. The tribunal asked the Applicant if she was intending to cash the Respondent’s cheque for £675. The Applicant said that she had been waiting for the CMD before taking any action in relation to the cheque. The Applicant stated that she thinks that even if she cashes the cheque for £675 it would be appropriate for the tribunal to award an additional payment in terms of Regulation 10 due to the stress caused by the deposit not being lodged, her repeated requests to the Respondent and his wife and the lack of information from the Respondent in relation to the deposit. She waited from May until October 2018 for her deposit to be returned (and she says that even now the cheque still requires to be cashed).

#### **4.4. Applicable Law**

4.5. Regulation 3 of the 2011 Regulations provides:

*(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.*

4.6. Regulation 9 of the 2011 Regulations provides:

*“(1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal] 1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.*

*(2) An application under paragraph (1) must be made [...] 2 no later than 3 months after the tenancy has ended.”*

4.7. Regulation 10 of the 2011 Regulations provides that: “[i]f satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal — (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;...”

## **5. Decision**

5.1. The tribunal was satisfied that it had sufficient information to make a decision in relation to the Application at the CMD.

5.2. The tribunal was satisfied that the tenancy was a relevant tenancy in terms of Regulation 3(3) of the 2011 Regulations.

5.3. The Application was made within three months of the tenancy ending as required by Regulation 9(1).

5.4. The tribunal is satisfied that no information has been provided by the Respondent to the Applicant in relation to the lodging of the deposit in an approved scheme.

5.5. The tribunal is satisfied that the deposit was never lodged with an approved scheme. The Respondent has admitted this in his written representations. It could, in any event, be inferred from the fact that the Respondent has never provided any information relative to the same to the Applicant or to the tribunal; and has recently sent a personal cheque to the Applicant in the sum of £675, at or about the same time as sending a text saying that the full deposit would be returned, rather than return of funds coming via the tenancy deposit protection scheme or being mediated through such a scheme.

5.6. The tribunal was satisfied that the Respondent did not comply with the duties in Regulation 3 in that the Applicant’s deposit was not lodged with an approved scheme and no information was provided to the Applicant.

5.7. In terms of Regulation 10, the tribunal was required to order payment by the Respondent to the Applicant for a sum not exceeding three times the amount of the deposit. The tribunal decided to order payment of £925, to include the

amount of £675 for which a personal cheque had been issued by the Respondent to the Applicant in about October 2018 but which has not yet been cashed; together with an additional payment of £250 to reflect following matters: that the Applicant's deposit was not protected by the Respondent throughout the tenancy; that the Applicant received no response to her enquiries in May and June 2018 relative to the deposit; that the Applicant required to make the Application to the tribunal; and that the Applicant had not received a cheque in respect of the deposit until the week prior to the CMD in October 2018. The Legal Member advised the Applicant that the payment order would be made for the full amount of £925 to include the sum of £675 for which the cheque has been issued. In the event that there are any issues with cashing the Respondent's personal cheque for £675 the full amount of £925 will be due to her in terms of the payment order; and the Legal Member advised the Applicant that if she cashed the cheque, the amount outstanding in terms of the payment order would be £250.

- 5.8. The Legal Member advised the Applicant that the tribunal's decision related only to her Application PR/18/1660 which had been made in terms of Rule 103 of the 2017 Rules and that the tribunal could not determine any matters relating to proposed charges for damage caused to the Property during the tenancy, damaged/missing items at the end of the tenancy or any claim in respect of rent arrears, as no such application was presently before the tribunal. The Respondent should be aware should he wish to pursue the other matters raised in his written representations relative to repairs to the Property and the costs thereof, and rent arrears, these would require to be the subject of a separate Application to the tribunal made by him or on his behalf.

## **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.**

Susanne Tanner

12 October 2018

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**Susanne L M Tanner Q.C.**  
**Legal Member/Chair**