



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/18/1433**

**Re: Property at 25/8 Panmure Place, Edinburgh, EH3 9HP (“the Property”)**

**Parties:**

**Ms Birgit Feldmann, 10/10 Lochrin Buildings, Edinburgh, EH3 9ND (“the Applicant”)**

**Mrs Victoria Johnson, Peppard House, Forty Green Road, Beaconsfield, Buckinghamshire, HP9 1XL (“the Respondent”)**

**Tribunal Members:**

**Rory Cowan (Legal Member)**

**Decision in absence of the Applicant and the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to dismiss the application.**

- Background

An application was received on 8 June 2018 seeking an order for a penalty under regulation 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) in relation to the Applicant’s former tenancy at the Property (the Application). In the Application, the Applicant claimed that her landlord (the Respondent) had not lodged the security deposit with an approved tenancy deposit scheme or issued the prescribed information, all as required by Regulation 3 of the Regulations.

The Applicant lodged various documents with the Application as follows:

- 1) Various emails between the Applicant, the Respondent, the Respondent’s father who was acting as her agent as well as other joint tenants at the Property;
- 2) A copy of a partially subscribed lease dated 13 July 2016; and

- 3) An email dated 11 April 2018 from The Letting Protection Service, one of the approved tenancy deposit schemes appointed under the Regulations.

The Tribunal fixed a Case Management Discussion (CMD) for 31 August 2018 at 2pm and the date and time of the CMD was intimated to the parties. Both the Applicant and Respondent were advised they were required to attend the CMD and that the Tribunal could do anything at the CMD that they could at a full hearing, if it had sufficient information in front of it and it considers that the procedure had been fair.

- The Case Management Discussion

The hearing took place in the absence of the Respondent and the Applicant. The Respondent had, prior to the CMD, lodged detailed representations with attached vouching and had explained her reasons for being unable to attend the CMD. She explained that she was content for the CMD to proceed in her absence.

The Applicant did not attend, nor was any explanation provided for her failure to attend.

In her written representations, the Respondent explained that the Property had originally been let to a Melanie Suetzman and a Jane Simpson and that, on or around "beginning of February 2016" the Applicant had moved into the Property in lieu of Jane Simpson who had vacated the Property. The Respondent indicated that there had been some attempts to get the Applicant and Ms Suetzman to sign a new lease but this had not occurred and that the original lease had therefore never been terminated. The position being that, the Applicant had effectively stepped into the shoes of Jane Simpson in the original tenancy. It was also stated that the deposit relative to the original tenancy had been lodged within time and prescribed information issued.

Crucially, the Respondent stated that the Applicant had not in fact paid any deposit to her and that what appeared to have happened is that the Applicant paid a half share of the deposit to the outgoing tenant Jane Simpson on or around the time the Applicant took occupation of the Property.

In terms of Regulation 3 of the Regulations the duty to pay a deposit into a scheme only applies to a landlord who "...has received a tenancy deposit...".

Nothing was produced by the Applicant that demonstrated that she had paid any security deposit to the Respondent, how much may have been paid or when that payment may have been made. Indeed, the position in the application regarding when any tenancy involving the Applicant may have started was also not clear. Without this information from the Applicant, the Tribunal is not in a position to determine the position justly or fairly.

Accordingly, the Tribunal took the view that the Applicant, by failing to appear at the CMD without explanation or to provide sufficient information to allow a determination to be made, had failed to cooperate with the Tribunal to such an extent that the Tribunal could not deal with the Application fairly or justly. In those circumstances, in

terms of Rule 27(2)(b) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the Tribunal decided that the appropriate course of action was to dismiss the Application.

- Decision

The Application is dismissed in terms of Rule 27(2)(b) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

### 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.**

R Cowan

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Legal Member/Chair

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Date

31 August 2018