



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 on an application made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/20/1031**

**Re: Property at 1/L, 14 Nelson Street, Largs, North Ayrshire, KA30 8LW (“the Property”)**

**Parties:**

**Miss Lorraine Ruine, 32 Balnagowan Wynd, Skelmorlie, PA17 5BF (“the Applicant”)**

**Mr Dogan Aktemel and Dr Susan Aktemel, 22 Craigpark, Glasgow, G31 2LZ, as individuals and as Directors of Maydos Developments Limited, registered in Scotland (SC304519) and having their Registered Office at 168 Bath Street Glasgow G2 4TP (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for payment by the Respondent to the Applicant of the sum of £1,000.**

**Background**

By application, received by the Tribunal on 26 March 2020, the Applicant sought an Order for Payment in respect of the failure of the Respondent to lodge a tenancy deposit in an approved tenancy deposit scheme, as required by Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties dated 26 March 2013, and a receipt of the same date for “Payment of Rent or Deposit” in respect of a payment of £525. The Applicant also provided the Tribunal with confirmation from SafeDeposits Scotland that the deposit had been

received by them on 23 January 2017. The Applicant stated that the Respondent had done the same to other tenants but provided no evidence to support that statement. The Applicant also made the point that the first she had heard of the matter had been when SafeDeposits Scotland had sent her confirmation that the deposit had been received on 23 January 2017.

On 24 July 2020, the Respondent made written representations to the Tribunal. The Respondent stated that Susan Aktamel, a Director of Maydos Developments Limited, had set up a letting agency, Homes for Good (Scotland) in March 2013 and that Homes for Good managed the letting, the present Property being the first one they had handled. The Applicant had paid the sum of £525, which was to be treated initially as rent in advance and to be converted to a deposit when the Applicant's Housing Benefit, which is payable in arrears, was received. The Respondent accepted that Maydos Developments Limited had not then lodged the deposit within the required timescale, when the Housing Benefit payment had arrived. That had been an oversight and by no means intentional or deliberate, as implied in the application. In January 2017, during a routine audit of deposits lodged with SafeDeposits Scotland, the error had been discovered and the deposit had been lodged on 23 January 2017. On 8 February, whilst reporting a matter for repair, the Applicant had asked why her deposit had only just been lodged, and the oversight and remedial action had been explained to her. On 11 February 2020, the Applicant had told the Respondent that she would be moving out, as she had been offered a tenancy of a housing association property, and the Respondent had advised her that they would not hold her to a specific period of notice. The tenancy had ended on 11 March 2020 and, recognising the error that had made in failing to lodge the deposit within the required timescale, the Respondent decided that it should be returned in full, even though the check-out report indicated that there were significant works required to the Property due to alleged tenant damage, the cost of which would have exceeded the amount of the deposit.

### **Case Management Discussion**

A Case Management Discussion was held by way of a telephone conference call on the afternoon of 5 August 2020. The Applicant participated in the telephone conference and Dr Susan Aktamel represented herself and the other Respondents. The Applicant told the Tribunal that she had been concerned that she had only become aware of the failure to lodge the deposit on time when SafeDeposits Scotland wrote to her to confirm its receipt on 23 January 2017. The Applicant had not informed her directly of the mistake they had made.

The Respondent stated that the commencement of the tenancy had coincided with the setting up of Homes for Good and the first payment of £525 had been held as rent, but, when the first payment of Housing Benefit had been received, that payment of £525 had, due to an oversight, not been recognised as now being a deposit and lodged as required. The Respondent asked the Tribunal to take into account that they had corrected the oversight unprompted and that they had then chosen not to challenge the repayment of the full deposit when the tenancy ended, because they had recognised that they had been at fault.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (procedure) Regulations 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 to enable it to decide the application without Hearing.

Under Regulation 3(1) of The Tenancy Deposits Scheme (Scotland) Regulations 2011 (“the Regulations”), 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 under Regulation 42, and Regulation 10 states that 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 considered carefully all the evidence, written and oral, before it. The Tribunal had no evidence to support the Applicant’s contention that the Respondent had failed to lodge deposits in respect of other tenancies, so made no finding on that matter and did not consider it in arriving at its Decision. It also did not make any finding as regards alleged damage to the Property caused by the Applicant. The Tribunal noted that the Respondent had discovered the error themselves and had taken immediate remedial action and that they had taken the decision to agree to the deposit being repaid in full when the tenancy ended (although the Tribunal could not speculate on what the outcome of any claim by the Respondent might have been). The Tribunal accepted that the failure to lodge the deposit had not been intentional, but nevertheless, the Applicant’s money had been at risk for almost four years. The Respondent should have had a system in place to trigger the process of “converting” the first payment to a deposit and lodging it with an approved tenancy deposit scheme, and the Respondent’s failure to comply with the Regulations, which had been in force for two years before the tenancy began, and should have been well-known by landlords, was a serious one.

Having considered all the facts and circumstances and all the evidence before it, the Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay to the Applicant the sum of £1,000.

## **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.**

George Clark

05/08/20

---

**Legal Member/Chair**

---

**Date**

