



**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**

Chamber Ref: FTS/HPC/PR/21/0460

**Re: Property at Flat A, 23 Malcolm Road, Peterculter, Aberdeen, AB14 0XA (“the
Property”)**

Parties:

Mrs Cassie Wilson, 51D Kirk Brae, ults, Aberdeen, AB15 9QR (“the Applicant”)

**Mr Jim Gray, 15 St Ronans Drive, Peterculter, Aberdeen, AB14 0RA (“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 Five Hundred Pounds (£500)**

Background

1. By application, received by the Tribunal on 26 February 2021, the Applicant sought an Order for Payment in respect of the Respondent's delay in lodging a tenancy deposit with an approved tenancy deposit scheme.
2. The Applicant stated that she had entered into a tenancy agreement with the Respondent, commencing on 9 March 2018 at a monthly rent of £550 and had paid a deposit of £550. That deposit had not, however, been secured with SafeDeposits Scotland until 3 March 2020.
3. The Applicant provided the Tribunal with a partial copy of her tenancy agreement and a copy of an email dated 4 March 2020 from SafeDeposits Scotland confirming that the deposit was protected with them on 3 March 2020. She stated that the tenancy had ended on 9 December 2020 and that the deposit had only been protected when the Respondent wished to make an application to the Tribunal himself.

4. On 28 April 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 19 May 2021.
5. On 19 May 2021, the Respondent made lengthy representations to the Tribunal. In the main, they related to difficulties that the Respondent had experienced in gaining access to the Property with a view to carrying out repairs. The Respondent described his failure to lodge the deposit in an approved tenancy deposit scheme within the required timescales as a “gaffe...due to failing memory.”

Case Management Discussion

6. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 1 June 2021. Both parties participated in the call. The Respondent told the Tribunal that he accepted that he had failed to comply with the requirements, but that it had been an oversight on his part which had been rectified as soon as he became aware of it. That had happened during a telephone discussion with the Applicant on 29 February 2020. He had not had cause to consider it sooner, as the Applicant was reluctant to allow inspections of the Property and, respecting that, the Respondent had not had the same level of involvement in the running of the tenancy as he might otherwise have had. He had always lodged the deposit on time when the Property had been let out previously. He had some medical issues regarding his memory and was endeavouring to obtain an appointment at the Glasgow Memory Clinic. He was also putting together a checklist to be used for future tenancies, to ensure that such a mistake did not happen again. The deposit had been placed in an account used solely for the letting of the Property and had never been at risk. There had been no actual loss to the Applicant.
7. The Applicant told the Tribunal that she did not accept that the delay in lodging the deposit was an oversight. It was one of a number of instances in which landlord duties had not been complied with. She stressed that the legal obligation lay with the Respondent and there was no responsibility on her to bring the omission to his attention.

Reasons for Decision

8. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 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 decide the application without a Hearing.
9. Regulation 3(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) states that 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 information required under Regulation 42 of the Regulations. 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.
10. The Tribunal noted that the deposit had been at risk for almost two years. Accordingly, it represented a serious failure on the part of the Respondent. The fact that it was held in an account used solely for the letting did not mean that

it was not at risk, should the Respondent suffer some unforeseen financial difficulty. The Tribunal noted that, whilst the application had been made within the time limit set out in the Regulations (three months after the date that the tenancy ended), the Applicant had been aware of the Respondent's failure since March 2020 but had not applied to the Tribunal until February 2021.

11. The Tribunal accepted, on the balance of probabilities, the evidence of the Respondent that the failure to secure the deposit had been a memory lapse on his part, possibly attributable to a medical condition, and noted that the deposit had been lodged with SafeDeposits Scotland within three days of the Respondent having become aware of his failure to comply with the regulatory requirement. Nevertheless, the Applicant's deposit had been at risk for two years, even though it was in an account reserved for dealings with the let Property, so the failure was a serious, albeit unintentional, one.
12. Having considered all the evidence, written and oral, presented to it, the Tribunal decided that the Respondent's failure to lodge the deposit with an approved scheme within 30 working days of the start of the tenancy had not been a deliberate act and that, whilst her money had been at risk for a lengthy period, the Applicant had not suffered actual loss. She would have been naturally concerned when she found out that the Respondent had not complied with his legal duty, but it appeared she had been unaware, until at least 29 February 2020, of the failure to comply, and, on 4 March 2020 was advised by SafeDeposits Scotland that the deposit had been secured with them on the previous day. The anxiety caused to her was, therefore, for a very short period. The view of the Tribunal was that a fair, reasonable and proportionate amount to order the Respondent to pay to the Applicant was £500.

Decision

13. 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 Five Hundred Pounds.

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.

G.C.

Legal Member/Chair

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1 June 2021
Date

