



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulations 3 and 10 of the Tenancy
Deposit Scheme (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/20/2049

**Re: Property at 184 Lamond Drive, St Andrews, St Andrews, UK, KY16 8JP
("the Property")**

Parties:

**Miss Lisa Doerner, Via Vincenzo Dandolo 26, Varese VA, 21100, Italy ("the
Applicant")**

**Mr Richard Brooks, Mrs Susan Brooks, 65 Tom Morris Drive, St Andrews, Fife,
KY16 8EN ("the Respondent")**

Tribunal Members:

Alison Kelly (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that an order for payment in the amount of £500 should
be made.**

Background

On 23rd September 2020 the Applicant lodged an application with the Tribunal under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("The Rules"), alleging that the Respondent had not lodged the Applicant's deposit in a Tenancy Deposit Scheme in accordance with the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Lodged with the application were: -

1. Copy Private Residential Tenancy Agreement dated 21st January 2019, showing the landlords as Richard Brooks and Susan Brooks and the Tenants as Isobel Brooks, Lisa Doerner and Caitlyn Harrold.
2. Private Residential Tenancy Agreement between the same parties dated 23rd and 27th May 2019.
3. Bank statement redacted but showing a payment on 4th July 2020 of £400 from Richard Brooks reference "Deposit refund".
4. Confirmations from each Tenancy Deposit Scheme confirming that the deposit had not been lodged with them.

The Applicant was asked to confirm the date on which the Lease came to an end. She sent an email to the Tribunal dated 1st November 2020 confirming that it came to an end on 30th June 2020. She also indicated that the other Tenants did not wish to be party to the application.

Service was not affected on the Respondents and the Case Management Discussion fixed had to be cancelled. The Application was thereafter served by advertisement on the Tribunal's website.

On 4th February 2021 the Respondents lodged a personal statement with the Tribunal.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference on 12th February 2021. The Applicant and both Respondents dialled in. The Chairperson introduced everyone and explained the Tribunal procedure and the purposes of a CMD in terms of Rule 17 of the Rules.

The Applicant confirmed that her application was made on the basis that the Respondents, who were her Landlords, had not placed her deposit in a Tenancy Deposit Scheme.

The Applicant confirmed that she had been a tenant of the Respondents at the property. The first Lease had commenced on the 1st September 2018. The second Lease had begun on the 1st September 2019 and as far as she was concerned, the

tenancy had ended on the 30th July 2020. She paid a deposit of £400 to the Respondents prior to the start of the original tenancy and this money was returned to her at the end of the tenancy. The Applicant pointed out that the Landlord, in the Tenancy Agreement, made reference to a Tenancy Deposit Scheme but it was one based in England and she thought that it should have been one based in Scotland.

The Respondents confirmed that they agreed that the Applicant was their Tenant at the property and that the original Lease commenced on the 1st September 2018, with the second Lease commencing on the 1st September 2019. They thought the tenancy had ended on the 30th June 2020. They agreed that £400 had been paid by way of deposit before the start of the tenancy and that this money had been returned to the Applicant at the end of the tenancy.

The Chairperson asked the Respondents to confirm the position regarding placing the deposit into an approved scheme. They advised that they had not done so. The Chairperson explained the terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and advised that the Respondents' admission that they hadn't placed the deposit into the scheme confirmed that there had been a breach of the regulations.

The Respondents confirmed that they had seven rental properties in England and one rental property in Scotland. They confirmed that there was a similar deposit scheme in England and that they took deposits from their Tenants there and placed them into an appropriate scheme. They no longer used the scheme referred to in the Tenancy Agreement with the Applicant, they now use a scheme called Deposit Guard. The Respondents confirmed that they have one rental property in Scotland, being the property in question. It is currently rented out and the deposit which they have taken has been placed in an approved scheme.

The Chairperson ascertained from the Respondents that Mr Brooks had drafted the Private Residential Tenancy Agreement for Miss Dorner and the other tenants to sign. He had taken it from the Scottish Government website and he had amended it to include reference to the English tenancy deposit scheme.

The Chairperson asked the Respondents to explain why they had not placed the deposit in a scheme. Mrs Brooks said that in their minds there had been a distinct difference from other tenancies as the Applicant was living with their daughter and

they were friends. They treated the Applicant and the other tenants differently than they would if they had not known them. They had thought there was no need to place the deposit in a scheme as it would be returned. Mrs Brooks pointed out that they have never in all their time as Landlords not returned a deposit. She accepted that it was their error and appreciated that they should have placed the deposit into a scheme. She said that the irony was not lost on her in that had it been placed in a scheme, Miss Dorner might not have had the whole deposit returned to her.

The Applicant was asked if there was anything further she wished to add and she said that everything was in her application, but she understood that the Tenancy Deposit Scheme was to protect tenants from the Landlord getting into financial difficulties or refusing to return the deposit at the end of the tenancy.

Findings in Fact

1. The parties entered into a Tenancy Agreement in respect of the property;
2. The Applicant paid the sum of £400 to the Respondents by way of a deposit;
3. The Tenancy came to an end on either 30th June or 30th July 2020;
4. The Application was lodged by the Applicant timeously;
5. The deposit was not placed in a Tenancy Deposit Scheme;
6. The deposit was returned to the Applicant at the end of the tenancy.

Reasons for Decision

It was clear that the respondents had breached Regulation 3 of the Regulations. The Tribunal has absolute discretion, in terms of Regulation 10, in deciding what penalty should be imposed for a breach of the regulations.

The Tribunal considered the whole circumstances of the matter. The Tribunal appreciated that the Applicant was a friend of the Respondent's daughter. The Tribunal appreciated that the Respondents had a different attitude towards that tenancy than they would have done had they not known the tenants. However, the Tribunal couldn't overlook the fact that the Respondents do have other rental properties and that they had adapted the style Private Residential Tenancy to mention a particular deposit scheme. This shows that they were aware of the requirement to lodge the deposit in a scheme. They had also entered in to a tenancy agreement with the Applicant, meaning that the arrangement was not quite as casual as made out.

As pointed out by the Applicant, the reasoning for the Tenancy Deposit Scheme's existence is to protect Tenants from Landlords taking a deposit from them and then getting into financial difficulties meaning that they can't pay it back at the end of the

tenancy, and also to provide a scheme for mediation in relation to any disputes about damage etc when the tenant leaves.

The Tribunal took the view that this breach was not at the serious end of the scale. However, it was not at the bottom end of the scale either, given the Respondents' experience as Landlords and the fact that they referred to a tenancy deposit scheme in the tenancy agreement. The Tribunal decided that a payment of one and a quarter times the deposit being the sum of £500 should be paid by the Respondents to the Applicant.

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.

12th February 2021

Legal Member/Chair

Date