



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 regulations”) pursuant to an application under rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Scotland Regulations 2017 (“the 2017 regulations”)**

**Chamber Ref: FTS/HPC/PR/21/0330**

**Re: Property at 15 Park Road, Cults, Aberdeen, AB15 9HR (“the Property”)**

**Parties:**

**Mr Bjorn van den Bosch, 22 Park Road, Cults, Aberdeen, AB15 9HR (“the Applicant”)**

**Mr Callum Barrow, 15 Park Road, Cults, Aberdeen, AB15 9HR (“the Respondent”) who was represented by Mr Waters of Aberdeen Property Leasing (“APL”)**

**Tribunal Members:**

**Graham Dunlop (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 applicant of the sum of £2100 (Two thousand One Hundred Pounds) should be awarded.**

**Background**

1. The applicant seeks an order for payment from the respondent due to the alleged failure to lodge a deposit with the scheme administrator of an approved scheme in accordance with regulation 3(1)(a) of the 2011 regulations.

2. At the previous CMD on 8<sup>th</sup> April the applicant amended his application to include a breach of regulation 3(1)(b) in so far as the applicant had not been provided with all of the information required under regulation 42 of the 2011 regulations.
3. The respondent's agents had changed during the period between when the deposit was paid and this application was made. The previous agents were Town and Country Leasing ("TCL").
4. Mr Waters explained that paperwork was missing that had not been transferred to APL. Mr Waters candidly accepted on behalf of the respondent that there was insufficient paperwork to defend the challenge under regulation 3(1)(b).
5. Mr Waters also explained that the bank records showed that the deposit was not paid timeously in accordance with the 2011 regulations.
6. Of more concern to the Tribunal is the existence of an email from the Letting Protection Service ("LPS") dated 1<sup>st</sup> May 2019 stating that the deposit was paid timeously. More recent investigations by the LPS indicate that this email was not genuine, as stated in an email from the LPS on 26<sup>th</sup> April 2021

## **Findings in Fact**

1. The Tribunal finds that on the balance of probabilities the following matters were proven:
  - a. That the deposit of £1050 (which sum is not in dispute) was not paid until February 2020 despite the tenancy commencing on 1<sup>st</sup> May 2019.
  - b. That the applicant was not provided with all of the information required under regulation 42.
  - c. That the email from LPS dated 1<sup>st</sup> May 2019 was not genuine.

## **Reasons for Decision**

1. This case concerned a failure to pay a deposit for reasons which are unclear. Similarly it was established that information was not provided as required by the 2011 regulations.
2. There was a candid and helpful acceptance by the new agents that there was no basis of defence to the application.
3. However the Tribunal is mindful of the attempt to pervert justice (in the civil rather than criminal sense) by the previous agents. Accordingly the award of twice the deposit is appropriate.

## **Decision**

1. The Tribunal determined that 2x the deposit was appropriate in all the circumstances.

## **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.**

**G. Dunlop**

**27<sup>th</sup> May 2021**

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**Legal Member/Chair**

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**Date**