



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/PR/18/2115

Re: Property at 10 Chattan Place, Aberdeen, AB10 6RD (“the Property”)

Parties:

**Mr Dale Rose Stephen Sutherland, 66 Charles Street, Aberdeen, Ab25 3TU
 (“the Applicant”)**

**Mr Ewan Sinclair Laird, 2 Northcote Road, Aberdeen, AB15 7SY (“the
 Respondent”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined that the Applicant is entitled to payment by the
 Respondent in the sum of EIGHT HUNDRED POUNDS (£800.00).**

Background

1. By application dated 14 August 2018 the Applicant applied to the Tribunal for an order under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 complaining that the Respondent had not lodged his Tenancy deposit in an approved scheme. The applicant provided copies of his tenancy agreement and emails and text messages between the parties.
2. By Notice of Acceptance dated 20 August 2018 a legal member with delegated powers accepted the application and referred it to a Tribunal.
3. A Case Management Discussion was fixed to take place on 1 October 2018 at the Credo Centre, 14-20 John Street, Aberdeen. Intimation was

given to the Applicant by post on 5 September 2018 and to the Respondent by Sheriff Officers on 6 September 2018.

Case Management Discussion

4. The Case Management Discussion took place at the Credo Centre, 14-20 John Street, Aberdeen on 1 October 2018. It was attended by both parties. The Respondent was supported by Ms Isla Jappey.
5. It was agreed that the tenancy commenced on 28 July 2017 and ended on 6 August 2018. The Rent was £400.00 per month and the Applicant had paid 6 months' rent in advance together with a deposit of £400.00. These sums had been paid to the Respondents Letting Agents, Cox & Co, 38 Holburn Street, Aberdeen.
6. According to the Respondent and Ms Jappey they had been new to the letting of property and had relied on Cox & Co to deal with the lease and associated matters professionally. They thought that Cox & Co were dealing with lodging the deposit in an approved scheme. They were aware that tenants' deposits had to be lodged in a scheme.
7. The Applicant said he was not aware of the Tenant Deposit Scheme until shortly before the end of his tenancy. His previous tenancy had been in London and the deposit had not been protected and before that had been with a social landlord and there had been no deposit.
8. Ms Jappey explained that although Cox & Co had paid the Respondent all of the rent collected from the Applicant and deducted their expenses from what must have been the deposit this had not been apparent to her or the Respondent at the time. It was only shortly before the end of the tenancy that she realised that Cox & Co had not lodged the deposit with an approved scheme. Ms Jappey said the Aberdeen office of Cox & Co had closed down and all the staff had gone but she had spoken to the firm's Edinburgh office who had made investigations and confirmed the deposit had not been lodged.
9. Ms Jappey produced a document from Cox & Co that indicated that part of the service provided by them was to deal with the collection and lodging of any security deposit with an approved tenancy deposit scheme.
10. The parties were agreed that no further evidence was required and that all the material facts had been agreed.
11. For his part the Applicant submitted that the Tribunal should award the maximum amount allowed in terms of the regulations as the Respondent had not exercised his duties as Landlord and there was very little excuse for not lodging the deposit in an approved scheme. It did not seem right that the Respondent could make reference to a third party and the details

of where the deposit had been put had been misplaced when in fact the deposit had never been lodged in a scheme at all.

12. For the Respondent Ms Japey explained that reference to a third party had been a reference to Cox & Co and not to a Scheme Administrator. The Respondent had thought the funds had been lodged in a scheme and had not found out that they had not until the end of the tenancy.
13. The Respondent accepted that the deposit had not been lodged and that therefore he was in breach of the Regulations but pointed out that the deposit had been repaid in full promptly at the end of the tenancy and he had not gained anything by the deposit not being paid into a scheme. He had relied upon a professional firm of letting agents and had been let down by them.
14. Taking account of the facts and circumstances and the length of time that the deposit was not in a scheme the Tribunal was of the view that an award of twice the deposit namely £800.00 was an appropriate amount to award the Applicant.

Findings in Fact

15. The parties entered into a Short Assured Tenancy Agreement that endured from 28 July 2018 until 6 August 2018 at a rent of £400.00 per month.
16. The Applicant paid a deposit of £400.00 at the commencement of the tenancy. The deposit was never paid into an approved Tenancy Deposit Scheme.
17. The Respondent relied upon his letting agent Cox & Co to prepare the lease documentation and collect the initial rent and deposit.
18. The tenancy agreement made no reference to the deposit being placed in an approved scheme.
19. The Respondent received all of the initial six month's rent paid by the Applicant from Cox & Co without any deduction for their fees.
20. Neither the Applicant or the Respondent received any intimation from a scheme administrator that the deposit had been lodged.
21. The Respondent repaid the deposit in full to the Applicant shortly after the end of the tenancy.
22. The Respondent was in breach of Regulation 3 of the Tenancy Deposit Schemes(Scotland) Regulations 2011 ("the Regulations") and is entitled to a remedy in terms of Regulation 10.

Reasons for Decision

23. The Respondent acknowledged that the deposit had not been placed in an approved scheme and that he was therefore in breach of Regulation 3.
24. Whilst the Tribunal had some sympathy for the Respondent in that it appeared that he had been let down by his letting agents who had failed to properly deal with the deposit in terms of their agreement with him ultimately the onus was on the Respondent to ensure as Landlord that all legislative requirements were met.
25. It ought to have been apparent to the Respondent when he did not receive intimation from a scheme administrator that the deposit had not been lodged. It also should have been apparent when he received all of the rent paid by the Applicant without any deduction for Cox & Co's fees that the deposit funds had been used inappropriately.
26. Although the Respondent did not gain to any significant extent from the funds not being deposited and the Applicant had his deposit repaid promptly there was a lengthy period of over a year when the deposit was not secured and it is only right that any award should reflect that this was a serious breach of the regulations. The Tribunal was therefore of the view that an award of twice the deposit was in the circumstances appropriate.
27. It may be that the Respondent is entitled to some form of redress against his former letting agents but that was not a matter for the Tribunal to take into account in considering the award to make in favour of the Applicant.

Decision

28. The Tribunal finds the Applicant entitled to payment by the Respondent in the sum of EIGHT HUNDRED POUNDS (£800.00),

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

- 1 October 2018
Date