



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/20/1672**

**Re: Property at 0/2 16 Harland Cottages, Glasgow, G14 0AS (“the Property”)**

**Parties:**

**Miss Sophie Lilith, 3/1, 2037 Dumbarton Road, Glasgow, G14 0HY (“the Applicant”)**

**PB Properties, Peter Brown, 10c Vennel Street, Stewarton, KA3 5HL (“the Respondents”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Linda Reid (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent in the sum of £625.00.**

**Background**

1. By application dated 5 August 2020 the Applicant applied to the Tribunal under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant submitted a copy of her tenancy agreement, a scan of meter readings, email and bank receipt in support of her application.
2. By Notice of Acceptance dated 3 September 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the case management discussion was sent to the Applicant by post on 14 September 2020 and was served on the Respondents by Sheriff Officers on 15 September 2020.
4. By letter dated 3 October 2020 the Respondents submitted written representations to the Tribunal. By email dated 6 October 2020 the Applicant submitted further written representations in response.
5. By email dated 12 October the Respondents sought a postponement of the case management discussion assigned for 13 October 2020. The Applicant had previously submitted a medical certificate excusing her from attending the case management discussion.
6. In light of neither party being in a position to attend the case management discussion the Tribunal considered the application, supporting documents and written submissions and determined that it would not be possible to make a final determination without a hearing. A hearing was assigned to take place by tele-conference on 24 November 2020.
7. By email dated 26 October 2020 the Respondents submitted further written submissions.
8. By email dated 18 November the Applicant submitted further written submissions.

### **The Hearing**

9. A hearing was held by tele-conference on 24 November 2020. The Applicant did not attend and was not represented having provided a medical certificate requesting she be excused due to ill health. The Applicant had previously confirmed she wished to rely upon her written submissions. The Respondents were represented by Mrs Mairead Brown.
10. The Tribunal explained that the purpose of the hearing was to ascertain whether the Applicant had paid one month's rent in advance at the commencement of the tenancy or had she paid a deposit of £425.00? If the Applicant had paid a deposit had it been paid into an approved scheme and if not why not? The Tribunal also explained that if there had been a breach of the regulations then the Tribunal would have to consider what would be an appropriate sanction to impose.
11. Mrs Brown confirmed the Applicant's tenancy commenced on 1 March 2020 and that the rent was £425.00 per month. She explained that a colleague Aileen Bell had dealt with the tenancy which had been very rushed. She said the Applicant did not have sufficient funds for both the deposit and the first month's rent and had asked that the deposit funds be used to cover the rent until her Housing Benefit payment was paid to the Respondents.

12. The Tribunal referred Mrs Brown to Clause 7 of the Tenancy agreement which clearly stated that although the tenancy commenced on 1 March 2020 the first rent payment was not due until 29 March 2020. The rent was therefore due to be paid in arrears and not in advance as stated by Mrs Brown. The Tribunal also referred Mrs Brown to Clause 10 of the Tenancy agreement which dealt with the payment of the deposit. That clause stated that the deposit had to be paid at or before the commencement of the tenancy. The Tribunal referred Mrs Brown to the transaction receipt from NatWest Bank submitted by the Applicant dated 28 February 2020 which showed a payment from the Applicant's bank account to the Respondents' bank account and described the payment as a "security deposit"
13. Mrs Brown accepted that the documents were what they were and that perhaps with the benefit of hindsight the Respondents ought to have lodged the funds in a deposit scheme but that the Applicant had never complained during the tenancy about the deposit not being lodged. Mrs Brown also continued to suggest that the Applicant herself had asked that the deposit be used to pay for the first month's rent in advance.
14. Mrs Brown disputed that the Applicant had given 28 days' notice and had returned the keys on 27 July and said that after the Applicant had vacated the property it had been marketed from 6 July. Mrs Brown also said that around that time the Applicant had said she would retain the last month's housing Benefit payment and would be due a further £33.00 by way of the return of her deposit.
15. Mrs Brown said that the Respondents ought to have lodged the Applicant's deposit once they had received payment of housing Benefit on 26 May 2020 but had not done so as they had not thought the Applicant was going to stay in the property for long.
16. Mrs Brown explained that the Respondents had little experience of tenants who were in receipt of benefits. Normally they dealt with private tenants who paid rent in advance. She said that they would normally always lodge a tenant's deposit in an approved scheme timeously. She advised the Tribunal that the Respondents were still becoming used to the new Private Residential Tenancies and had previously been used to Short Assured Tenancies. She explained that the Respondents were in the course of applying for Landlord Accreditation and took their position as landlords very seriously. Mrs Brown advised the Tribunal that the Respondents had been landlords for 25 years and had ten let properties. The Respondents had agreed to rent the property to the Applicant under unusual circumstances on the recommendation of an old long-term tenant and during a difficult time when due to Covid they were quarantined out of the country and reliant on a colleague to process the tenancy. However, Mrs Brown accepted that at the end of the day the written agreement was binding in law and the Respondents should have adhered to the Tenancy Deposit Scheme Regulations.

### **Findings in Fact and Law**

17. The parties entered into a Private Residential Tenancy Agreement that commenced on 1 March 2020 at a monthly rent of £425.00.
18. The agreement was signed by the Applicant and by Aileen Bell for the Respondents on 26 February 2020.
19. The agreement provided that a deposit of £425.00 be paid by the Applicant to the Respondents on or before the commencement of the tenancy.
20. The agreement provided that the first payment of rent was due on 29 March 2020 and four weekly in arrears thereafter.
21. The Applicant paid a deposit of £425.00 to the Respondents by bank transfer on 28 February 2020.
22. The Respondents failed to lodge the Applicant's deposit in an approved Tenancy Deposit Scheme within 30 working days.
23. The Respondents were in breach of Regulation 3 of the 2011 Regulations.
24. The Applicant's application to the Tribunal was timeous in terms of Regulation 9(2) of the 2011 Regulations.

### **Reasons for Decision**

25. The Tribunal was satisfied that the terms of the written agreement reflected what had been agreed between the parties. The Rent clause had been amended from a standard Scottish Government Model Private Residential Tenancy Agreement to reflect that the Applicant was in receipt of Housing Benefit and that therefore the rent would be paid in arrears rather than advance with the first payment of rent becoming due four weeks after the commencement of the tenancy. The Deposit clause provided for the deposit being paid on or before the start of the tenancy and the Tribunal was satisfied that the payment made by the Applicant on 28 February and described on the transaction receipt as being for a "security deposit" was indeed payment of the deposit.
26. The Tribunal determined that it would be highly unlikely given the terms of the tenancy agreement that the Applicant would offer to use the deposit funds as advance rental when the rent was not due until 29 March and did not accept that part of Mrs Brown's evidence as credible.
27. The Tribunal found that the deposit having been paid to the Respondents on 28 February it ought to have been paid into an approved Tenancy Deposit Scheme within 30 working days. It was not and the Respondents retained the deposit for the duration of the tenancy.

28. Where a landlord is in breach of Regulation 3 of the 2011 Regulations and a tenant makes an application to the Tribunal in terms of regulation 9 then in terms of Regulation 10 the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the deposit.
29. Any award under Regulation 10 requires to reflect a sanction which is fair and proportionate and just given the circumstances (Jensen v Fappiano 2015 GWD 4-89). In Tenzin v Russell 2015 Hous. L.R. 11 it was held that any payment in terms of Regulation 10 is the subject of judicial discretion after careful consideration of all the circumstances of the case.
30. In reaching its decision the Tribunal has carefully considered the written and oral submission of all the parties. The Tribunal has taken account of the fact that the Respondents are experienced, professional landlords who are apparently seeking landlord accreditation. They have ten let properties that they own. The Tribunal therefore expects a high standard of professionalism in the Respondents dealings with tenants' funds. The Tribunal was disappointed that the Respondent's representative seemed unaware of the terms of the tenancy agreement and continued to suggest that rent had been due in advance when it was clear from the agreement that this was not the case. Although the tenancy was of short duration the Tribunal was not persuaded that the Respondents would have taken action to lodge the Applicant's deposit in an approved scheme had the tenancy endured for a longer period. However, the Tribunal did not think that the Respondents failures amounted to a wilful disregard for the regulations and furthermore it did appear that there may have been a lack of communication between the Respondents' principals and their colleague Ms Bell that was exacerbated by Mr and Mrs Brown quarantining in Ireland due to Covid -19 at the time the tenancy was created. The Tribunal was therefore of the view that the breach of the regulations by the Respondents would not merit a sanction at the upper end of the scale and in the circumstances taking everything into account determined that an award in the middle range of £625.00 was appropriate.

### **Decision**

- 31. The Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £625.00**

### **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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**Graham Harding  
Legal Member/Chair**

**24 November 2020  
Date**