



**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/20/2016

**Re: Property at 6C Braemar Gardens, 1 Robertson Street, Greenock, PA16 8JE
("the Property")**

Parties:

**Miss Linzi McCallum, 6C Braemar Gardens, 1 Robertson Street, Greenock, PA16
8JE ("the Applicant")**

**Brenda McLeod, 37 Denholm Terrace, Greenock, PA16 8RN ("the
Respondent")**

Tribunal Members:

Helen Forbes (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that an order for payment should be granted in favour of
the Applicant in the sum of £495.**

Background

1. By application received in the period between 21st September and 9th November 2020 and made under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended ("the Rules"), the Applicant applied for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations"). The Applicant lodged a copy of the tenancy agreement between the parties and copy notification from SDS. deposit.
2. By letter dated 16th December 2020, the Applicant's representative, Ms Cathie Scott of Cathie Scott Properties lodged written representations.

The Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 11th January 2021. Both parties were in attendance. The Respondent was represented by Ms Cathie Scott.
4. The Applicant set out her case as reflected in the application, namely that the parties entered into a tenancy agreement in respect of the Property which commenced on 20th February 2020, and continues to be in place. A deposit in the sum of £495 was paid by the Applicant to the Respondent on 13th February 2020. The Applicant was informed by Safe Deposit Scotland (“SDS”) on 28th July 2020 that the deposit had been lodged on 27th July 2020.
5. Ms Scott reiterated her written representations stating that this should not have happened. The matter arose due to two staff being on sick leave just prior to the Covid 19 lockdown, the subsequent closure of the office, and the furloughing of staff. These were unprecedented circumstances. Ms Scott apologised fully to both parties. This had never happened before. New procedures have been put in place so this cannot happen again. The deposit remained in the client account and was never at risk.
6. The Applicant accepted the apology put forward. She said that she felt there had been time in which to lodge the deposit between the start date of the tenancy and furloughing. It should and could have been lodged instantly. She had to make payment before the keys were handed over to her, and she trusted that her deposit would be dealt with properly.
7. Invited to make representations as to the amount of payment to be awarded, given the admitted breach of the Regulations, the Applicant submitted that it ought to be twice the amount of the deposit. Ms Scott submitted that twice the amount of the deposit would be excessive. She appreciated the seriousness of the matter, but there were mitigating circumstances and the error occurred in unprecedented times. It was rectified as soon as it came to light.

Findings in Fact

8.
 - (i) The parties entered into a tenancy agreement in respect of the Property that commenced on 20th February 2020.
 - (ii) A tenancy deposit of £495 was paid to the Respondent by the Applicant at the start of the tenancy.
 - (iii) The deposit was not lodged with an approved tenancy deposit scheme within the 30 days required by the Regulations.

- (iv) The deposit was lodged with an approved tenancy deposit scheme on 27th July 2020.
- (v) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

Reasons for Decision

9. The deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy as required by Regulation 3. The deposit remained unprotected for a period of five months and one week.
10. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015* by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
11. The Tribunal took guidance from 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 or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.'*
12. The Tribunal considered this to be a serious matter. The Tribunal took into account the length of time for which the deposit was unprotected, and the fact that both parties had trusted Ms Scott to lodge the deposit timeously. The Tribunal did not consider this to be a case at the most serious end of the scale. The Tribunal took into account the mitigating circumstances put forward by the Respondent's representative. While it considered that a reputable letting agent ought to have procedures in place to ensure that a landlord's obligations are met whatever the circumstances, these were unprecedented circumstances that clearly put the business under considerable strain. This appeared to be a regrettable, and one-off, oversight. The Tribunal noted that the matter was dealt with as soon as the mistake was identified, and that Ms Scott had apologised fully to both parties.
13. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £495 to the Applicant. This is one times the deposit.

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.



Legal Member/Chair

11th January 2021
Date