



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

**Chamber Ref:** FTS/HPC/PR/20/2557

**Re: Property at G/L 111 Arbroath Road, Dundee, DD4 6HS (“the Property”)**

**Parties:**

**Anita Pajaczek, residing at G/L 111 Arbroath Road, Dundee, DD4 6HS (“the Applicant”)**

**And**

**Brian David Graham Stewart of BS Properties, 23 South Tay Street, Dundee DD1 1NR (“the Respondent”)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached his obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.**

Background

1. On 19 April 2019 the respondent agreed let to the applicant the property at G/L 111 Arbroath Road, Dundee, DD4 6HS. A Tenancy agreement was entered into which required payment of a deposit of £500. The tenancy started on 01 May 2019. A notice to leave was issued on 2 December 2020, with the intention of ending the tenancy on 03 March 2021.

The Case Management Discussion

2. A Case Management Discussion took place before the Tribunal by telephone conference at 2.00pm on 15 March 2021. The Applicant was present and was represented by her solicitor, Ms J Horsman. The respondent was not present, initially, but he was represented by Ms D Latham from BS Properties.

3. The respondent sets out his position in an email dated 4 March 2021. The respondent admits that the tenancy deposit was not placed with an approved tenancy deposit scheme until 02 December 2020. He explains that a former employee had embezzled the tenancy deposit funds, and he only found out in December 2020. The former employee is now the subject of a police investigation and has been charged with embezzlement of £200,000 from the respondent. The respondent borrowed money so that he could replace the deposit and protected the deposit as soon as he could.

4. The hearing was adjourned for 20 minutes to enable Ms Latham to consider the terms of reg 10 of the 2011 regulations. When the hearing resumed, the respondent was present. He joined with Ms Latham in making representations after Ms Horsman had made representations on behalf of the applicant.

5. Both parties agree that the deposit was not lodged with an approved tenancy deposit scheme within 30 days of commencement of the tenancy. Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 tells me that, in light of that admitted fact, I must make a payment order against the respondent. I can dispose of this case today, without the need for a further hearing.

#### Findings in Fact

6. In April 2019 the respondent agreed to let the dwelling-house at G/L 111 Arbroath Road, Dundee, DD4 6HS, to the applicant. A tenancy agreement was entered into setting out the agreed rental and requiring a deposit of £500. The tenancy agreement narrated that the deposit would be paid into an approved tenancy deposit scheme within 30 days of commencement of the lease. The respondent relied on his former office manager to pay the deposit into an approved scheme within 30 days of the commencement of the tenancy.

7. The respondent discovered that his office manager had been stealing money from him. He reported a 200,000 embezzlement to the police. When he carried out an audit, he discovered that the applicant's deposit had been stolen by his former employee and had not been paid into an approved scheme. He borrowed money to pay the deposit into an approved scheme on 02 December 2020 to ensure that the tenant is not out of pocket and to comply with the 2011 Regulations.

8. The respondent is the proprietor of a letting agency. He manages about 50 rental properties. He has not previously been found to be in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011. He has already applied his own funds to ensure that the applicant is protected.

9. The respondent had no intention of depriving the applicant of repayment, He is the victim of his former employee's dishonesty. The respondent suffers financial loss to protect the applicant, but he has to accept responsibility for the actions of his employees.

### Reasons for Decision

10. It is a matter of agreement that a deposit of £500 was paid at the commencement of the tenancy. On the facts as I find them to be, the deposit was not paid into an approved scheme when it should have been.

11. The respondent acknowledges his error. The respondent has no history of breaches of the 2011 Regulations. A full accounting for the deposit has been made. Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected for many months.

12. The Applicant asked me to make a payment order. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 Regulations in the future. The respondent clearly took steps to protect the deposit when he discovered that both he and the applicant are the victims of a crime of dishonesty, but he has to accept responsibility for the actions of his former employee because he is in the business of letting properties.

13. The respondent is already out of pocket because of the dishonesty of his former employee. The applicant suffers no loss because of the honesty of the respondent.

14. The amount of deposit was £500.00. For a long time the deposit was not protected. A payment order equivalent to the value of the deposit reflects the seriousness of the breach of the 2011 Regulations.

15. The appropriate level of payment order is £500.00

### Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Five Hundred pounds (£500.00) within 14 days of service of this order.

### **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.**

# P. Doyle

Legal Member

15 March 2021