



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

**Chamber Ref: FTS/HPC/PR/20/1058**

**Re: Property at 1/3 1 Lochlip Road, lochwinnoch, Renfrewshire, PA12 4AF (“the Property”)**

**Parties:**

**Mr Daniel McDonald, C/O Renfrewshire CAB, 7 Glasgow Road, Paisley, PA1 3QS (“the Applicant”)**

**Mr Yuk Mui Chung, Ms Chin Keung Chung, C/O Edzell Property Management, 1008 Pollokshaws Road, Glasgow, G41 2HG; C/O Edzell Property Management, 1008 Pollokshaws Road, Glasgow (“the Respondent”)**

**Tribunal Members:**

**Mark Thorley (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent to the Applicant of the sum of £500 be made.**

**Background**

**The applicant applied to the First Tier Tribunal for Scotland on Rule 103 by application dated 21 March 2020. Accompanying the application was a copy of the Tenancy Agreement and Notice by the tenant.**

**The application is made under Rule 103. The applicant sets out that his deposit was never placed in the Tenancy Deposit Scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011.**

**The application was served by Sheriff Officer.**

**Mr Timothy Lovat of Edzell Property Management confirmed in advance that he would be acting on behalf of the respondents Mr & Mrs Chung.**

### **Case management hearing**

**At the case management hearing Mr Kevin Montgomery from Renfrewshire Citizens Advice appeared with the applicant. Mr Smith of Edzell Property Management attended on behalf of the respondents. The hearing was conducted by tele-conference call.**

### **Findings in Fact**

- 1. The parties entered into a private residential tenancy agreement dated 4 April 2018 for the property at Flat 1/R, 1 Lochlip Road, Lochwinnoch, PA12 4AF.**
- 2. The rent payable was the sum of £430 per calendar month payable in advance.**
- 3. A deposit of the sum of £430 was paid by the applicant at the same time.**
- 4. Notice to Leave was given by the applicant on 22 January 2020 and the applicant moved out on 3 March 2020. The last payment of rent was made on 4 February 2020.**
- 5. The respondents agent paid the deposit into a tenancy deposit scheme but the funds were never allocated to the applicant and the deposit was returned to the landlord.**
- 6 The applicant has not received the deposit back as yet.**

### **Reasons for Decision**

**The respondents agent confirmed the position namely that the applicant had paid the deposit at the commencement of the tenancy. It had then been paid by the respondents agent into a tenancy deposit scheme but the deposit was not allocated to the applicant and the money was returned. The respondents agent accepted therefore that it was their error that prevented the deposit being properly protected.**

**They did however confirm that the monies were retained in their client account and accordingly were protected there.**

**They also confirmed that the applicant was a good tenant and but for Covid the deposit would have been returned by now. The respondents agent would send the deposit back. The breach was accepted**

The applicant was represented by Mr Montgomery. There was no dispute on the facts.

The tribunal considered the level of penalty. On the basis that the deposit was not protected in a scheme (although with protection elsewhere) and taking into account that the deposit had still not been repaid the tribunal were of the view that the appropriate award was £500 which represented just over once the amount of the deposit. This was not a case where there was a very brief period where the deposit was unprotected but there was mitigation in that the money had initially been sent to the scheme and the respondents agent indicated that the full amount of the deposit would separately be repaid.

### Decision

The respondent to pay the sum of £500 by way of payment for the breach of Regulation 9 of the Tenancy Deposit Schemes ( Scotland) Regulations 2011

### 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.

M Thorley

19 August 2020

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Legal Member/Chair

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Date