



**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/22/3421**

**Re: Property at 153 Gilmour Place, Edinburgh, EH3 9PW ("the Property")**

**Parties:**

**Miss Sarah Cook and Miss Rebecca Russell, Flat 4, 16 New Mart Square, Edinburgh,  
EH14 1TJ ("the Applicants")**

**Mr Frank Power, 16 Ramslack Street, Belerno, Edinburgh, EH14 5FE ("the  
Respondent")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that:-**

At the Case Management Discussion ("CMD") which took place by telephone conference on 25 January 2023 the Applicants were in attendance. The Respondent was also in attendance and was represented by Ms Lorna Moffat.

Prior to the CMD the Tribunal had received from the Applicants an email dated 2 December 2022.

**Background**

The following issues are not in dispute between the parties:-

- The Respondent leased the Property to the Applicants in terms of a Private Residential Tenancy Agreement dated 14 July 2020 ("the PRT").
- The PRT commenced on 1 August 2020.
- At the outset of and in terms of the PRT the Applicants, at the request of the Respondent, paid to the Respondent a deposit of £1200.

- The deposit was not paid into an approved scheme within 30 working days of the commencement of the PRT as required in terms of Regulations 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").
- The deposit was paid into an approved scheme on 24 September 2020.
- The deposit was unprotected for 13 days.
- The PRT ended on 20 June 2022.

## **The Case Management Discussion**

In addition to the application and the written representations of the parties, the Tribunal had regard to the following oral submissions:-

### *For the Applicants:-*

- i. The Applicants did not realise the deposit had been lodged late until, at the end of the tenancy, Safe Deposits Scotland advised the Applicants to that effect.
- ii. The deposit was returned to the Applicants by the approved scheme less a deduction of £25.
- iii. The Applicants seek a penalty be imposed on the Respondent in terms of the Regulations.

### *For the Respondent:-*

- i. Ms Moffat was acting as the Respondent's Letting Agent at the material time. She overlooked lodging the deposit timeously.
- ii. She noticed the error on 22 September 2020 and emailed the Applicants on Whatsapp to advise and seek clarity on the lead tenant's identity. She lodged the deposit straight away.
- iii. The error arose during the pandemic. Ms Moffat's business and her personal situation was impacted as a result but she did not seek to make excuses.
- iv. The Property was purchased by the Respondent in January 2016.
- v. The Property is the only property that the Respondent rents out.
- vi. The Property has previously been rented out as a holiday let and to students.
- vii. The Property is currently tenanted. Another Letting Agent is dealing with those arrangements and the deposit had been lodged into an approved scheme.
- viii. Ms Moffat has closed her holiday let business.
- ix. Ms Moffat and the Respondent offered their apologies for the oversight.

## **Reasons for Decision**

The factual background was not in dispute between the parties.

The Tribunal takes a landlord's failure to comply with the Regulations very seriously.

In terms of Regulation 10 of the Regulations it is stated:-

*"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;"*

Having admitted a breach of the Regulations the Tribunal is obliged to make an order

against the Respondent.

In determining the amount payable by the Respondent to the Applicants the Tribunal took into account the following:-

- i. That the Respondent's Letting Agent lodged the deposit in an approved scheme as soon as she discovered she had overlooked lodging the deposit timeously.
- ii. That the deposit was unprotected for only 13 days.
- iii. That the Applicants had the benefit of the adjudication process operated by an approved scheme operating under the Regulations at the end of the tenancy.
- iv. That the Property is the Respondent's only rental property.
- v. That the Respondent's failure to comply with the Regulations is not excusable.

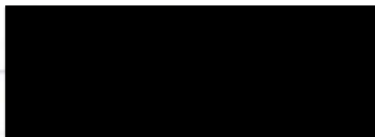
The Tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicants a sum of £600 by way of a penalty for his failure to comply with the Regulations, being 50% of the deposit. Such a penalty is proportionate, fair and just in the circumstances.

### **Decision**

The Respondent is ordered to pay to the Applicants a sum of £600.

### **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: Miss Gillian Buchanan**

**Date: 25 January 2023**