

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

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

**Chamber Ref: FTS/HPC/PR/18/0456**

**Re: Property at 2 Lauder Court, New Farm Loch, Kilmarnock, Ayrshire, KA3  
7QJ (“the Property”)**

**Parties:**

**Ms Jacqueline Steele, 52 Knowehead Road, Shortlees, Kilmarnock, Ayrshire,  
KA1 4NQ (“the Applicant”)**

**Mr Mark Cassidy, Barmill Farm, Galston, Ayrshire, KA4 8LU (“the  
Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the Respondent did not comply with the duty in  
Regulation 3 to pay the deposit to the scheme administrator of an approved  
scheme and ordered the Respondent to pay the Applicant the sum of one  
thousand pounds (£1000) being two times the amount of the tenancy deposit.**

**BACKGROUND**

This was a Case Management Discussion to consider an application under Rule 103 for an order under Section 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. (2011 Regulations) The Applicant had given notice of and terminated the tenancy of the Property and had asked for the information regarding where her deposit was held and when it would be returned. The applicant was seeking information regarding the whereabouts of her deposit and the return of the deposit as well as an order under Section 10.

**The Discussion**

The Applicant attended the CMD in person with her mother Mrs Steele as a supporter. The Respondent was represented by his solicitor Ms Maitland, who explained at the outset that she was instructed to offer to pay the deposit back to the Applicant in cash today. She also confirmed that the deposit had not been lodged in an approved scheme and explained this was due to an oversight by the Respondent who had been dealing with a family bereavement at the time the lease was entered into and thought his wife Mrs Diane Cassidy who is noted on the application as the Landlord's representative, was lodging the deposit. Ms Maitland advised that even more unfortunately Mrs Cassidy also suffered a family bereavement, when her Aunt died, around this time she did not lodge the deposit in a scheme and the solicitor submitted this was purely down to an oversight. Ms Maitland then explained her clients simply forgot lodge the deposit until the Applicant raised the current application.

The Applicant advised that at no time did she know where her deposit was, that Mrs Cassidy who preferred to be contacted by text message had not responded to her message on 4th February asking when her deposit would be sorted out. Ms Steele also advised that she thought Mrs Cassidy would have brought up the issue of the deposit when she left the property on 11<sup>th</sup> December but there had been no communication about it and no attempt to see Ms Steele.

The Applicant wishes an order made for payment for failure to lodge the deposit and the return of her deposit. She submitted that the landlord had a legal and moral duty to lodge the deposit in a scheme and was worried that this might continue as she was aware the house was relet earlier this year and that the landlord might be holding another deposit.

Ms Maitland confirmed that her instructions were to repay the deposit in cash today and handed over £500 in cash to Ms Steele who accepted that as a return of the deposit.

## **FACTS**

1. The Respondent entered into a lease with the Applicant whereby the Applicant leased the Property from the Respondent by virtue of a tenancy agreement dated 17<sup>th</sup> April 2015.
2. The rent due was £500 per month.
3. The deposit paid by the Applicant to the Respondent was £500.
4. The tenancy continued from April 2015 until 11<sup>th</sup> December 2017 when the Applicant quit. The tenancy agreement having been extended by two weeks to the 11<sup>th</sup> December.
5. The Applicant was not at any time given information about where her deposit had been placed.
6. The Applicant raised an application for payment of an order under Rule 9 of the Regulations on 17<sup>th</sup> February 2018.
7. The Deposit was not placed in an approved scheme.
8. The landlord thought his wife, Mrs Diane Cassidy had paid the deposit into an approved scheme but due to family bereavements this was not done and the Respondent did not check it was done.

9. The Deposit of £500 was repaid to the Applicant in cash at the hearing by the Respondent's solicitor who was instructed to repay it to the Applicant.
10. Mrs Diane Cassidy had tried to phone the applicant urgently on 2<sup>nd</sup> May but had not previously responded to text messages in February from the Applicant regarding where the deposit was held and when it would be returned, necessitating this action
11. The Respondent's solicitor had asked to speak to the Applicant prior to the Hearing.
12. The Repayment of the deposit was done two and half months after the application was raised by the Applicant and at the CMD.

## REASONS

- The Tribunal found that the Respondent has failed to comply with the duty set out in Section 3 of the 2011 Regulations by failing to place the deposit in an approved scheme within 30 days of the beginning of the tenancy.
- That in terms of Section 10 of the 2011 Regulations the Tribunal is obliged to make an order that the landlord pay the tenant an amount not exceeding three times the amount of the tenancy deposit.
- The Tribunal considered that as there was no dispute over the facts and in accordance with the overriding objective to avoid delay, it was appropriate to make an order at the CMD.
- The Tribunal considered that the Respondent may have overlooked the need to lodge the deposit initially due to family circumstances, but noted that a responsible landlord should have been aware of this failure prior to the lease coming to an end over 2 and half years later.
- In addition the Tribunal noted that despite the Applicant having to ask for the return of her deposit in a text message dated February 2018, the landlord's representative Mrs Cassidy did not respond to this request and only paid the deposit today at the CMD, after trying to contact the Applicant by telephone the previous evening. It is noted the solicitor was instructed to try and speak to the Applicant just before the hearing but the Applicant and her mother were already in the witness room.
- In view of the serious delay in overlooking the lodging of the deposit for the whole duration of the tenancy and the further delay in paying the deposit for another 2 and half months after the action was lodged, but allowing for the fact the deposit has now been repaid and taking account of the initial reason for the oversight, the Tribunal considers the amount of two times the deposit as reasonable and appropriate, namely 2 times £500, being £1000.

## 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.**

J Todd

**Legal Member/Chair**

**Date**

3rd May 2018