

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

**Chamber Ref: FTS/HPC/PR/21/2746**

**Re: Property at 25 Inchmead Drive, Kelso, TD5 7LW (“the Property”)**

**Parties:**

**Mr Lewis McCran, 25 Inchmead Drive, Kelso, TD5 7LW (“the Applicant”)**

**Mrs Judith Oldham, 2 Mainhouse Farm Cottages, Kelso, TD5 8AA (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £500 should be made in favour of the Applicant.**

**Background**

1. By application received on 5 November 2021, the Applicant seeks an order in terms of Regulation 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). A tenancy agreement, receipt from the Respondent and email from Safe Deposit Scotland (“SDS”) were lodged in support of the application.
2. The Tribunal served a copy of the application of the Respondent by Sheriff Officer on 23 November 2021. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 22 December 2021 at 11.30am. Prior to the CMD the Respondent lodged written representations.
3. The CMD took place on 22 December 2021. The Applicant participated. The Respondent was represented by her husband, Mr Oldham.

## **The Respondent's submissions**

4. The Respondent states that she had been shocked when the copy of the application was served on her as the tenant had only asked about the deposit on 26 October 2021, by text message. On checking her records, the Respondent discovered that the deposit had not been lodged with SDS. She contacted them immediately and lodged the deposit. This was confirmed on 28 October and the DAN number sent to the Applicant on 29 October 2021. The Respondent confirmed that she is aware that the 2011 Regulations require a deposit to be lodged within 30 days of the start of the tenancy. The Applicant is the first tenant of the property which was only purchased in 2019. Her only previous experience of letting out property involved her son as the tenant and the 2011 Regulations did not apply. She has no other rental properties and does not have a letting agent. When the tenancy started in October 2019, the Respondent's mother was seriously ill, and her attention was therefore on other matters. She forgot to transfer the deposit to SDS. When she arranged the transfer of the deposit on 26 October 2021, she was not attempting to deceive the tenants or withhold the deposit. The Applicant did not ask about the deposit until she notified them of a proposed rent increase. The failure to lodge the deposit was an oversight and was rectified as soon as it was brought to her attention.

## **The CMD**

5. From the application form, the documents lodged in support of the application, and the information provided by the parties at the CMD the Legal Member noted the following agreed facts: -
  - (i) The tenancy started on 12 October 2019 and is ongoing.
  - (ii) The Applicant paid a deposit of £500 prior to the start of the tenancy.
  - (iii) The deposit was not lodged in an approved tenancy deposit scheme until 28 October 2021.
6. Mr McCran advised the Legal Member that he does not dispute the information provided by the Respondent in her submissions. However, he does take issue with the suggestion that he should have made enquiries about the deposit before October 2021. It was not his responsibility to do so. He confirmed that he has rented property before and was aware that the deposit should be secured, as stated in the tenancy agreement. With previous tenancies he recalled receiving an email with the scheme details. He hadn't registered the fact that he had not received a similar email for this tenancy. This only occurred to him in October 2021 and led to the text message to the Respondent. He did

not get a response to the message of 26 October 2021 and had to make his own enquiries with the deposit schemes. He is concerned that the deposit was not lodged until he asked about it. He feels that the Respondent tried to cover up her failure by immediately lodging the deposit, instead of simply acknowledging the oversight. There was a lack of honesty. Mr McCran said that he and the joint tenant had experienced stress and inconvenience. They have now been served with a Notice to leave. There has been no direct financial impact due to the late lodging of the deposit, but he had to take time out of his working day to make enquires and it was stressful.

7. Mr Oldham confirmed that the property is the Respondent's only current rental property. A previous property was only rented out to their son and Mrs Oldham was aware that she did have to comply with the 2011 regulations in those circumstances. The lease with the Applicant is the Respondent's first experience of being a landlord. She had inherited some money and purchased the property as an investment. She had been aware of the 2011 Regulations although maybe not all the details. She had not taken any advice. However, as is confirmed in the lease, it was her intention to lodge the deposit with SDS. She forgot to do so probably because her mum was ill at the time. The text message from the Applicant was part of a series of messages between the parties about several matters, including a rent review. When she became aware that she had forgotten about the deposit, she took immediate steps to address it and her actions were not an attempt to deceive.

## **Findings in Fact**

8. The Applicant is the tenant of the property.
9. The tenancy started on 12 October 2019.
10. The Respondent is the owner and landlord of the property.
11. The Applicant paid a deposit of £500 prior to the start of the tenancy.
12. The deposit paid by the Applicant was not lodged by the Respondent in an approved tenancy deposit scheme until 28 October 2021.

## **Reasons for Decision**

13. Regulation 3 of the 2011 Regulations states –
  - (1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy –
    - (a) Pay the deposit to the scheme administrator of an approved scheme; and
    - (b) Provide the tenant with the information required under regulation 42.

(1A) Paragraph (1) does not apply –

- (a) Where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and
- (b) The full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,  
Within 30 working days of the beginning of the tenancy.

14. The Tribunal is satisfied that the Applicant's tenancy is a relevant tenancy in terms of the 2011 Regulations and that a deposit of £500 was paid and not lodged in an approved deposit scheme within 30 days of the start of the tenancy. The tenancy is continuing. The Applicant has therefore complied with Regulation (9)(2) of the 2011 Regulations, which requires an application to be submitted no later than 3 months after the tenancy had ended.

15. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it **“(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.”** The Legal Member therefore determines that an order must be made in favour of the Applicant.

16. The Legal Member notes that the deposit was not secured in an approved scheme for over 2 years, a substantial period. As the Respondent did not lodge the deposit until the Applicant asked her where it was, it is reasonable to conclude that the tenancy could have continued for some time and ended without it ever being lodged. This might have had financial consequences for the Applicant. The Legal Member is also satisfied that the Applicant suffered inconvenience and stress, albeit over a relatively short period of time, between making his enquiry and receiving confirmation that the deposit was now secured. However, the Legal Member also notes that the deposit is now secured in an approved scheme. The Respondent is not an experienced landlord and there is no evidence to suggest that her failure to lodge the deposit was deliberate. Furthermore, as this is her first experience of letting property (other than to a relative), she has not failed to comply with the 2011 Regulations before. The Tribunal also notes that there were mitigating personal circumstances at the start of the tenancy, although this does not explain the length of time involved nor does it justify or excuse the Respondent's failure to meet her obligations as a landlord.

17. Having regard to the length of time the deposit was not secured, and the stress and inconvenience experienced by the Applicant, the Legal Member is satisfied that the award should not be at the lowest end of the scale. However, the Legal Member is also satisfied that the breach was the result of error or oversight, and that the Respondent took immediate steps to rectify her failure when it was brought to her attention. In the circumstances, the Legal Member is satisfied that an award of one times the deposit should be made

## **Decision**

18. The Legal Member determines that an order for payment of the sum of £ 500 should be made 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.**

Josephine Bonnar

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**Josephine Bonnar, Legal Member**

**22 December 2021**