

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

**Chamber Ref: FTS/HPC/PR/21/1064**

**Re: Property at 2/2, 40 Daisy Street, Glasgow, G42 8HF (“the Property”)**

**Parties:**

**Mrs Darragh Moss, 78A High Street, Dunbar, EH42 1JH (“the Applicant”)**

**Mrs Kleida Bajrami, 21 3F1, Bernard Street, Edinburgh, EH6 6PW (“the Respondent”)**

**Tribunal Members:**

**Paul Doyle (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached her obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.**

**Background**

1. On 17/10/2020 the respondent let to the applicant and one other person the property at 2/2, 40 Daisy Street, Glasgow, G42 8HF. The tenancy commenced on 25/10/2020. A Tenancy agreement was entered into which required payment of a deposit of £650. The applicant’s one-half share of that deposit was £325.00. The tenancy ended in March 2021.

**The Case Management Discussion**

2. A Case Management Discussion took place before the Tribunal by telephone conference at 10.00am on 13 August 2021. The Applicant was present and unrepresented. The respondent was represented by Mr D Gibb of Tay Letting Ltd.

3. The respondent accepts that the applicant paid £325.00 as a deposit at the commencement of the tenancy. Both parties agree that the deposit was not lodged with an approved tenancy deposit scheme within 30 days of commencement of the tenancy. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that, in light of that admitted fact, I must make a payment order against the respondent. I can dispose of this case today, without the need for a further hearing.

#### Findings in Fact

4. In October 2020 the respondent agreed to let the property at 2/2, 40 Daisy Street, Glasgow, G42 8HF to the applicant and one other person. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £650. The tenant paid £325.00 to the respondent's letting agents as her one-half share of the tenancy deposit. The tenancy agreement narrated that the deposit would be paid into an approved tenancy deposit scheme within 30 days of commencement of the lease.

5. The applicant's joint tenant had lived in the property, with a third-party tenant, under a different lease since May 2020. They had paid a deposit of £650.00 at the start of their separate tenancy. There was a delay in placing their separate deposit in an approved tenancy deposit scheme, but, by August 2020, the deposit in their names rested with SafeDeposits Scotland. The Third-party tenant vacated the property. The applicant replaced the third-party tenant in the property. The tenancy dated 17/10/2020 was signed to create a new tenancy for the applicant and her joint tenant.

6. The applicant's join tenant did not pay anything towards the deposit required by the tenancy entered into on 17/10/2020 because the respondent's agents intended to use his existing deposit as the deposit under the new tenancy with the applicant.

7. The tenancy ended in March 2021. After an exchange of correspondence between the applicant and the respondent's agents, £325.00 was returned to the applicant. That sum had not been placed in an approved tenancy deposit scheme. Instead, it had rested in the respondent's letting agent's clients' account for the duration of the tenancy.

8. The respondent had no intention of depriving the applicant of repayment but ignored the terms of the lease between the parties which (correctly) narrated that the deposit would be placed in an approved scheme within 30 days of the commencement of the tenancy.

#### Reasons for Decision

9. It is beyond dispute that a deposit of £325.00 was paid at the commencement of the tenancy. On the facts as I find them to be, the deposit was not paid into an approved scheme but, for the duration of the tenancy (and more), rested in the respondent's letting agent's clients' account.

10. The respondent had the advice of experienced letting agents and the lease she signed as landlady reiterated the requirement to place deposits in an approved scheme with 30 days.

11. The respondent acknowledges her error. A full accounting for the deposit has been made. Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected for the duration of the tenancy.

12. The Applicant asked me to make a payment order. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future. Although the respondent refunded the applicant after termination of the tenancy, the deposit was entirely unprotected despite the terms of the lease the respondent presented to the applicant to sign (and which the respondent herself signed) which narrates the requirements of the 2011 Regulations.

13. The applicant's share of the deposit was £325.00. The deposit was not protected. A payment order equivalent to twice the value of the deposit reflects the seriousness of the breach of the 2011 Regulations.

14. The appropriate level of payment order is £650.00

### Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Six Hundred and Fifty pounds (£650.00) within 14 days of service of this order.

### **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.**

# P Doyle

**Legal Member**

**13 August 2021**