

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

**Chamber Ref: FTS/HPC/PR/19/1696**

**Re: Property at Stable Gate Cottage, Eccles, Kelso, Roxburghshire, TD5 7QS (“the Property”)**

**Parties:**

**Mr George Anderson, C/O 13 Brock Bank, Tweedbank, Galashiels, Selkirkshire (“the Applicant”)**

**Mr Justin Greig, Braw Bothy, Eccles, Kelso, Roxburghshire, TD5 7QS (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of £390 to the Applicant.**

**Background**

This is an application for payment against the Respondent in respect of an alleged failure to protect a tenancy deposit under Regulation 9 and Rule 103 of the Procedure Rules.

The Tribunal had regard to the following documents:

1. Application received 30 May 2019;
2. Tenancy Agreement dated 30 June 2019;
3. AT5;
4. Emails confirming deposit not lodged with one of the three schemes;
5. Respondent’s Submissions.

**Case Management Discussion (CMD)**

The case called for a CMD on 30 July 2019. The Applicant was not present but was represented by Ms Kellet. The Respondent appeared in person.

The Respondent accepted that he had not protected the deposit. At the time the tenancy was created the Regulations were not in force, he was unaware of the subsequent requirement to protect the deposit, this was the only Property that he had let. He has repaid the deposit and has protected the new tenant's deposit.

The Applicant's position is that he enquired at the end of the tenancy about which scheme the deposit had been protected in. This was not accepted by the Respondent.

The Tribunal found the following facts established:

1. The Parties entered in to a tenancy agreement commencing 30 June 2010;
2. The Applicant paid a deposit of £390;
3. The deposit was repaid at the CMD by cheque;
4. The deposit was unprotected throughout the tenancy;
5. The tenancy terminated around 30 April 2019;
6. At the commencement of the tenancy the Regulations were not in force;#
7. The Respondent is an inexperienced landlord and this is his only experience of letting a Property;
8. The Respondent was unaware of the requirement to protect the deposit until the end of the tenancy.

The Tribunal considered that it had sufficient information upon which to make a Decision and that it was fair to do so at this stage.

The Tribunal considered and followed the approach of the Court in ***Russell-Smith and Others v Uchegbu [2016] SC EDIN 64***. The Tribunal assessed the appropriate level of sanction in a fair, proportionate and just manner having regard to the circumstances of the case, the purpose of the Regulations and the gravity of the breach.

The Tribunal took in to account the length of time the deposit had been unprotected, the fact the deposit had now been repaid, the fact that this was the Respondent's first experience of letting a property and that the Regulations were not in force at the time the tenancy commenced.

Each case depends on its own specific facts and in the end of the day the Tribunal must exercise judicial discretion. Having done so the Tribunal determined that a fair and proportionate sanction in this case should be £390.

## **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.

Alan Strain

**Legal Member/Chair**

70 June 2019

**Date**