



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 103 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/18/1488

Re: Property at 59 Forsyth Street, Elgin, IV30 5SY (“the Property”)

Parties:

**Mrs Fiona Byerley, C/O Picketts Hill House East, Picketts Lane, Redhill, RH1
5RG (“the Applicant”)**

**Mr Hugh MacPhee, Mrs Elaine MacPhee, 47 High Street, Strathmiglo, Cupar,
Fife, KY14 7QA (“the Respondent”)**

Tribunal Members:

Helen Forbes (Legal Member) and Linda Robertson (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order should be granted in favour of the
Applicant in the sum of £400**

Background

An application was lodged by the Applicant on 18th June 2018 in terms of Rule 103 seeking payment of up to three times the deposit in terms of Regulations 9 and 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the Regulations”).

A case management discussion took place on 17th September 2018 by tele-conference call. At that time, it was agreed that:

- (i) The parties entered into a tenancy agreement in respect of the Property on 8th December 2017.
- (ii) The tenancy agreement was a Private Residential Tenancy.
- (iii) A deposit in the sum of £1350 was paid by the Applicant at the commencement of the tenancy.
- (iv) The deposit was paid into an approved scheme on 6th February 2018.

- (v) The deposit was refunded in full to the Applicant at the end of the tenancy.
- (vi) There has been a breach of Regulation 9.
- (vii) The application was submitted within 3 months of the termination of the tenancy.

The case was set down for a hearing to consider the amount to be paid to the Applicant in terms of Regulation 10. A hearing was scheduled for 21st February 2019. The hearing was adjourned as the Applicant was unable to attend on that date. A further hearing was set down for 29th March 2019.

The Hearing

A hearing took place at Jury's Inn, Millburn Road, Inverness on 29th March 2019. Parties participated by tele-conference. Mr Pickering also participated by tele-conference.

Preliminary Matters

1. The Chair raised the issue that the Respondents and Mr Pickering had made representations to the Housing and Property Chamber indicating their disapproval at being informed that the hearing was to proceed by tele-conference. The Chair said the tele-conference was set up for the benefit of the Applicant, who was unable to attend. Other parties were expected to attend in person, although attendance by tele-conference was an option. They indicated that they had been informed at a late stage in proceedings that they could attend in person, but it was then easier to attend by tele-conference. The Chair asked whether the Respondents wished to make a request for an adjournment to allow them to attend in person. The Respondents indicated that they would prefer to proceed with the hearing by tele-conference today. Mr Pickering agreed he was happy to proceed by tele-conference.
2. The Chair raised the issue of Mr Pickering's status at the hearing, as the Respondents had previously raised an issue with the Housing and Property Chamber, stating that Mr Pickering was not their representative, as stated by the Applicant in her application. They had questioned why papers were only being sent to Mr Pickering. The Respondents clarified that Mr Pickering was a crucial witness, as he was the letting agent and the responsibility to lodge the deposit lay with him.

The Applicant's Evidence

The Applicant said she had expected to receive notification from a deposit scheme shortly after the tenancy commenced. When this did not happen, she rang the letting agent, CCL Property, several times to discuss this, among other matters. She spoke to Sarah Craven who told her several times that the deposit was just about to be lodged. Ms Craven did not mention Mr Pickering and the Applicant was unaware of his existence, or that he had sustained an injury immediately after the tenancy commenced. The Applicant rang two deposit schemes to enquire whether the deposit had been lodged. On 5th February 2018, the Applicant spoke to another

person within CCL Property. On 6th February 2018, she received notification from Safe Deposits Scotland that the deposit had been lodged.

The Respondents' Evidence

The Respondents said they had left matters in the hands of CCL Property. The payment of the deposit was shown on their statement, but they were unaware that it had not been lodged in a deposit scheme.

Mr Pickering's Evidence

Mr Pickering said his company had made a genuine error and had lodged the deposit eight days late. The deposit had been ring-fenced in a client account. Ms Craven was the accounts administrator and lettings manager. She had access to the bank accounts until early January, when she handed in her notice. Until that time, she could have lodged the deposit. Mr Pickering had no knowledge of the Applicant's calls regarding the deposit, although he had been aware that other matters in relation to the tenancy had been addressed. The company had also changed banks in December 2017 and this had not helped matters. When the Applicant sent her email on 5th February 2018, the matter was immediately addressed and the deposit was lodged. Responding to questions from the Tribunal, Mr Pickering said CCL Property is a small family business employing three people. They deal with seventy five properties and have been in business for six years. Their usual procedure is to lodge the deposit within seven days of the tenancy commencing. This tenancy commenced on 8th December 2017. The following day, he sustained a serious tendon injury that had an impact on business matters, and he was unable to work for a period. He wished to make a genuine apology to the Applicant.

Amount of sum

Parties were invited to make representations on the amount of the sum that should be paid. The Applicant said she did not have a particular sum in mind and would be donating the sum to Shelter. She did not expect to be granted a large sum. The Respondents said that Mr Pickering's injury was a mitigating circumstance and should be taken into account. The deposit was only unprotected for eight days. Mr Pickering said he would accept the Tribunal's decision in relation to the amount to be paid.

Findings in Fact

- (i) The parties entered into a tenancy agreement in respect of the Property on 8th December 2017.
- (ii) The tenancy agreement was a Private Residential Tenancy.
- (iii) A deposit in the sum of £1350 was paid by the Applicant at the commencement of the tenancy.
- (iv) The deposit was paid into an approved scheme on 6th February 2018.
- (v) The deposit was refunded in full to the Applicant at the end of the tenancy.
- (vi) There has been a breach of Regulation 9.
- (vii) The application was submitted within 3 months of the termination of the tenancy.

- (viii) Mr Pickering sustained a serious injury on or around 9th December 2017. This had a direct impact upon his ability to work and it affected procedures at CCL Property.
- (ix) The Applicant contacted CCL Property several times to inquire whether the deposit had been lodged in a deposit scheme.

Reasons for Decision

The Tribunal considered it was a serious matter that the deposit had not been lodged within 30 days of the tenancy commencing, as required by the Regulations. The Tribunal took into account the fact that the deposit was only unprotected for a period of eight days, and that the Applicant had the benefit of the adjudication procedure, had that been necessary at the end of the tenancy. The Tribunal also took into account the mitigating circumstances that Mr Pickering had sustained an injury immediately after the tenancy commenced and that he was absent from work for a period, and that there had been a change of personnel and banking procedures within the office. In all the circumstances, the Tribunal decided to grant an order in the sum of £400 to be paid by the Respondents to the Applicants.

Decision

The Tribunal determined that an order should be granted in favour of the Applicant in the sum of £400

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.

H Forbes

Legal Member/Chair

29th March 2019

Date