

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



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

**Chamber Ref: FTS/HPC/PR/18/3478**

**Re: Property at 26 Bressay Grove, Glasgow, G33 4UR (“the Property”)**

**Parties:**

**Miss Louise Miller, 72 Miklehouse Road, Glasgow, G69 6TG (“the Applicant”)**

**Ms Elizabeth Aire, 1 Baillieston Road, Glasgow, G71 7SB (“the Respondent”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an Order for Payment in the sum of £1,500.**

Background

The Applicant submitted an application on 20<sup>th</sup> December 2018 seeking an order for payment in terms of Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011. A case management discussion took place on 25<sup>th</sup> March 2019 and reference is made to the notes from that case management discussion.

It was noted by the Tribunal that there are 2 tenancy agreements produced: the first is dated 27<sup>th</sup> July 2011 between Sarah E Aire (the Respondent’s daughter) and the Applicant. The second tenancy agreement is undated but indicates that the tenancy commenced on 29<sup>th</sup> February 2012. This tenancy agreement is in almost identical terms to the first tenancy agreement, but it is between the Applicant and Respondent. Both tenancies relate to the same property and the Applicant occupied the property without interruption until December 2018. The Tribunal also noted that the Respondent has been the heritable proprietor of the subjects from May 2008 to date.

## The Case Management Discussion

The Applicant was present and represented by Mr Doig. The Respondent was present and represented by Mr McTurk.

The Tribunal referred the Respondent to the Directions previously issued and enquired why she had not provided a response to paragraphs (ii) to (iv). The Respondent advised that she was confused as to whether a deposit had been paid. The Tribunal referred the Respondent to the List of Documents lodged by the Applicant and in particular document number 7. The Respondent confirmed that this was a screenshot of a text exchange between her and the Applicant. In that text exchange the Applicant asked "What date will I get that deposit back? Is it in that government scheme?" and in response the Respondent replied "Not in scheme as it was before they brought that out, once I have checked everything I will text and email your letter". The Respondent advised that she was confused and advised that although the word "deposit" is used, she was referring to rent. The Tribunal referred the Respondent to Document 4 which was an email exchange between the parties. Again, in that email exchange, reference is made to a deposit. In those circumstances, the Tribunal observed that it is difficult to understand why there was any confusion. On behalf of the Respondent, Mr McTurk suggested that some evidence be produced to demonstrate that a deposit of £500 was actually paid. Miss Miller advised that her mother paid £500 in cash to the Respondent's daughter on the date that the tenancy agreement was signed, 27<sup>th</sup> July 2011. In response to a question from the Tribunal, the Respondent advised that her daughter is now abroad but when asked by the Respondent about a deposit for this property, her daughter advised that she could not remember. Mr McTurk recognised that the terms of the Regulations are mandatory and explained that the Respondent was not an experienced landlord. His position was that it would be unfair to penalise the Respondent by making an order for payment, especially when there has been no evidence of the deposit having been paid.

### Findings in fact

1. The Applicant entered into a tenancy on 27<sup>th</sup> August 2011 in respect of the property.
2. The Applicant and Respondent signed a second tenancy agreement in 2012 in respect of the same property.
3. A deposit was paid on behalf of the Applicant to the Respondent's daughter on 27<sup>th</sup> July 2011 in the sum of £500.
4. The Respondent failed to comply with her duty in terms of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 in respect that the deposit paid by the Applicant was not paid to an administrator of an approved scheme within 30 days as required and separately, the Respondent failed to provide the Applicant with the prescribed information about her tenancy deposit in accordance with Regulation 42 within 30 days.

### Reason for Decision

It was submitted by Mr McTurk that no evidence had been produced to demonstrate that the deposit was in fact paid. The Tribunal does not accept that no evidence was

produced. The Applicant herself advised the Tribunal of the date and manner of payment of the deposit. However, in addition to that, Documents 7 and 4 referred to the deposit and the reason why the deposit was withheld after termination of the tenancy. In these circumstances, the Tribunal was satisfied that the deposit was indeed paid. It was accepted by the Respondent that she did not pay a deposit to one of the approved schemes. It follows that there was a failure to comply with the Regulations. The Applicant's representative sought payment in the sum of £1,500 being three times the deposit paid. The Tribunal was satisfied that, in the particular circumstances of this case, it was appropriate to award three times the value of the deposit and the Applicant's motion was therefore granted.

### **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.**

N Irvine

**Legal Member/Chair**

**8<sup>th</sup> May 2019**

**Date**

