



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit
Scheme (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/18/1690

Re: Property at 21 Millerhill, Dalkeith, EH22 1RZ (“the Property”)

Parties:

Mr Colin Muir, Mrs Naomi Muir, 9 Orchard Park, Tranent, EH33 1DW (“the Applicant”)

Ms Marion Smith, 34 Northfield Park, Edinburgh, EH8 7QX (“the Respondent”)

Tribunal Members:

Anne Mathie (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 be ordered to pay the Applicants the sum of NINE HUNDRED POUNDS STERLING (£900)

- **Background**

This case concerns an application under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. (‘The Regulations’). An application was made to the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘The 2017 Rules’) seeking an order for payment of the deposit paid in relation to a short assured tenancy of the Property.

The application contained the following documents:

1. A copy of the Tenancy Agreement signed by applicants on 16 August 2017
2. A copy of the AT5

3. A copy of Section 33 Notice dated 5 April 2018 requesting Applicants leave by 19 June 2018
4. A copy letter from Respondent to Applicants dated 5 April 2018
5. A copy Notice to Quit dated 5 April 2018 requesting Applicants leave by 19 June 2018
6. Copies of emails exchanged between the Applicants and Respondent dated 11 April 2018 regarding the whereabouts of the deposit
7. Deposit Protection Certificate from My Deposits Scotland showing deposit of £900 received by them on 11 April 2018
8. A covering letter from My Deposits Scotland dated 12 April 2018

The Tribunal wrote to the First Applicant on 19 July 2018 asking for information regarding the position of the joint tenant, the date the tenancy came to an end and for clarification about a date referred to in the application.

The First Applicant responded by email of 26 July 2018 confirming that the Second Applicant wished him to deal with matters on behalf of them both (a signed letter was provided from the Second Applicant in this regard), he confirmed the tenancy came to an end on 19 June 2018 and confirmed that his reference to an email of 11 May 2018 should have actually been to an email on 11 April 2018.

Notice of today's Case Management Discussion was served on the Respondent on 18 September 2018 requesting written representations by 3 October 2018. The letter served on the Respondent confirmed that if the Respondent did not attend at the Case Management Discussion today then this would not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

Written representations were received from the Respondent by email dated 19 September 2018. These written representations advised that a case in relation to the original deposit of £900 had already been decided by MyDeposits Scotland and that the First Applicant had requested a review of this decision. The Respondent also advised that the reason the deposit was lodged late was due to an oversight as she had been working abroad at the time. Along with the written representations, the Respondent lodged the following:

1. A large number of photographs in relation to the Property
2. A copy of the Adjudication Decision from MyDeposits Scotland
3. Copies of some receipts and invoices in relation to work done to the Property
4. A copy of the Tenancy Agreement
5. A copy of the letter from the Respondent to the Applicants dated 5 April 2018
6. A copy of the AT6
7. A copy of the Section 33 Notice

- The Case Management Discussion

The First Applicant appeared at the Case Management Discussion today on behalf of himself and the Second Applicant. He advised that the Second Applicant suffered from anxiety and was unable to attend. The Respondent did not attend the Case Management Discussion today (although the Tribunal waited

until 10.10am to commence Case Management Discussion in case Respondent was running late). I was satisfied that the Respondent was aware of today's Case Management Discussion and I proceeded with the matter today in her absence. I advised that today's Case Management Discussion only concerned the alleged delay in paying the deposit into a recognised scheme and that the dispute in relation to how much, if any, of the original deposit should be repaid was a separate matter. I also discussed the fact the First Applicant had only recently had sight of the written representations from the Respondent. Ordinarily the Tribunal would adjourn the case to allow the Applicant to look through the documents but most of the documents lodged were irrelevant in so far as they related to the return of the original deposit and many of the other documents received from the Respondent has also been lodged by the Applicant. He was content to proceed without an adjournment. The First Applicant confirmed that he and his wife (the Second Applicant) had moved into the property on 19 August 2017 and had paid the Respondent a deposit of £900 on or about 8 August 2017. They had had various issues during the course of their tenancy. I did not unfortunately have the benefit of the Respondent's oral representations in this regard but these matters would not have materially affected my decision in any event. The First Applicant believed the Respondent had at least one other property which she rented out as she had tried to take a sofa from the Property to put in another property that she rented out. The First Applicant did not know how long the Respondent had been working abroad but had paid the deposit personally to her on or about 8 August 2017 and had seen her again the day he moved into the Property. The Respondent had carried out an inspection at the Property on or about 1 February 2018.

- Findings in Fact

1. The Applicants and Respondent entered into a tenancy agreement in respect of the Property and the Applicants stayed in the Property from 19 August 2017 until 19 June 2018.
2. A deposit of £900 was paid to the Respondent on or around 8 August 2017.
3. This deposit was only paid into a recognised scheme on 11 April 2018 and the deposit was therefore unprotected for approximately 8 months.

- Reasons for Decision

The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits by landlords for tenants. In particular Regulation 3 provides: 'A landlord who has received a tenancy deposit on 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.'

In terms of Regulation 9 of the 2011 Regulations a tenant may apply for an order under Regulation 10 where the landlord did not comply with their duties and in terms of Regulation 10 of the 2011 Regulations an order must be made if the landlord did not comply with any of their Regulation 3 duties.

The Respondent admits she was late lodging the deposit in her written representations and advised that this was due to an oversight as she was working abroad.

It is appropriate that an Order for Payment be granted. The Respondent should pay the Applicants an amount to reflect the circumstances of the case. I am granting the sum of £900 which equates to one month's rent. In coming to this figure I have taken into account the length of time the deposit was unprotected for, the fact that the deposit was lodged eventually in a recognised scheme and the Respondent's written representations that the reason for the late lodging was due to an oversight as she was working abroad.

The Tribunal proceeded on the basis of the written documents which were before it and the information provided by the First Applicant at the Case Management Discussion. There was nothing before the Tribunal challenging or disputing the evidence before it.

- Decision

That the Respondent be ordered to pay the Applicants the sum of NINE HUNDRED POUNDS STERLING (£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.

Anne Mathie

Legal Member/Chair

Date

5 October 2018