



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

Chamber Ref: FTS/HPC/PR/19/0864

**Re: Property at 2/3, Block B, 350 Argyle Street, Glasgow, G2 8ND (“the
Property”)**

Parties:

**Miss Anastasia Pantazopoulou, Flat 6/2, Variety Gate, 289 Bath Street,
Glasgow, G2 4LP (“the Applicant”)**

**Ms Shu Guo, 2/3, Block B, 350 Argyle Street, Glasgow, G2 8ND (“the
Respondent”)**

Tribunal Member:

Maurice O’Carroll (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 not placed the deposit into an
approved scheme as required by the 2011 Regulations and had failed to
reimburse the full amount of the deposit obtained from the Applicant**

Background

1. An application was made to the First-tier Tribunal for Scotland (Housing and Property Chamber) under rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber)(Procedure) Regulations 2017 (“the rules”) seeking an order for payment of a deposit in relation to a private residential tenancy for the Property.
2. The tenancy commenced on 1 October 2018 and ended on 1 December 2018, with the Applicant providing the requisite notice.
3. The application narrated that a tenancy had been entered into; that a deposit of £665 had been paid to the Respondent; that the deposit had not been paid into a

tenancy deposit scheme, despite reminders having been sent to the Respondent; and that the full deposit had not been returned to the Applicant upon termination of the tenancy. The Applicant received £500 at the end of the tenancy with £165 having been retained by the Respondent for cleaning charges.

4. The Applicant attended the Case Management Discussion (“CMD”) on her own behalf. The Respondent sent an email on 28 May 2019 indicating that she would not be attending the CMD as she was travelling. There was accordingly no appearance by the Respondent or by anyone on her behalf.
5. Notice of the CMD had been served on the Respondent by Sheriff Officers on 1 May 2019. The Respondent did not seek to have the CMD postponed in her email of 28 May 2019. She did not provide any documentation to the Tribunal. The Respondent was informed by email dated 28 May 2019 (timed at 21:16h) that the CMD would proceed in her absence.

The Hearing

6. At the CMD, the Applicant confirmed the details contained in her application form. She had first attempted to send the application form to the Tribunal on the date it was signed 18 December 2018. The application form sent on that date contained photographic attachments which meant that due to their size, they were not accepted by the electronic system in use at the Tribunal.
7. The Applicant re-submitted her application on or about 14 March 2019 when she had not heard anything further from the Tribunal. She had no reason to know that the application had not gone through when first submitted on 18 December 2018 and had reasonably assumed that the delay in hearing anything from the Tribunal had been as a result of the festive period.
8. The Tribunal had sight of the application as sent to the Tribunal on 18 December 2018. The Applicant provided sight of the email sent to the Tribunal; that it was sent to the correct address for the Tribunal and that the email had attached the application form to the Tribunal on that date. Accordingly, the Tribunal was satisfied that the application had been lodged timeously with the Tribunal in accordance with Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).
9. The Applicant confirmed at the CMD that despite requesting confirmation that the deposit had been paid into the deposit scheme, she received no such confirmation. Nor did she receive the information required to be provide to tenants in terms of Regulation 42 of the 2011 Regulations.
10. After the CMD was concluded, the Chair was provided with an email from the Respondent which had been sent at 18:45h on 29 May 2019. The email came to late to be taken into account. However, it did nothing more than discuss issues related to the purpose of the deposit and the requirement for the Property to be cleaned. As noted above, no documentation was provided by the Respondent to demonstrate that the Applicant’s deposit had been placed in a deposit scheme; or

that the information required by Regulation 42 had been supplied to the Applicant, all as required by Regulation 9 of the 2011 Regulations.

Findings in fact

11. A tenancy agreement in respect of the Property was entered into by the Applicant and the Respondent.
12. The tenancy ended on 1 December 2019 in accordance with the tenancy agreement.
13. The Applicant paid a deposit of £665, of which £500 was returned to her.
14. The Respondent did not comply with the duties as set out in Regulation 3 of the 2011 Regulations. The deposit was not paid into an approved scheme and was not returned to the Applicant at the end of the tenancy.
15. Accordingly, the Tribunal has the powers as set out in Regulation 10 of the 2011 Regulations. That Regulation provides that where a landlord does not comply with Regulation 3, the Tribunal must order the landlord to pay to the tenant an amount not exceeding three times the tenancy deposit.

Decision

16. The Decision of the Tribunal is therefore to make an Order for payment to the Applicant by the Respondent the sum of £1,995 being an amount which is three times the deposit of £665 paid.

Reasons for the Decision

17. The Respondent has been given ample time to provide evidence of having complied with Regulation 3 of the 2011 Regulations. No correspondence sent by her demonstrates that compliance was effected. Therefore, the Tribunal has concluded on the basis of the credible testimony of the Applicant that the terms of Regulation 3 have not been complied with by the Respondent.
18. The terms of Regulation 3 are mandatory. No excuse or mitigation has been provided by the Respondent for the failure to comply with that provision. Accordingly, in the exercise of its discretion, the Tribunal decided to make an award of the full penalty available to it in terms of Regulation 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.

M O'Carroll

Legal Member/Chair

30 May 2019

Date