



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.**

**Chamber Ref: FTS/HPC/PR/19/1688**

**Re: Property at 62 Highcroft Avenue, Croftfoot, Glasgow, G44 5RW (“the Property”)**

**Parties:**

**Miss Gemma O'Brien, Mr Ryan Martin, 62 Highcroft Avenue, Croftfoot, Glasgow, G44 5RW (“the Applicants”)**

**Mr Allan Campbell, Mrs Andrea Campbell, 22 Huntly Drive, Cambuslang, Glasgow, G72 8PU (“the Respondents”)**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondents as landlords for the property did not comply with any duty in Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the respondents to make payment to the applicants the sum of seven hundred and fifty pounds.**

This is case management discussion, ‘CMD’ regarding an application in terms of rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ for a penalty in terms of regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, ‘the regulations’. The application was made by Miss Gemma O’Brien and Mr Ryan Martin on 31 May 2019.

The tribunal had before it the following copy documents:

1. Application dated 29 May and received by the Tribunal on 31 May 2019.
2. Tenancy agreement for lease of the property for the initial period of 23 August 2013 until 28 February 2014.
3. Sheriff Officer’s execution of service of the application on the respondents.
4. Representations by the respondents dated 20 June 2019.

The applicants attended the CMD and the respondents Mr and Mrs Campbell also attended.

### **Preliminary matters**

The tribunal sought to ascertain the date the tenancy came to an end. The parties all agreed that the tenancy came to an end on 30 June 2019. The tribunal was therefore satisfied that the application was lodged timeously.

### **The applicant's position**

The applicant Ms Campbell stated that they only became aware that their deposit of £500 should have been lodged in a deposit scheme when she paid her deposit for her new property. The deposit of £500 was therefor unprotected for 6 years. Both applicants accepted that the deposit had been returned less the agreed £75 for grass cutting. Ms Campbell stated that the respondents' submission contained a lot of irrelevant matters.

### **The respondents' position**

Mrs Campbell stated that the applicants were well aware that the deposit was not being lodged and that administration costs were kept to a minimum (including the landlord registration) to keep the rent down for the applicants and that this was agreed. Both respondents conceded that the deposit of £500 was not lodged in a deposit scheme for the duration of the tenancy. Mrs Campbell also stated that she and her husband were first time landlords at the time the lease was entered into. They were not aware of the legal obligation to put the depositor in a scheme. She stated she works for a housing organisation (and the applicant Miss O'Brien works for a letting agent) but she was not aware that this was legally required. She stated a friend helped with the lease. The respondents were disappointed the application was made and felt that it had been made as a result of bad feeling as they were putting the property on the market and the applicants erroneously thought they were intending to redecorate.

### **Decision and reasons**

The tribunal was satisfied that there was sufficient information to make a decision today and the procedure had been fair. There was a clear admitted breach of the regulations. The tribunal went on to consider the gravity of the breach. The tribunal noted that the deposit had been unprotected for the whole 6 years of the tenancy. The respondents were letting the property for the first time and the failure to lodge

the deposit appeared on balance to be a genuine failure to realise the legal obligation to do so. The deposit had been returned swiftly and the deduction had been agreed amicably. In all of the circumstances of this particular case having reviewed the case law the tribunal decided one and a half times the deposit was fair proportionate and just. Mrs Campbell asked for time to pay and the tribunal adjourned for the respondents to complete a time to pay application. They offered to pay £50 per month. The applicants did not consider this was reasonable as it would take over a year to pay off. The tribunal noted that the respondents have substantial outgoings but they also have a substantial income and the tribunal refused the time to pay application as the offer of £50 was not reasonable.

### 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 Ward

Lesley A Ward Legal Member

25 July 2019

Date