



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

**Chamber Ref: FTS/HPC/PR/19/2009**

**Re: 16 Milton Mains Road, Parkhall, Clydebank G81 3NF("Property")**

**Parties:**

**James Sheary, 52 Rossland Crescent, Bishopton, Renfrewshire PA7 5JJ  
("Applicant")**

**Elaine Forsyth, 16 Milton Mains Road, Parkhall, Clydebank G81 3NF  
("Respondent")**

**Tribunal Members:**

**Joan Devine (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined to dismiss the Application.**

**Background**

The Applicant made an application in Form G ("Application") under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") claiming that the Respondent had failed to lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The Applicant provided a copy tenancy agreement which commenced on 1 February 2019 and a copy of an email from The Letting Protection Service Scotland ("LPS Scotland") dated 7 May 2019 in which it was stated that the deposit had been protected from 3 April 2019. A Case Management Discussion ("CMD") took place on 4 October 2019 at Glasgow Tribunals Centre. The Applicant and the Respondent were both present.

At the CMD the Respondent said that she had relied on her letting agents, Purple Bricks, to ensure the deposit was protected within the relevant timescale. The information provided by LPS Scotland indicated that the deposit was not protected until 3 April 2019 which was outwith the 30 working day time period specified in

Regulation 3 of the 2011 Regulations. The Tribunal made an order for payment of £575 in terms of Regulation 10(a) of the 2011 Regulations ("Decision").

The Respondent requested a Review of the Decision. The Respondent sent to the Tribunal an email from Purple Bricks which said that the deposit had been sent to LPS Scotland on 19 February 2019. A copy tenancy statement showing this was attached to the email.

The Tribunal determined that it would be appropriate to review the Decision as it was clear that all relevant evidence had not been before the Tribunal. The Tribunal determined to fix a fresh CMD at which all relevant evidence could be identified. In particular it would be necessary to identify evidence in connection with the date on which the deposit was sent to LPS Scotland and the date on which the deposit became protected by LPS Scotland. It would be necessary for the Tribunal to explore, if necessary, why there had been a delay between the deposit being sent to LPS Scotland and the deposit becoming protected. A further CMD was fixed for 9 January 2020. A Direction was issued to the Parties seeking further documentation showing the date on which the deposit was sent to LPS Scotland, the date on which the deposit became protected, an explanation in respect of any delay between the deposit being sent and it becoming protected and written submissions from the Parties as both had indicated they would not attend the CMD fixed for 9 January 2020. No further documentation was provided nor were written submissions lodged.

### **Case Management Discussion on 9 January 2020**

A further CMD took place on 9 January 2020 at 10 am at Glasgow Tribunals Centre. There was no appearance on behalf of the Applicant or the Respondent. The Tribunal proceeded to consider the matter in the absence of the Parties. The Tribunal considered the documentation provided in advance of the CMD on 4 October 2019 along with the further documentation provided along with the request for a review.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement which commenced on 1 February 2019.
2. The Applicant paid to the Respondent a deposit of £1150 on 1 February 2019.
3. The tenancy came to an end no earlier than 9 April 2019.

4. The application was timeous in terms of Regulation 9 of the 2011 Regulations.
5. The deposit was paid to LPS Scotland on 19 February 2019 which was within 30 working days of the commencement of the tenancy in compliance with Regulation 3 of the 2011 Regulations.

### **Reasons for the Decision**

Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

The obligation in Regulation 3 is to pay the deposit to the scheme administrator timeously. The email from Purple Bricks dated 8 October 2019 with supporting tenancy statement indicates that the deposit was sent to LPS Scotland within the 30 day time limit. This is supported by the email from LPS Scotland dated 7 May 2019 which states "*We can confirm that Purple Bricks submitted the above details to LPS Scotland on 19 February 2019.*"

In terms of Regulation 21 of the 2011 Regulations a tenancy deposit paid to an approved scheme must be accompanied by sufficient information to enable the scheme administrator to identify the tenancy and the property in connection with which the tenancy deposit was paid to the landlord. In terms of the Direction dated 10 December 2019 Parties had been asked to provide any documents which explained the delay between the deposit being sent to LPS Scotland and it becoming protected. Nothing had been provided. It may be that the delay was due to a failure to comply with Regulation 21, but that is speculation.

The sanction provided by Regulation 10 is in respect of a failure to comply with Regulation 3. On the basis of the information available to the Tribunal it appeared that there had been compliance with Regulation 3 in that the deposit was paid to LPS Scotland within 30 working days of the beginning of the tenancy. No information was provided to the Tribunal to explain the delay between the deposit being paid to LPS Scotland and becoming protected on 3 April 2019. The obligation in Regulation 3 is to pay the deposit to an approved scheme. That obligation had been complied with. There may have been a failure to comply with Regulation 21 but the sanction in Regulation 10 relates to failure to comply with Regulation 3. It does not provide a sanction for any other failure to comply with the Regulations.

The Tribunal therefore decided to review the decision of 4 October 2019 and to dismiss the Application and make no award.

**Decision**

The Tribunal determined to review the Decision of 4 October 2019 and to dismiss the Application.

**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.**

Joan Devine

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Legal Member

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Date

9 January 2020