



**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/20/1472**

**Re: Property at 96 Main Street, Lochgelly, KY5 9AA (“the Property”)**

**Parties:**

**Mr David Wight, Mr Robbie Wight, 5 Darnaway Drive, Glenrothes, KY7 6GL (“the Applicant”)**

**Mr Stuart Elliott, 11 Chisholm Street, Townhill, Dunfermline, KY12 0EX (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

**Decision**

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 96 Main Street Lochgelly KY5 9AA, Glasgow, did not comply with any duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicants the sum of two hundred and sixty two pound fifty pence (£262.50).**
- 2. This is a case management discussion ‘CMD’ in connection with an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’ for an order for payment where a landlord has not paid a deposit into an approved scheme in terms of regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, ‘the regulations’. The applicants Mr David Wight and Mr Robbie Wight attended the CMD. The respondent was represented by his wife Mrs Kathleen Elliot.**
- 3. The tribunal had before it the following copy documents:-**

- (1) Application dated 6 July 2020.
- (2) Tenancy agreement with a start date of 28 November 2018.
- (3) Email dated 1 June 2020 giving notice in connection with the tenancy.
- (4) Exchange of text messages between the parties.
- (5) Voucher for payment of the sum of £525 to Mrs Frain on 1 November 2018.
- (6) Email to the tribunal from respondent dated 7 September 2020 enclosing further text messages and photographs.

### **Matters agreed**

4. It was agreed that the applicants rented the property from the respondent from around 27/28 November 2018 until 29 June 2020. It was agreed that the applicants paid a deposit of £525 via the respondent's agent Mrs Frain. It was agreed that this sum was returned in full to the applicants on 6 July 2020. It was also agreed that the respondent did not lodge the deposit in an approved scheme.

### **The applicant's position**

5. For 7 days after the tenancy came to an end the applicants were left wondering whether the deposit would be returned by the respondent. They became more worried when they discovered the deposit was not lodged in an approved scheme. The respondent inspected the flat on 29 June 2020 and he did not raise any issue with the condition of it. He was not good at returning their messages and it took 7 days for the return of the deposit. It was only after the applicants raised the application the respondent complained about the condition of the flat. He has also given an unfavourable reference to the local authority which has affected their application for a tenancy. The respondent has not pursued them in connection with the damage to the property.

### **The respondent's position**

6. The failure to lodge the deposit was a genuine oversight which only came to light when the applicants gave notice. The respondent agreed to return the deposit in full. There was a delay of a few days due to a problem with the respondent's bank. This meant the money was returned to the respondent in error. The money was paid to the applicants 7 days after the tenancy came to

an end. The respondent has rented the property out for around 11 years. He has had one long term tenant for 8 years and a few tenants like the applicants, who have rented for a short time. The respondent knows he has an obligation to lodge the deposit and he has done this for previous tenants. The applicants were very persistent in their messages to the respondent at the end of the tenancy and he felt they were hounding him. The respondent did identify problems with the property after they left and when he was approached for a reference, advised they council that although the applicants did not leave any arrears, they did leave damage to the flat.

## **7. Findings in fact**

- (1) The parties entered into a Private Residential Tenancy agreement for let of the property from 28 November 2019.
- (2) The applicants paid a deposit of £525.
- (3) The respondent failed to pay the deposit into a deposit scheme.
- (4) The tenancy came to an end on 29 June 2020.
- (5) The deposit was returned to the applicants around 6 July 2020.

## **Reasons**

8. It was not disputed that this was a clear breach of the regulations as the respondent had failed to lodge the deposit in a recognised scheme. The deposit should have been lodged within 30 working days of his receipt of it. The respondent's agent received the money on 1 November 2019 and passed it on to the respondent thereafter. The agent was only used to do initial checks of the tenant. All other matters were dealt with by the respondent. It was not disputed that the error only came to light in June 2020 when the applicants gave notice that they were leaving the property. Although it appears there was a difference of opinion between the parties about the condition of the property, the respondent does not appear to have used the fact that he held the deposit to his advantage as he returned the deposit in full within 7 days. The respondent was aware of his obligations to lodge the deposit but this is the only property he rents out and it was overlooked.

9. The tribunal considered the severity of the breach and reviewed all of the recent cases regarding tenancy deposit schemes. The tribunal noted that in the case of Kirk-v-Singh Sheriff Jamieson was mindful of the need to:-

*proceed to impose a sanction which is "fair, proportionate and just having regard to the seriousness of the noncompliance.*

10. The tribunal, having heard all of the available evidence and taking into account the representations made for the respondent, is satisfied that the respondent failed to comply with all of his obligations in terms of regulation 3. The tribunal was satisfied that the breach was at the low end of the scale. It

appeared to be a genuine oversight, the tenancy was of short duration and the deposit was returned at the end of the tenancy despite a disagreement about the condition of the property. The tribunal decided that a penalty of one half of the deposit is fair proportionate and just. The tribunal therefor made an order for payment of the sum of £262.50.

### **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.**

Lesley Ward

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**Lesley Ward Legal Member**

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**18 September 2020**