



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/21/1772**

**Re: Property at 8F Morgan Street, Dundee, DD4 6QF (“the Property”)**

**Parties:**

**Mr Stevie Johnstone, 2 Gardner Street, Flat 11 3/R, Dundee, DD3 6DU (“the Applicant”)**

**Mr John Nicol, 8 Wallacetown Court, Dundee, DD4 6RP (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Mike Scott (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.**

**Background**

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 dated 22<sup>nd</sup> July 2021.
2. The Applicant advised in the application that the tenancy had commenced in 2013. The tenancy is a short assured tenancy. The Respondent did not place the deposit in any scheme or provide details when asked regarding the placing of the deposit in any scheme. He lodged a Deposit Certificate Protection for £461.52. It was dated 2<sup>nd</sup> June 2021. The Applicant was unable to lodge a copy of the lease as he had misplaced it since 2013.
3. The Respondent lodged a submission on 28<sup>th</sup> September 2021 which was submitted by his solicitor.

4. A CMD was held on 11<sup>th</sup> October 2021 at 10am by teleconferencing. The Applicant and the Respondent were both present and represented themselves. As matters remained unresolved the case progressed to a full hearing. The Tribunal issued a direction for further evidence.
5. The Applicant lodged submissions on 18<sup>th</sup> October 2021. These submissions included a witness list, copies of pages of a PRT from 2019 obtained from Dundee City Council and a screenshot from Safe Deposit Scotland showing the lodging on the deposit on 2<sup>nd</sup> June 2021 which states the start date of the tenancy being 10<sup>th</sup> April 2013.
6. The Respondent lodged submissions on 16<sup>th</sup> November 2021. These submissions included citation of case *Mann v. Myles*, the Tenancy Deposit Schemes (Scotland) Regulations 2011 and a full submission.
7. A hearing was held on 29<sup>th</sup> November 2021 at 10am by teleconferencing. The Applicant and the Respondent were both present and represented themselves. Parties gave evidence as detailed in the hearing note. However at the very end of the hearing the Applicant's mother found the lease relating to the joint tenancy in 2012 which had previously believed, by both parties, to be dated 2013. The hearing was adjourned for this to be lodged and considered.

### **Continued Hearing**

8. The continued hearing was held on 24<sup>th</sup> February 2022 at 10am by teleconferencing. The Applicant and the Respondent were both present and represented themselves. The Tribunal noted that there had been more evidence submitted by both parties since the hearing had last called on 29<sup>th</sup> November 2022.
9. At the last hearing the following facts had been agreed:
  - The Applicant's mother, Ms Rose Harkin, entered into a tenancy agreement with the Respondent in 2008. At which point, the Applicant claims, that Ms Harkin paid £500 as a deposit.
  - In April 2011 the letting agent managing the Property ceased to trade.
  - On 10<sup>th</sup> April 2013 the Applicant became a joint tenant with his mother on a new Short Assured Tenancy agreement. Though it is noted that since the Applicant's mother found the signed lease that the actual date of the lease was 8<sup>th</sup> October 2012. The lease of 10<sup>th</sup> April 2013 appears to be a continuation of that one.
  - On or around August 2019 Ms Harkin left the Property and the Applicant became the sole tenant. The Applicant signed a new lease which was a PRT ("Private Rented Tenancy"). There was no deposit paid in connection to that lease.
  - On 2<sup>nd</sup> June 2021 the parties entered into a new PRT. This was signed on 29<sup>th</sup> June 2021. A deposit was paid on 2<sup>nd</sup> June 2021 into Safe Deposit Scotland.
10. The Applicant confirmed that there was no deposit for the lease of 2019. He noted that the deposit scheme receipt noted that the start date of the lease was

2013 which had led him to conclude that this was a late lodging of the deposit. The Respondent noted that it was an error on his part as he was referring to when the Applicant first became a tenant under a previous tenancy. The Tribunal noted that all parties had assumed that the tenancy first arose with the Applicant in 2013 until the very end of the last hearing when the lease was found with the date 8<sup>th</sup> October 2012. The Tribunal noted the Applicant's frustration. The Respondent had also noted that there had been no deposit taken in 2019. As there was no deposit taken in 2019 there could be no penalty for not lodging the deposit.

### **Reasons for decision**

11. The Tribunal considered that the question of if there was a deposit in 2012 was not a matter for this hearing. An application had not been lodged within 3 months of the end of the tenancy. It was agreed that a deposit had been lodged in 2021 for the lease that started at the end of June 2021. The deposit was lodged prior to the signing of the lease but after parties had agreed to enter into a PRT. This left the lease of 2019 to be considered. Both parties agreed that there was no deposit lodged in relation to this lease. As such there was no requirement for the deposit scheme regulations. The Tribunal did not consider that there were grounds to proceed with the application any further. Both parties accept this pointed. The Tribunal refused the application.

### **Decision**

12. The application is refused.

### **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.**

**Gabrielle Miller**

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**24 February 2022**

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**Legal Member/Chair**

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**Date**