



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of an application in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the Rules”) for an Order for Payment under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)**

**Chamber Ref: FTS/HPC/PR/19/0910**

**Re: Property at Rosslyn Cottage, Glendevon, Perthshire, FK14 7JY (“the Property”)**

**Parties:**

**Ms Angela Muir, C/O The Manse, Manse Brae, Gargunnoch, Stirling, FK8 3BQ (“the Applicant”)**

**Mr Andrew Taplin and Mrs Janet Clarke, Rosslyn House, Glendevon, Perthshire, FK14 7JY (“the Respondents”)**

**Tribunal Members:**

**Karen Moore (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that Respondents had not complied with Regulation 3 of the 2011 Regulations and made an Order of compensation amounting to SEVEN HUNDRED AND FIFTY POUNDS (£750.00) Sterling.**

**Background**

1. By application received between 21 March and 1 April 2019 (“the Application”), the Applicant applied to the Tribunal for an Order for Payment against the Respondents under Regulations 9 and 10 of the 2011 Regulations

on the grounds that the Respondents had not complied with Regulation 3 of the 2011 Regulations.

2. On 18 April 2019, a legal member of the Tribunal with delegated powers of the Chamber President accepted the Application and a Case Management Discussion ("CMD") was fixed for 13 June 2019 at 10.00 at STEP Stirling Enterprise Park, John Player Building, Stirling, FK7 7RP. The CMD was intimated to both parties.
3. Both Parties submitted written representations which were copied to each other.

#### **First Case Management Discussion**

4. The first CMD took place on 13 June 2019 at 10.00 at the said STEP Stirling Enterprise Park, John Player Building. The Applicant was not present. The Respondents were both present. From the Application and the written submissions, I took the view that although the Applicant had not appeared, as she had been in contact with the Tribunal Chamber as recently as Monday 10 June 2019, it would not be in the interests of justice to dismiss the Application in terms of Rule 27 of the Rules, being non-co-operation of the Applicant and so proceeded with the CMD.
5. I explained to the Respondents the basis of the Application with reference to the Rules and to the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") and in particular, that in terms of Regulation 10 of the 2011 Regulations, that if the Tribunal is satisfied that the landlord did not comply with Regulation 3 of the 2011 Regulations the Tribunal must grant an Order.
6. I noted from the Respondents' written representations that they appeared to accept that they had not complied with Regulation 3 of the 2011 Regulations and they confirmed that was so. Accordingly, the only matter for consideration is the amount of the Order which the Tribunal must impose. The Respondents offered £750.00 being one times the deposit. From the Application and the written submissions, I took the view that, as the Applicant was seeking the maximum award, it was just and fair to continue the CMD to a further CMD to allow both parties to make written submissions on the amount of the Order.

#### **Second Case Management Discussion**

7. The second CMD took place on 30 August 2019 at 10.00am at the said STEP Stirling Enterprise Park, John Player Building. The Applicant was present and The Respondents were both present. The Applicant apologised for her non-

appearance at the First CMD and explained that and due to unforeseen circumstances she had been unable to leave her place of employment.

8. I explained to the Parties that as the Respondents had accepted that they had not complied with Regulation 3 of the 2011 Regulations, the only matter for consideration is the amount of the Order which the Tribunal must impose.
9. The Applicant advised me that she was content to leave that amount to the Tribunal.
10. The Respondents advised me that the deposit had been held securely and could be repaid today in full. Mr. Taplin offered to make an electronic bank transfer during the course of the CMD which he did.

#### **Findings in Fact**

11. From the Application and the CMD, I found that the facts as set out in paragraphs 6 and 8 hereof had been established and that the Respondents had failed to comply with Rule 3 of the 2011 Regulations.
12. From the First CMD, I accepted that the Respondents may have failed to comply with Rule 3 of the 2011 Regulations as a genuine oversight. From the Second CMD, I accepted the tenancy deposit was now repaid in full. I also accepted that the tenancy deposit was unlikely to have been at risk.

#### **Decision and Reasons for Decision**

13. Having found that the Respondent had failed to comply with Rule 3 of the 2011 Regulations, I had regard to Rule 17(4) of the Rules which state that the Tribunal "may do anything at a case management discussion which it may do at a hearing, including make a decision" and, accordingly, I determined to grant an Order for payment in terms of Rule 10 of the 2011 Regulations.
14. In determining the amount of the Order, I had regard to the submissions made by and on behalf of both Parties and my finding that the deposit had not been at risk. I had regard to the purpose of the 2011 Regulations and took the view that the Regulation 10 of the 2011 Regulations sanction is intended to be punitive in respect of a breach of Regulation 3 of the 2011 Regulations and so determined that one time the amount of the tenancy deposit is appropriate in this matter.

#### **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.**

Karen Moore

**Legal Member/Chair**

30 August 2019

**Date**