

**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/19/1872**

**Re: Property at 26 Dunglass Avenue, West Mains, East Kilbride, G74 4EG ("the  
Property")**

**Parties:**

**Mrs Maria Thorburn, 68 Craighill Drive, Clarkston, Glasgow, G76 7TD ("the  
Applicant")**

**Mr Dominic Tyrell, Spey Bay, Golf View, East Kilbride, G74 4GS ("the  
Respondent")**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that an Order for Payment in the sum of FIVE HUNDRED  
POUNDS (£500.00) should be made in favour of the applicant.**

**BACKGROUND**

1. By application received on 18<sup>th</sup> June 2019 the applicant sought an award against the respondent in respect of a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The present application was conjoined with application reference FTS/HPC/CV/19/2114.
2. The applicant lodged with the application a copy of the tenancy agreement. The respondent submitted a written response on 4<sup>th</sup> September 2019. The parties also lodged WhatsApp messages between parties spanning the period from 16<sup>th</sup> February 2019 to 15<sup>th</sup> June 2019.

### **CASE MANAGEMENT DISCUSSION (“CMD”)**

3. A CMD took place on 28<sup>th</sup> October 2019. Both parties attended.
4. Parties confirmed that they entered into a tenancy agreement commencing on 14<sup>th</sup> January 2019. The tenancy term was three months. The respondent advised that he owned a number of other properties which he rented out. He advised that it was unusual for him to issue a lease for less than six months however; he had been sympathetic to the applicant's personal circumstances and agreed to a shorter term.
5. Parties confirmed that a deposit of £500 was paid prior to the commencement of the tenancy. The monthly rent payable was £400. The applicant had moved out of the property and the tenancy had terminated on 14<sup>th</sup> April 2019.
6. The respondent advised that after the applicant moved out he discovered damage to the kitchen worktops. He advised that the property had been fully refurbished before the applicant had moved in. He obtained a quote for remedial works to be carried out for £560.
7. The applicant advised that she had disputed the quote as in her view it was too high. She had been unable to obtain an alternative quote without access to the property. She advised the Tribunal that the original worktops may have been defective as they had been easily damaged. The respondent confirmed that the quoted works were subsequently carried out.
8. The respondent accepted that the tenancy was one to which the Tenancy Deposit Regulations applied. The respondent advised that he had been familiar with the regulations and in other properties rented out by him, deposits were placed within the appropriate scheme. He advised that in this instance he had not placed the deposit in an approved scheme due to the short term of the lease. In his written representation and at the CMD the respondent accepted that he had made an error in not placing the deposit in an appropriate scheme as required by the regulations.
9. Parties confirmed that the deposit was repaid in full to the applicant after she raised the Tenancy Deposit Scheme Regulations with the respondent. This was borne out by the WhatsApp message which showed that the deposit had been transferred back to the applicant on or around 11<sup>th</sup> June 2019.

## **FINDINGS IN FACT**

10. Parties entered into a tenancy agreement in respect of the property. The commencement date was 14<sup>th</sup> January 2019. The term of the lease was for 3 months to 14<sup>th</sup> April 2019.
11. The tenancy terminated on 14<sup>th</sup> April 2019.
12. The applicant paid a deposit of £500 prior to the commencement of the tenancy.
13. The respondent did not place the deposit in an appropriate Tenancy Deposit Scheme as required.
14. The respondent repaid the tenancy deposit in full to the applicant on or around 11<sup>th</sup> June 2019
15. The respondent was aware of the relevant regulations however, due to the short term of the lease had not complied with the regulations. He accepts that this was an error.

## **REASONS FOR DECISION**

16. The tenancy is a "relevant tenancy" for the purposes of Regulation 3. Accordingly the deposit required to be placed in an approved scheme. The respondent had failed to do so. Regulations 9 and 10 applied which allow for a sanction of up to three times the amount of the deposit to be made against the respondent.
17. The Tribunal considered that the breach by the respondent was at the less severe end of the scale. In determining this the Tribunal took into account the fact that the respondent had readily accepted his error of judgement, the fact that the lease was for a short period and therefore the tenancy deposit was not unprotected for an extended period. The Tribunal took into account that the respondent had repaid the deposit in full when the applicant had raised the breach of the Regulations. The Tribunal also took into account the respondent's explanation that he had granted an unusually short lease to try and accommodate the applicant and had departed from his usual practice of placing the deposit in an approved scheme as a result. The Tribunal took into account that the deposit was repaid after the applicant had raised the Regulations with the respondent although the respondent would have been aware that he was in breach of the regulations.

18. Taking the above factors into account the Tribunal determined that an award of one times the deposit payable is a fair and equitable sanction in the circumstances.

## **DECISION**

The Tribunal makes an order for payment in the sum of £500 in favour of the applicant.

## **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.

M Kelly

Legal Member/Chair

Date

28<sup>th</sup> Oct 2019