



**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**

Chamber Ref: FTS/HPC/PR/21/0861

Re: Property at 11B Baker Street, Stirling, FK8 1BJ (“the Property”)

Parties:

Miss Meryem Saffi, c/o 19a Queen Street, Stirling, FK8 1HL (“the Applicant”)

**Mr John Steven Singleton, 125/102 Green Villa, 555 Mingzhu Lu, Xujing Town,
Qingpu, Shaghai, 201702, China (“the Respondent”)**

Tribunal Member:

Lynsey MacDonald (Legal Member)

Decision (in absence of the Applicant)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for should be granted in the sum of £150.**

1. Background

- 1.1. By way of application in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) the Applicant sought an order for payment of compensation in respect of the Respondent’s failure to pay her tenancy deposit into an approved scheme.
- 1.2. In support of the application the Applicant lodged a copy of a tenancy agreement commencing 24th November 2017, along with screenshots of messages and emails.
- 1.3. The Tribunal fixed a Case Management Discussion for 11th June 2021, which the Applicant failed to attend. That Case Management Discussion was continued to ascertain whether the Applicant’s failure to attend was deliberate and wilful, as she had lodged submissions which suggested that she wished to proceed with her case.
- 1.4. The new Case Management Discussion was intimated to parties. In response the Applicant indicated that she was “busy” on the date of the

new Case Management Discussion, and was not prepared to incur the cost of joining the teleconference from abroad. She had been made aware that the Tribunal could at the Case Management Discussion make any decision on the application that could be made at the full Hearing, if the Tribunal had sufficient information and considered the procedure to have been fair.

2. The Case Management Discussion

- 2.1. The Applicant did not attend the Case Management Discussion. The Tribunal was satisfied that the Applicant's failure to attend at the Tribunal was deliberate and informed. Whilst the Tribunal was unimpressed with the Applicant's lack of attendance, on two occasions, at the Case Management Discussion, the Tribunal considered that it was appropriate to treat the Applicant's lodging of written representations as a request to proceed in her absence and on the basis of those written representations. Accordingly the Tribunal considered that it was fair to hear the Case Management Discussion in the absence of the Applicant.
- 2.2. The Respondent attended the Case Management Discussion on his own behalf.
- 2.3. In her written submissions the Applicant stated that she had paid a deposit in the amount of £150 to the Applicant. In support of her request for compensation she relied upon the following factors:
 - (a) There were defects in the creation of the tenancy agreement, in that it was an English tenancy agreement rather than a Scottish tenancy agreement;
 - (b) She was forced to move out of the property without appropriate notice;
 - (c) There were problems between her and another tenant;
 - (d) She had paid all the rent that was owed so there was no reason to withhold her deposit; and
 - (e) Her deposit has still not been returned.
- 2.4. The Respondent accepted that a deposit in the amount of £150 had been paid by the Applicant, that the deposit had not been returned to the Applicant, and that the deposit had not been paid into an approved scheme. In mitigation he relied upon the following factors:
 - (a) This is the only property that he has rented out;
 - (b) The rent was a low level rent designed to help a friend of his son's;
 - (c) He was unaware of the requirement to secure the deposit in a deposit scheme;

- (d) The deposit had not been returned because there was a dispute about the end of the tenancy and he had attributed the deposit to rent arrears;
- (e) He does not intend to have any further involvement in renting residential property; and
- (f) In the event that he did have any further involvement in renting residential property he would secure appropriate advice regarding his obligations before doing so.

3. Findings in Fact

- 3.1. The Applicant and the Respondent entered into a tenancy agreement on 12th October 2020.
- 3.2. The Applicant paid a deposit of £150 to the Respondent when she rented the property from the Respondent.
- 3.3. The Respondent has not returned the deposit to the Applicant.
- 3.4. The Respondent did not pay the deposit into an approved scheme.

4. Reasons for Decision

- 4.1. The Tribunal proceeded on the basis of the written documents and representations from the Applicant, together with written representations and oral submissions from the Respondent.
- 4.2. Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Tenancy Deposit Regulations") provides:
(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy:
 - (a) pay the deposit to the scheme administrator of an approved scheme; and*
 - (b) provide the tenant with the information required under regulation 42.*
- 4.3. Regulation 10 of the Tenancy Deposit Regulations provides:
If satisfied that the landlord did not comply with any duty in regulation 3, the First-tier Tribunal:
 - (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and*
 - (b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to:*
 - (i) pay the tenancy deposit to an approved scheme; or*

(ii) provide the tenant with the information required under regulation 42.

- 4.4. As the Respondent accepted that he had failed to pay the deposit into an approved scheme, there was little in dispute between the parties. The only matter for the Tribunal was to determine the level of compensation to be paid to the Applicant.
- 4.5. The Tribunal noted that there was a significant deterioration in the relationship between the parties, and that this deterioration has resulted a dispute over the end of the tenancy. The Tribunal does not consider the reasons for the disagreement to be relevant to the matter before it, namely the breach of the Tenancy Deposit Regulations. In particular, the Tribunal has disregarded the Applicant's allegations regarding the behaviour of her co-tenant.
- 4.6. Whilst ignorance of a landlord's duties does not excuse a failure to a failure to secure a deposit in an approved scheme, the Tribunal does accept that the Respondent's failure was a result of ignorance as to the requirements rather than wilful disobedience of the requirements. Further, the Tribunal accepts the Respondent's submissions in mitigation that he is not a 'professional landlord', that he has no intention to participate further in residential leasing, and that his failure to return the deposit was as a result of him attempting to adopt a 'common sense' approach to the rent arrears dispute.
- 4.7. The Tribunal considers that this is a breach of the regulations which is at the lower end of the scale. Accordingly the Tribunal considers that it is appropriate to mark the breach with a penalty at the lower end of the scale.

5. Decision

- 5.1. The order for payment of compensation is granted in the amount of £150, which represents the amount of 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.



01/07/21

Chair

Date