

Housing and Property Chamber
First-tier Tribunal for Scotland



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 ("the 2011 Regulations") and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules")

Chamber Ref: FTS/HPC/PR/18/0907

**Re: Property at 3/5 Peffermill Road, Edinburgh, EH16 5LQ
("the Property")**

Parties:

**Mr Kristian Laszkiewicz, 21 Delta View, Mussleburgh, EH21 8HN
("the Applicant")**

**Key Contacts Letting Solutions Limited (SC400356), a limited company having its registered office at Summerside, Old Dalkeith Road, Sheriffhall, EH22 1RT and having a place of business at KCLS Property, Montpelier House, 2 Melgund Terrace, Edinburgh, EH7 4BU
("the Respondent")**

Tribunal Members:

Susanne L M Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") refused the Application under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules") because it was not made within the period of three months of the tenancy ending as required by Regulation 3(3) of the 2011 Regulations.

1. Procedural background

- 1.1. On 16 April 2018, the Applicant made an application "the Application" to the tribunal.

1.2. The Applicant attached to the Application:

1.2.1. The Short Assured Tenancy Agreement dated 23 November 2015 between the Applicant and Mrs Louisa McCabe, c/o Key Contacts Letting Solutions Limited, Montpelier House, 2 Melgund Terrace, Edinburgh, EH7 4BU;

1.2.2. Deposit Receipt dated 17 December 2015;

1.2.3. Notice letter dated 28 October 2017 ending tenancy on 28 December 2017;

1.2.4. Formal letter from Applicant to letting agent dated 21 March 2018;

1.2.5. Proof of delivery of formal letter;

1.2.6. Emails from Marc Klan at the Respondent letting agency dated 15 February and 13 March 2018 stating that the Applicant would receive the deposit back;

1.2.7. A page apart to the Application Form, section 7(c).

1.3. On 24 April 2018, the Application paperwork was referred to a tribunal by a legal member of the tribunal with delegated powers.

1.4. On 23 July 2018, the tribunal wrote to the Respondent to advise that the Application had been referred to the tribunal and that a Case Management Discussion had been fixed for 23 August 2018 at 1400h in George House, 126 George Street, Edinburgh. The Respondent was invited to submit any written representations it wished by 15 August 2018.

1.5. The Respondent did not lodge any written representations.

2. Applicable legislation

2.1. Regulation 9 of the 2011 Regulations provides:

(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made no later than 3 months after the tenancy has ended.

3. Relevant facts in Application paperwork

- 3.1. There is a short assured tenancy agreement between the Applicant and Mrs Louisa McCabe c/o Key Contacts Letting Solutions Limited, Montpelier House, 2 Melgund Terrace, Edinburgh, EH7 4BU. The period of the tenancy was originally from 23 November 2015 to 24 May 2016. If the agreement was not brought to an end by either party on 24 May 2016 it was to continue on a month to month basis until terminated by prior written notice in accordance with the lease.
- 3.2. The Tenant advised in Section 7 of the Application that the tenancy ended on 23 December 2017. He attached a notice letter dated 28 October 2017 to provide two months' notice to end the tenancy on 28 December 2017.
- 3.3. The Application was made on 16 April 2018.
- 3.4. The Respondent named in the Application is KCLS Property. However, as noted above, the landlord in the short assured tenancy agreement is Mrs Louisa McCabe c/o Key Contacts Letting Solutions Limited, Montpelier House, 2 Melgund Terrace, Edinburgh, EH7 4BU.

4. Case Management Discussion

- 4.1. A Case Management Discussion ("CMD") took place at George House, 126 George Street, Edinburgh on 23 August 2018 at 2.00pm.
- 4.2. The Applicant was present. The Respondent did not appear.

5. Oral submissions by Applicant

- 5.1. The chair began by explaining to the Applicant that if, as it appeared from the Application paperwork, the tenancy had ended on 27 December 2017, then the Application made on 16 April 2018 was out of time and the tribunal had no discretion to extend the time period and the Application would be refused.
- 5.2. The Applicant agreed the dates and agreed that the Application had been made more than three months after the tenancy had ended. He explained that he had consulted Citizens Advice Bureau and that they had not told him about the time limit in the Regulations.
- 5.3. He added that he was unhappy with the Respondent and the amount of time it had taken to receive his deposit repayment. He contacted the Respondent shortly after the tenancy had ended and the Respondent had conducted an inspection and told that Applicant that everything was fine and he would get

his deposit back. The Applicant then sent emails and made various attempts to get his deposit repaid and he received a number of emails from Marc Klan of the Respondent stating that this would be repaid. The tribunal asked if the deposit repayment was still outstanding. The Applicant advised that the deposit money has been paid back about two days ago, the full amount of £550. It was paid by the Respondent and not through a deposit scheme. The Applicant was unhappy that he had to wait almost eight months for his deposit repayment with no explanation for the delay and that it had caused inconvenience and hardship as mentioned in the Application.

5.4. The tribunal chair repeated the fact that the Application in terms of Rule 103 would be refused because of the time limit in Regulation 9(2).

5.5. The chair advised the Applicant that since 31 January 2018 there has been a Code of Conduct for Letting Agents and that the tribunal has jurisdiction to hear complaints against letting agents. The chair indicated that any such complaint would require a fresh application and could not be dealt with as part of the current Application. The Applicant was advised that there is a section of the Housing and Property Chamber website relating to such applications and that the Applicant could consider whether he wished to lodge a fresh Application in relation to the Respondent as letting agent.

6. Findings in Fact

6.1. There was a short assured tenancy for the property between the Applicant and Mrs Louisa McCabe c/o Key Contacts Letting Solutions Limited, Montpelier House, 2 Melgund Terrace, Edinburgh, EH7 4BU.

6.2. The Respondent was the letting agent for the landlord.

6.3. On 17 November 2015, the Applicant paid a deposit of £550 to the Respondent in respect of the tenancy and was issued with a receipt by the Respondent.

6.4. The tenancy started on 23 November 2015 and ended on 28 December 2017 following two months' written notice being given by the Applicant.

6.5. After the tenancy ended on 28 December 2017, the Applicant made a number of requests in writing to the Respondent for the return of his deposit. The Respondent replied in writing on a least two occasions stating that the deposit would be re-paid. No repayment was made prior to the Application being made to the tribunal.

6.6. The Application to the tribunal was made on 16 April 2018.

6.7. The Respondent re-paid the deposit of £550 to the Applicant on or about 21 August 2018.

7. Reasons

8. The Application was not made within the period of three months after the tenancy ended, as required by Regulation 3(3) of the 2011 Regulations. The Application is therefore refused.
9. The tribunal also observed that the duty in terms of Regulation 9 of the 2011 Regulations is placed on a landlord. The landlord in the short assured tenancy agreement is Mrs Louisa McCabe c/o Key Contacts Letting Solutions Limited, Montpelier House, 2 Melgund Terrace, Edinburgh, EH7 4BU. The term "landlord" is defined in regulation 2 of the 2011 Regulations as follows: "*landlord*" refers to a landlord, within the meaning conferred by the Housing (Scotland) Act 2006, of a relevant tenancy". The fact that the Application was brought against the Respondent rather than the landlord named in the short assured tenancy agreement was not material to the decision to refuse the Application as the Application was made out of time. Had it been made in time, the tribunal would have required to be satisfied that it was competent for the Application to be brought against the Respondent as a letting agent, rather than the landlord.

10. 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.

Susanne Tanner

Susanne L M Tanner Q.C.
Legal Member/Chair

23 August 2018