



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 3 & 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/0585**

**Re: Property at 2/1, 1276 Argyle Street, Glasgow, G3 8AA (“the Property”)**

**Parties:**

**Mr Martin Bowman, 32 Renshaw Road, Elderslie, Renfrewshire, PA5 9JA (“the Applicant”)**

**Mr Russell Hyslop, 20 Peters Gate, Bearsden, Glasgow, G61 3RY (“the Respondent”)**

**Tribunal Members:**

**Susan Christie (Legal Member)**

**Decision (in absence of the Applicant)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

1. The Application for payment of a maximum award under Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) arising out of a failure by the Respondent to comply with the duty in Regulation 3 of the Regulations was received by the Tribunal on 22 February 2019.
2. A Notice of Acceptance of the Application by the Tribunal made under Rule 9 of the First-Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 as amended (“the Rules”) is dated 6 March 2019.
3. The Application type is under Chapter 11, Rule 103 of the Rules.
4. On 28 March 2019, the Tribunal sent a letter to the Parties intimating the day, time and venue of the Case Management Discussion and told them they required to attend: 17 April 2019 at 11.30 am within Glasgow Tribunals Centre, Room 109, 20 York Street, Glasgow, G2 8GT. Further detailed information was given as to what could occur then including the making of a decision in absence.

5. The said letter of 28 March 2019 was served on the Applicant by 'signed for' Post and a track and trace search showed that this had been served and signed for on 29 March 2019. The Recipient name being 'Bowman' as recorded by the postal service.
6. The said letter of 28 March 2019 along with the accompanying supporting documentation was served on the Respondent on 1 April 2019 by Sheriff Officers the mode of service being by way of letterbox service.
7. Written representations were to be made by the Respondent by 5 April 2019. These were submitted by email on that date, the Respondent advising that he had only just returned from holiday. Background information regarding the ending of the lease, the landlord registration, the deposit and some detail regarding the ongoing dispute between the Parties regarding payment of the deposited monies at The Letting Protection Service Scotland was included.
8. On 16 April 2019 the Applicant e mailed the Tribunal stating that the track and trace information did not bear his signature. He stated that he had not been able to make arrangements for representation for the CMD and would be unable to attend. He was happy for the CMD to be held in his absence. He provided a response to the Representations of the Respondent, taking issue with the relevancy of some of the matters raised and affirmed his position on the application proceeding as stated. Those documents were considered at the CMD along with all other written and oral information given.

### **The Case Management Discussion**

9. The Respondent was in attendance.
10. Given the comments made by the Applicant regarding him being happy to proceed in his absence and having regard to the criteria to be applied in the overriding objective in the Rules, I did so. I was satisfied the procedure was fair and that the matter should be capable of reaching an early conclusion, dependent upon agreed facts.
11. The Application details and the documents in support of the Application and those detailed in response were discussed in detail with the Respondent and discussion took place around the lease terms, the Deposit paid and the terms of the Application and response.
12. The Short Assured Tenancy (SAT) created was between the Parties. It commenced on 31 January 2017 for an initial term of 18 months and was continued for a further 6 months thereafter by agreement between the Parties. The end date to be 31 January 2019. It was submitted by the Respondent that he was prepared to be flexible with the end date procedure. This was borne out by the notice period given by the tenant being less than the two months that he had referred to.
13. The rental was £900 pcm and the initial deposit taken was £1500, which the agreement stated could be reduced to £1200 after 3 months at the landlord's discretion. The Respondent explained that the Deposit was reduced to £1200 after some 3 months or so, with a refund of £300 being paid back.

14. The deposit paid of £1200 should have been paid into an approved scheme within the timeframe described in the Regulations but it was not.
15. The Respondent explained that he was disappointed that this application had been made as he believed overall relations had been good between the Parties and that he did not consider the deposit to have been at risk. He had placed the deposit in a scheme when he recognised that it had not been paid in by him. He explained that he had other properties and that he was aware of the terms of the Regulations and had in fact been paying another deposit into the scheme when he realised this one had not been paid in. He thought the scheme did not facilitate a partial refund arrangement. It was an error on his part. He had procedures in place for notable dates and it was an oversight. It had been kept in his business account. No request had been made to him for evidence that the deposit had been placed in an appropriate scheme prior to him noticing it. During 2018 he had been on a training scheme regarding the new Private Residential Tenancies and considered the new style tenancy agreement clearly set out the procedure and this would ensure such an error would not be made by him in the future.
16. The Applicant has (I understood) partially recovered the deposit sum and I was led to believe the scheme -The Letting Protection Service Scotland -will conclude matters for the remaining sum held shortly. That is out with the remit of the Tribunal.

### **Findings in Fact**

- I. The parties entered into a Short Assured Tenancy which commenced on 31 January 2017 for an initial term of 18 months and was extended for a further 6 months by agreement thereafter. It ended on 31 January 2019 by agreement. It is a relevant tenancy as defined in Regulation 3 of the Regulations.
- II. A deposit was paid of £1500 by the Applicant to the Respondent. This was reduced to £1200 after some 3 months in terms of the provision in the lease by the landlord exercising his discretion and refunding £300 to the Applicant.
- III. The Respondent did not pay the deposit to the scheme administrator of an approved scheme within 30 working days of the tenancy beginning.
- IV. The deposit was paid into an approved scheme on 10 October 2018.
- V. The deposit itself is the subject of a dispute which is being dealt with separately by The Letting Protection Service Scotland, the approved scheme.

### **Findings in Fact and law**

- VI. The Respondent being the landlord did not comply with Regulation 3 of the Regulations and is in breach of the Regulations.

- VII. The Respondent is required to pay the Applicant a sum of money and the Tribunal must make an Order to that effect by Regulation 10.
- VIII. The Respondent is ordered to pay the Applicant the sum of £750.

### **Reasons for Decision & Decision**

The Application is well founded. A deposit was clearly paid at the outset of the tenancy and not deposited in an approved scheme. The purpose of Regulation 10 is to impose a *sanction* on the landlord for the failure and non-compliance with the statutory scheme. The reduced amount of the deposit of £1200 was exposed over a period of time to risk during which the deposit could have been at risk whilst it remained the Respondent's business account. I am conscious that it was paid into an approved scheme eventually. In the circumstances of this Application and having regard to all material before me for both Parties, I order the Respondent to pay the Applicant £750. This sum is less than the actual deposit. I could have imposed a higher sum to an amount not exceeding three times the amount of the tenancy deposit, but I considered the undisputed timeline and facts and that whilst the deposit was at risk, the deposit was ultimately paid into a scheme. I did consider that the Respondent knew about the legal obligations, as he accepted, and he states that human error was involved. I considered that £750 was reasonable in all of the circumstances, exercising my discretion.

### **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.

# S Christie

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Legal Member/Chair

17 April 2019

Date