



**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/20/0804

**Re:** Property at 4C-2 East Suffolk Road, Edinburgh EH16 5PH (“the Property”)

**Parties:**

**Miranda Heath residing at 4C-2 East Suffolk Road, Edinburgh EH16 5PH (“the Applicant”)**

**and**

**Crown Properties (Edinburgh) Ltd, a company incorporated under the Companies Acts and having their registered office at 4 East Suffolk Road, Edinburgh, EH16 5PH (“the Respondents”)**

**Decision**

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

**Background**

1. On 18 June 2019 the respondents agreed to let to the applicant and one other the property at 4C-2 East Suffolk Road, Edinburgh EH16 5PH. The tenancy started on 18 July 2019. On 18 June 2019 the applicant paid the respondent a rent deposit of £750. Her co-tenant paid the same amount, on the same day, as a rent deposit. On 9 October 2019 the respondents’ director paid the total rent deposit of £1500 into an approved rent deposit scheme.

**The Case Management Discussion**

2. A Case Management Discussion took place before the Tribunal by telephone conference at 2.00pm on 14 August 2020. The Applicant was present and represented by Ms M Kilgallon. Mr M Iqbal, a director of the respondents, represented the respondents. Mr Iqbal submitted written representations on 6 August 2020.

3. For the respondents, Mr Iqbal explained that he had been abroad and had left the management of this property and one other (with a similar address) to his daughter. Confusion arose because the respondents own, and rent out, a property with a similar address, and a new lease agreement was entered into for the second property (with other tenants) the month after the lease agreement with the applicant. When Mr Iqbal returned to business, he realised the applicant's deposit was not protected and immediately lodged the deposit with SafeDeposits Scotland. The respondent says that in this case there has been an unintentional omission. Both parties asked me to dispose of this case today, without the need for a further hearing.

4. 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 respondents. I can dispose of this case today, without the need for a further hearing.

#### Findings in Fact

5. On 18 June 2019 the respondent agreed to let the dwelling-house at 4C-2 East Suffolk Road, Edinburgh EH16 5PH to the applicant and one other. A tenancy agreement was entered into and the applicant and her co-tenant paid a rental deposit of £750 each. The tenancy commenced on 18 July 2020.

6. The respondents are a company incorporated under the Companies Acts. Their SIC code (the Standard industrial classification of economic activities maintained by Companies House) describes the company's activities as

Letting and operating of own or leased real estate (other than Housing Association real estate and conference and exhibition services)

7. The rent deposit paid by the applicant should have been lodged with an approved scheme not later than 18 August 2020. It was not paid into an approved scheme until 9 October 2019. Throughout September, Mr Iqbal, a director of the respondents, was abroad, but the deposit had been in the hands of the respondents since 18 June 2020. When Mr Iqbal returned to business, he noticed that the deposit had not been placed on an approved scheme and immediately arranged for the deposit to be placed with SafeDeposits Scotland

8. The respondents have not previously breached the 2011 Regulations. They have (otherwise) ensured that all rent deposits are securely placed with rent deposit schemes.

#### Reasons for Decision

9. It is beyond dispute that a deposit of £750 was paid prior to 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 and rested for 50 days in the respondent's name alone.

10. There are mitigating factors. The respondent had no intention of placing the applicant at a disadvantage, and the weight of reliable evidence demonstrates the respondents' director took steps to protect the funds as soon as he realised a mistake had been made. It is to Mr Iqbal's credit that he identifies the failure to place the deposit on an approved scheme as a mistake and he accepts responsibility for the error.

11. There are, however, aggravating factors in this case. The respondents are in the business of letting property, and this is not the only property they offer for rent. The respondents' director was unable to deal with this transaction personally, but that is not a good reason for a commercial company whose principal business is letting property to fail to adhere to the 2011 Regulations.

12. The respondents acknowledge their error. The respondents have no history of breaches of the 2011 Regulations. The deposit is now protected. Against those mitigating factors I must balance the undisputed fact that the deposit was unprotected for 50 days longer than it should have been. The deposit was in the respondents' hands from 18 June 2019 to 9 October 2019. The deposit should have been paid into an approved scheme not later than 18 August 2020. It was not paid into an approved scheme until 9 October 2019

13. 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.

14. The amount of deposit was £750.00. For 50 days 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 £750.00

### Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Seven Hundred and Fifty pounds (£750.00) 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.**

Paul Doyle

Legal Member

14 August 2020