



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

**Chamber Ref: FTS/HPC/PR/22/4247**

**Re: Property at 4 Marionville Medway, Edinburgh, EH7 6AN (“the Property”)**

**Parties:**

**Miss Susan Douglas, 7 Longstone Cottages, Edinburgh, EH14 2AU (“the Applicant”)**

**Mrs Angela Will, 36 Marionville Drive, Edinburgh, EH7 6BW (“the Respondent”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order for payment against the Respondent in favour of the Applicants in the sum of £500.**

**Background**

1. The Applicant submitted an application under Rule 103 for an order for payment on the basis that it was said that the Respondent had failed to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. By decision dated 8 December 2022, a Convenor of the Housing and Property Chamber having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. The Notice of Acceptance was intimated to the Applicant on 8 December 2022. Letters were issued on 12 January 2023 informing both parties that a case CMD had been assigned for 28 February 2023 at 11.30am, which was to take place by conference call. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and

considers the procedure to have been fair. The Respondent was invited to make written representations by 2 February 2023.

4. The Tribunal received an email from the Respondent on 14 February 2023, setting out her position.

### **The case management discussion**

5. Both parties participated in the CMD which took place by conference call. A number of matters were agreed between the parties, namely:
  - a) The tenancy started on 10 June 2022;
  - b) The tenancy ended on 25 November 2022;
  - c) The Applicant paid a deposit of £675 to the Respondent at the outset of the tenancy;
  - d) The Respondent did not secure the deposit in an approved scheme;
  - e) The Respondent paid £655 to the Applicant on 28 November 2022.
6. The Respondent explained that she held the Applicant's deposit in a separate account and that she repaid the Applicant the sum of £655 within days of the tenancy ending. She withheld the sum of £20 on the basis that she had credited the gas/electricity meter with £20 at the outset of the tenancy and found that it the balance of the meter at the end of the tenancy was in deficit by £18. The property is the only one rented out by the Respondent and prior to the Applicant moving into the property, she had one long term tenant. The Applicant sought the maximum compensation in respect of the Respondent's failure to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011. Both parties referred to other matters relating to the tenancy which were not relevant to the present application.
7. The Tribunal noted that there was no material factual dispute between the parties. A Hearing was not required to determine the present application.

### **Findings in Fact**

8. The parties entered into a private residential tenancy which commenced 10 June 2022.
9. The Applicant paid a deposit of £675 to the Respondent at the outset of the tenancy.
10. The Respondent failed to pay the Applicant's deposit to an administrator of an approved scheme.
11. The Respondent failed to comply with her duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") in respect that the deposit paid by the Applicants was not paid to an administrator or an approved scheme within 30 working days as required.

## **Reason for Decision**

12. The Tribunal proceeded on the basis of the written documents which were before it and the information provided by the parties at the CMD. The Respondent was candid about her failure to comply with the 2011 Regulations. The Applicant's deposit was unprotected for the whole of the tenancy. The property is the only property let out by the Respondent; she was not a terribly experienced landlord, having let the property to one other long term tenant previously.
13. The Regulations exist to protect a tenant's deposit and to provide the benefit of dispute resolution, if required.
14. The terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 are mandatory and state "*A 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.*"
15. The Tribunal was satisfied that the Respondent failed to comply with her duties in terms of that regulation. It was the Respondent's duty to pay the deposit to the scheme administrator within 30 working days and she failed to do that. The Tribunal was mindful of the fact that almost all of the deposit was repaid to the Applicant within 3 days of termination of the tenancy.
16. The Tribunal considered that its discretion in making an award requires to be exercised in a manner consistent with the case *Jenson v Fappiano (Sheriff Court) (Lothian & Borders, Edinburgh) 28 January 2015*. It must be fair, just and proportionate and informed by taking account of the particular circumstances of the case.
17. The Tribunal considered the decision of the Upper Tribunal (UTS/AP/19/0020) which states: "*Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate of reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.*"
18. The Tribunal considered that the present case is very much at the lower end of the scale and an appropriate sanction for failure to comply with the duties was to order the Respondent to pay the Applicant £500.

## **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.**

**Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.**

**Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.**

**Legal Member/Chair** \_\_\_\_\_ **28 February 2023**  
**Date**