



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 120-122 of the Housing (Scotland) Act 2006, Section 16 of the Housing (Scotland) Act 2014 and Regulations 3 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/18/2801**

**Re: Property at 1 (2f1) Graham Street, Edinburgh, EH6 5QN (“the Property”)**

**Parties:**

**Miss Ana Montero, 4f1, 226 Leith Walk, Edinburgh, EH6 5EQ (“the Applicant”)**

**Mr Frank Tokarz, Hope Cottage, 6 Rosetta Road, Peebles, EH45 8JU (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had failed to comply with the requirement of Rule 3 of the Tenancy Deposit Schemes (Scotland) Regulations and made an Order for Payment by the Respondent to the Applicant of the sum of One Thousand Pounds.**

**Background**

By application, received by the Tribunal on 7 October 2018, the Applicant sought an Order for Payment in respect of the failure of the Respondent to lodge a tenancy deposit with the scheme administrator of an approved tenancy deposit scheme within 30 days of the commencement of her tenancy of the Property. The Applicant stated that her tenancy had ended on 1 October 2018 and the Respondent had failed to refund the deposit to her.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 1 June 2017, which provided for a deposit of £950 and e-mails from MyDeposit Scotland dated 8 September 2018, SafeDeposits Scotland dated 19 September 2018 and Letting Protection Service Scotland, undated, all of which organisations confirmed that they did not hold a deposit in

respect of the Property. The Applicant confirmed that her share of the deposit had been £475.50 and that she had moved in to the Property on 1 March 2016, but had later signed a new lease commencing on 1 June 2017.

On 22 January 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 10 February 2019. The Respondent did not make any written representations to the Tribunal.

The Case Management Discussion which took place on 14 February was adjourned by the Legal Member of the Tribunal, as there was uncertainty as to whether the Respondent had received the papers, which had been served on his letting agents, who were no longer acting for him.

A further Case Management Discussion was held on 12 April 2019 and the Applicant and Respondent were both present. The Respondent stated that he had evidence that the deposit had in fact been paid by his former agents to one of the approved schemes and asked for time to find this information. The Tribunal advised the Respondent that, should he be unable to demonstrate that the deposit was in fact paid into an approved scheme, the Tribunal would have to make an Order against him and both Parties were encouraged to consider whether an informal settlement would be possible. With the agreement of the Applicant, the Case Management Discussion was adjourned to a later date, which was intimated to the Parties by letter on 10 May 2019.

### **Case Management Discussion**

A Case Management Discussion was held at George House, 126 George Street, Edinburgh on the afternoon of 14 June 2019. The Applicant was present but the Respondent was not present or represented.

The Applicant told the Tribunal that she had received a text from the Respondent on 3 June 2019, in which he had stated he had not received any responses to his enquiries of the three approved tenancy deposit schemes and asked for her bank details and said he would get back to her. She had heard nothing since, but expressed surprise at his suggestion that the tenancy deposit schemes had not responded to an enquiry from him, as the Applicant's enquiries of the three companies had been responded to within a few days. She stressed that she did not really have anything against the Respondent and recognised that the failure to lodge the deposit might have happened without his knowledge, as it was paid by her to his then letting agents, but she felt that some recompense was due, as the deposit had not been refunded to her and she had suffered financial hardship as a result..

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a hearing.

Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") states that a landlord must, within 30 working days of the beginning of the tenancy, pay the deposit to the scheme administrator of an approved scheme and provide the tenant with certain information required by Regulation 42 of the 2011 Regulations. By regulation 10 of the 2011 Regulations, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal

**must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal was satisfied, from the copy e-mails provided by the Applicant with her application, that none of the approved tenancy deposit schemes held the deposit and that, accordingly, the requirement of Regulation 3 of the 2011 Regulations had not been met. The Respondent had been given ample opportunity to provide the evidence that the contrary was the case, but he had failed to do so and had chosen not to attend or be represented at the Case Management Discussion. The Tribunal accepted that the deposit had been paid by the Applicant to the Respondent's agents, who were no longer acting for him when the Applicant's tenancy ended, but the duty to comply with the 2011 Regulation rests with landlords.

Having considered carefully all the evidence before it, the Tribunal determined that an appropriate amount to order the Respondent to pay to the Applicant was One Thousand Pounds.

### **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.**

  
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**Legal Member/Chair**

14 June 2019  
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**Date**