



**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/19/0972**

**Re: Property at 11A Deedes Street, Airdrie, ML6 9AG (“the Property”)**

**Parties:**

**Ms Joyce Bennett, 61 Gartlea Road, Airdrie (“the Applicant”)**

**Mrs Linda Black, 48 Cairnhill Road, Airdrie, ML6 9HA (“the Respondent”)**

**Tribunal Members:**

**Sarah O’Neill (Legal Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondent has failed to comply with the duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to lodge a tenancy deposit with an approved tenancy deposit scheme. The tribunal therefore makes an order requiring the respondent to pay to the applicant the sum of £450.

**Background**

1. By application received on 27 March 2019, the applicant submitted an application under rule 103 of Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The applicant was seeking an order for payment from the respondent and Ms Lynn Bell for:
  - 1) the sum of £1000 in respect of the respondent’s alleged failure to lodge the deposit paid to the respondent in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘the 2011 regulations’).
  - 2) the sum of £500 in respect of the return of the deposit paid by the applicant to the respondent at the beginning of the tenancy.

- 3) The sum of £1700 in respect of damaged beds and bedding, and a share of the fuel bills for the property.
2. The tribunal office wrote to the applicant on 9 April 2019, advising her that an application under rule 103 deals only with the issue of whether a tenancy deposit has been lodged in an approved scheme in terms of the Tenancy Deposit (Scotland) Regulations 2011. The applicant was also advised her that if she wished to apply for a payment order in relation to any other matter connected to her tenancy, she would need to make a separate application under rule 70.
3. The application was accepted on 3 May, and the parties were invited to make written representations by 10 June. Written representations were received from the respondent on 27 May 2019. No written representations were received from the applicant. Written representations were also received from Ms Lynn Bell, who had been named by the applicant on her application form as a respondent. She stated that she was not an owner of the property or the landlord of the property.
4. On 6 June 2019, the tribunal issued a direction to the parties, making clear that the tribunal would only consider the application under section 103, and that if either the applicant or the respondent wished to make an application for an order for payment relating to any other matter in connection with the tenancy, this must be done through a separate application. The direction also stated that the tribunal intended to proceed with the application on the basis that Mrs Linda Black was the only respondent, as she was the landlord named on the tenancy agreement between the parties. Ms Bell would therefore no longer be named as a respondent.

#### **The Case Management Discussion**

5. A case management discussion (CMD) took place on 26 June 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was not present or represented. The respondent was present and was accompanied by her daughter Ms Lynn Bell. They both gave evidence on the respondent's behalf.
6. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a case management discussion had been duly complied with. It was clear from emails sent by the respondent to the tribunal on 20 and 26 June that she was aware of the CMD, and did not intend to be there, due to work commitments. In her email of 26 June, she also stated that she would accept any decision made in her absence. The tribunal therefore proceeded with the CMD in the respondent's absence.
7. The tribunal considered whether a hearing on the issues was required. The respondent had admitted in her written representations that she had not

lodged the applicant's deposit with an approved deposit scheme. She confirmed to the tribunal at the CMD that she had not done so. The applicant had indicated in her email of 26 June that she would accept any decision made in her absence. In the circumstances, the tribunal did not consider that a hearing on the issues was necessary, and considered that it had sufficient information before it to make a decision.

### **Summary of the issues to be determined**

8. The primary issue before the tribunal was whether the respondent had complied with the duty under section 3(1) of the 2011 regulations. The tenancy between the parties began after the duty on landlords under regulation 3 of the 2011 Regulations came into force in 2012. In terms of regulation 3(1), any landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy a) pay the deposit to the scheme administrator of an approved scheme; and b) provide the tenant with the information required under regulation 42 of the 2011 Regulations.

### **Findings in fact**

9. The tribunal made the following findings in fact:
  - The respondent owns the property jointly with Mr Allan Kenneth Black (title number LAN104692).
  - The respondent is the landlord named on the tenancy agreement for the property.
  - The applicant and the respondent initially entered into a short assured tenancy in respect of the property for 6 months from 1 December 2016. The tenancy was then extended, and a form AT5 dated 1 March 2018 was produced by the respondent.
  - The applicant's tenancy came to an end on or around 11 March 2019.
  - The rent payable under the original tenancy agreement was £450 per month.
  - The tenancy deposit paid by the applicant to the respondent was stated on the tenancy agreement as £450.
  - The respondent did not pay the tenancy deposit into an approved scheme.

### **Reasons for the decision**

10. The respondent admitted that she had failed to comply with the duty under regulation 3 (1) of the 2011 regulations. The tribunal was therefore required to make an order requiring the respondent to make a payment to the applicant. The only issue to be considered, therefore, was the amount which the respondent should be ordered to pay to the applicant in terms of regulation 10 of the 2011 regulations.
11. In considering the appropriate level of payment order to be made, the tribunal had regard to the fact that the applicant's deposit was unprotected throughout the 27 months of her tenancy. The applicant had also lost the opportunity to claim her deposit back through an approved deposit scheme, or to challenge

any proposed deduction from the scheme. The protection of the deposit was the main purpose of such schemes. The respondent said that she had fully intended to give the applicant her deposit back at the end of her tenancy, but had not done so because the applicant had allegedly cause damage to the property, and had allegedly removed fire from the property, and the loss suffered by the respondent had been greater than the amount of the deposit. This was not, however, directly relevant to the issue before the tribunal.

12. The respondent told the tribunal that she had been unaware of the requirement to lodge the deposit with an approved scheme, although Ms Bell acknowledged on her behalf that ignorance of the law was no excuse. She said that she lets out two other properties, but that this property was the first one she had bought to rent. The applicant had moved in only two days after she had got the keys to the property- this was borne out by the land certificate which showed the date of the entry as 30 November 2016.
13. The applicant had been a friend of Ms Bell, and was also known to the respondent. The respondent had therefore viewed the tenancy as an informal arrangement involving a personal relationship. She conceded however that there was a tenancy agreement between them, which stated that the deposit would be paid into an approved scheme. She said she had not understood what this meant at the time. She said that she had put the deposit in an envelope which was kept in her safe. She showed the tribunal evidence that she had now put the tenancy deposits from other tenants into approved schemes, now that she was aware of the duty to do so.
14. Weighing up all of these factors, and given that the respondent had engaged fully with the tribunal process throughout and had admitted her failure to comply with the duty under regulation 3, the tribunal considered the need to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach (Sheriff Welsh in *Jenson v Fappiano* 2015 GWD 4-89). The tribunal considers that an award of £450, representing the amount of the deposit paid, is fair, proportionate and just in all the circumstances.

### **Decision**

The tribunal determines that the respondent has failed to comply with the duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to lodge a tenancy deposit with an approved tenancy deposit scheme. The tribunal therefore makes an order requiring the respondent to pay to the applicant the sum of £450.

### **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.

S. O'Neill

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Legal Member/Chair

26/6/19  
\_\_\_\_\_  
Date