



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

**Chamber Ref: FTS/HPC/PR/23/0534**

**Re: Property at 47 Kinnell Road, Inverkeithing, Fife, KY11 1BG (“the Property”)**

**Parties:**

**Miss Cerys Dyer, 47 Kinnell Road, Inverkeithing, Fife, KY11 1BG (“the Applicant”)**

**Mr Matthew Whiting, 36 Donibristle Gardens, Dalgety Bay, KY11 9NQ (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicants in the sum of £625.**

**Background**

- 1) The Applicant lodged an application dated 20<sup>th</sup> February 2023 under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), applying for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
- 2) The Applicant lodged with the Application a copy of the tenancy agreement showing the Landlord was the Respondent and the tenant is the Applicant. The tenancy started on 17<sup>th</sup> February 2022, that rent was due in the sum of £625 per month and that a deposit was payable of £625 and that the scheme administer where the deposit should be paid was Safe Deposit. The Applicant also lodged copy e-mails from the 3 deposit scheme companies namely Safe Deposit Scotland; My Deposit Scotland and Letting Protection Scotland

confirming that no deposit was being held for the Applicant at the Property address.

- 3) In response to a request for information about payment of the deposit the Applicant lodged a copy of the transfer of £1,250 to Elsie Dyer who she explained was her sister and the transfer on 17<sup>th</sup> February from Ms Dyer's account of £1,250 to Mathew Whiting the Respondent explaining this represented one month's deposit and one month's rent which her sister sent on her behalf.
- 4) The Respondent was served with a copy of the application and papers by Sheriff Officer on 29<sup>th</sup> March 2023 and details of how to dial in were enclosed with the papers.
- 5) The first Case Management Discussion ("CMD") took place by telephone conference on at 2pm on 4<sup>th</sup> May 2023. Mr Whiting, the Respondent, attended on the call along with an observer Mr Scott from Shelter. Ms Dyer the Applicant was not in attendance and no representative attended on her behalf. The legal member waited until 14.10 to see if the Applicant was going to attend or be represented but no appearance was made. As the application had been intimated on both parties and the Respondent was present the legal member deemed it appropriate to continue.
- 6) The legal member explained what the purpose of the CMD was and Mr Whiting indicated immediately that as soon as he had received service of the papers he had realised he had not lodged the deposit and proceeded to do so on that day namely the 29<sup>th</sup> March. He advised that he had lodged it with My Deposit Scotland under deposit number DPC 340044 and had messaged the tenant to tell her it was done. He admitted the failure to lodge the deposit was completely his mistake and he had lodged it as soon as he had received the papers.
- 7) Under questions from the legal member the Respondent confirmed the tenancy began in February 2022, that the deposit was £625 and the tenancy was continuing. He also confirmed he had another property that he let out and had now lodged the deposit for that one as well indicating he had not realised deposits had to be lodged. As the Applicant was not on the call the Tribunal determined to continue consideration of the application to another CMD and to ask why the Applicant was not present.
- 8) The Applicant responded in writing advising that she had problems with her phone and could not access the call but wished to proceed with the application.
- 9) A further CMD was arranged for 12<sup>th</sup> June 2023 at 10am.
- 10) On 20<sup>th</sup> May the Applicant submitted an email with a copy of text messages between the parties submitting that Mr Whiting would have known of the deposit schemes at least from 18<sup>th</sup> February when she had asked him where it was lodged

### **The CMD on 12<sup>th</sup> June 2023**

- 11) The second CMD took place by telephone conference on at 2pm on 4<sup>th</sup> May 2023. Both parties were in attendance namely Ms Dyer the Applicant and Mr Whiting, the Respondent, neither were represented.
- 12) The legal member explained the purpose and order of proceedings and indicated that the Tribunal could make a decision at a CMD as it could after a full hearing if it was fair and appropriate to do so.

- 13) Ms Dyer advised that she had paid one month's rent and the deposit which totalled £1250 at the start of the tenancy. She confirmed the tenancy started on 17<sup>th</sup> February and was still ongoing although she advised that she has now received a notice to leave from the Applicant. Ms Dyer confirmed that the deposit was not paid into a scheme for over a year and so she was seeking a penalty sum in respect of the failure to lodge a deposit into a scheme. She acknowledged that the landlord had advised her he had now lodged it but she indicated she had not received an email from My Deposits Scotland.
- 14) Mr Whiting confirmed that he had been a landlord for around 10 years but advised he had been unaware of his responsibility to lodge a tenancy deposit into a deposit scheme. He said that as soon as he received the application he lodged it immediately and also lodged a deposit for another property he lets out. He advised that he had admitted his mistake at the first CMD and continues to accept it was his responsibility.
- 15) The Applicant indicated that she thought he should have realised this when she first text him in February and also raised the issue of a message received when she got the notice to leave saying that she needed to change walls she had painted back to white. After some discussion it was noted the messages indicated that if she was struggling to do that the landlord offered to use some of the deposit to pay someone to paint the walls for her.
- 16) Both parties agreed they were not in dispute over the fact the deposit had not been lodged timeously and were content for the Tribunal to make a decision today.

## **Findings in Fact**

- 1) The parties entered into a tenancy agreement whereby the Applicant is the tenant in the Property rented from the Respondent who is the landlord, and that the tenancy commenced on 17<sup>th</sup> February 2022 and is continuing.
- 2) A tenancy deposit of £625 was paid to the Respondent by the Applicants at the commencement of the tenancy.
- 3) The deposit was not lodged with an approved tenancy deposit scheme within 30 days.
- 4) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.
- 5) The Respondent lodged the deposit of £625 in a tenancy deposit scheme as at 29<sup>th</sup> March 2023.
- 6) The Respondent has admitted liability and now lodged the deposit in a scheme.
- 7) The Application is timeous.

## **Reasons for Decision**

- 8) The fact that the Applicants' deposit was not lodged timeously with an approved tenancy deposit scheme as required by Regulation 3 was confirmed by the letters submitted by the Applicant from the 3 deposit companies and was

admitted by the Respondent at the first CMD. The deposit was then lodged on 29<sup>th</sup> March 2023 with My Deposit Scotland and so the deposit was unprotected for just over one year from the commencement of the tenancy. During that period the tenant was vulnerable to the landlord going bankrupt and deprived of the opportunity of dispute resolution through an approved tenancy deposit scheme had the tenancy ended before then.

- 9) The parties agreed that the tenancy was still ongoing although Ms Dyer indicated that she had been served a notice to leave and Mr Whiting advised this is because he now wishes to sell the Property.
- 10) Mr Whiting admitted both at the first CMD and today that he had not been aware of the Regulations and the requirement to place the deposit in a tenancy deposit scheme, although he also admitted he has been a landlord for around 10 years. He confirmed that as soon as he received the application from the Tribunal, which was served on him by sheriff officers on 29<sup>th</sup> March 2023 he took steps to immediately place the deposit in a scheme and has done so now with the one other property he lets out.
- 11) With regard to the message suggesting part of the deposit could be used to pay for the tenancy to be repainted the Tribunal notes this is not incompatible with the deposit being lodged as the deposit could be claimed for this even if it was lodged in a scheme, although it would then be up to the deposit scheme to adjudicate on any such request.
- 12) The Regulations were put in place to ensure compliance with the tenancy deposit scheme, to protect deposits for tenants and to provide the benefit of dispute resolution for parties. When a breach of the Regulation has taken place the Tribunal must make an award. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015 by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
- 13) In coming to its decision the Tribunal considered and took account of the decision of the Upper Tribunal UTS/AP/19/0020 which states: 'Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.'
- 14) The Tribunal considered that this breach is serious but not one at the most serious end of the scale. The Respondent claimed he was unaware of the Regulations. This is no excuse as all landlords should be aware or should arrange to make themselves aware of the obligations of a landlord. It is noted the Respondent has lodged the deposit quickly after the applicant raised this action although not immediately after she asked about the deposit in a text message as he was busy with his child. He has accepted that he has not lodged it, admitted liability and has now rectified that matter and the deposit is now protected and will be available for adjudication at the end of the tenancy.
- 15) The deposit was unprotected for just over a year and the Applicant is entitled to have her deposit protected for the duration of the lease. The Tribunal has taken into account that the Respondents have admitted liability, has paid the deposit into a deposit scheme on 29<sup>th</sup> March 2023, and weighed that up with the fact the Respondent has been a landlord for a number of years, this is not

a new regulation and he should have been aware of his responsibilities before this.

- 16)** Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum £625 to the Applicant, which is one times the tenancy deposit.

### **Decision**

The Tribunal grants an order against the Respondent for payment to the Applicants of the sum of £625.

### **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.

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**Legal Member/Chair**

**12<sup>th</sup>          June          2023**  
**Date**