



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/PR/19/1882**

**Re: Property at 23 Sighthill Street, Edinburgh, EH11 4QQ (“the Property”)**

**Parties:**

**Mr Oluwatofunmi Akintola, 76 Queen’s Crescent, Eliburn, EH54 8EG  
 (“the Applicant”)**

**Mr Ankit Sehgal, 17 Sighthill Street, Edinburgh, EH11 4QQ  
 (“the Respondent”)**

**Tribunal Member:**

**Susanne L. M. Tanner Q.C. (Legal Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Applicant had failed to cooperate with the tribunal to such an extent that the tribunal cannot deal with proceedings justly and fairly, in terms of Rule 27(2)(b) of the Tribunal’s Rules; and dismissed the whole of the proceedings.

## **1. Procedural background**

- 1.1. On 18 June 2019, the Applicant submitted an application (“the Application”) to the tribunal in terms of Rule 103 of the 2017 Rules. Sections 7(b) and (c) on the Application were incomplete.

1.2. The Applicant attached to the Application:

1.2.1. A two page "rental agreement" dated 28 August 2018 between the Applicant and the Respondent, designated as "managing director of Alkemy Rentals Limited" (signed by the Applicant, unsigned by the Respondent); and

1.2.2. Text messages to and from "Ankit" on +447917674487.

1.3. On 2 July 2019, the Application was considered by a legal member of the tribunal acting under the delegated powers of the Chamber President. A request for further information was sent to the Applicant requesting:

1.3.1. that he complete sections 7(b) and (c) of the Application form; and

1.3.2. that he confirm when the tenancy came to an end and provide evidence of the date. The Applicant was asked to provide the required information by 16 July 2019.

1.4. On 18 July 2019, the Applicant submitted:

1.4.1. a revised Application stating in Section 7(b) that the Respondent has failed to carry out his duties in relation to the Applicant's tenancy deposit by not registering the deposit with one of the approved deposit schemes in Scotland. In Section 7(c) the Applicant stated that he is seeking an order for payment of his deposit of £500; and

1.4.2. A screen shot of text messages including three messages sent and received on 16 May 2019 to and from "Ankit".

1.5. On 12 August 2019, the Application was considered by a legal member acting under the delegated powers of the Chamber President and the Application was accepted for determination by the tribunal. The Applicant was informed by letter of 14 August 2019.

1.6. By letter of 19 August 2019, the tribunal notified the parties that the Application had been referred to the tribunal and that a Case Management Discussion had been fixed for 23 September 2019 at 1130h at Riverside House, 2<sup>nd</sup> Floor, 502 Gorgie Road, Edinburgh, EH11 3AF. Parties were advised that the tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application. Parties were advised that if they do not attend the Case Management Discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it

has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations he wished by 9 September 2019.

1.7. On 21 August 2019 the Application paperwork and notification of CMD was served on the Respondent by Sheriff Officers.

1.8. On 27 August 2019, the tribunal sent Directions dated 26 August 2019 to both parties, requiring them to comply with the tribunal's orders by close of business on 9 September 2019. The Directions required the Applicant to provide to the tribunal and the Respondent no later than close of business on 9 September 2019:

*"1. Documentary evidence of the amount and date of payment of a deposit by the Applicant to the Respondent in respect of the Property, such as a bank transfer receipt, a relevant bank statement entry, or a receipt issued by the Respondent."*

1.9. The Directions required the Respondent to provide to the tribunal and the Applicant no later than close of business on 9 September 2019:

*"1. A copy of the Respondent's Scottish landlord registration in respect of the Property with the City of Edinburgh Council.*

*2. A copy of a signed and dated lease or occupancy agreement which specifies the full address of the Property let by the Respondent to the Applicant.*

*3. Confirmation of the end date of the tenancy or occupancy agreement.*

*4. A statement of all payments received by the Respondent from the Applicant in respect of the tenancy or occupancy agreement for the Property.*

*5. Any documentary evidence of the amount and date of receipt of a deposit payment from the Applicant to the Respondent in respect of the Property.*

*6. Any deposit protection certificate to show when the Landlord registered the deposit in one of the three statutory deposit protection schemes in Scotland in accordance with Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011, which provides that: "A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy— (a) pay the deposit to the scheme administrator of an approved scheme..."*

7. If the Respondent has received a deposit payment from the Applicant and has not so lodged the deposit in accordance with Regulation 3(1)(a), any written submission the Respondent wishes to make about the reason(s) for such late lodging or failure to lodge.

8. Any documentary evidence of provision by the Respondent to the Applicant of the prescribed information in the prescribed timescale required by Regulation 3(1)(b) and Regulation 42 of the 2011 Regulations. Regulation 3(1)(b) provides: "A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy ... (b) provide the tenant with the information required under regulation 42." Regulation 42 provides:

"(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme."

1.10. On 9 September 2019, the Respondent submitted written representations. Within the representations the Respondent admitted that he had failed to comply with the requirement to lodge the Applicant's deposit and provided an explanation for the failure. The Respondent lodged an incomplete document showing paragraphs 13 to 20, with one signature. The Respondent did not comply with all of the orders in the tribunal's Directions. The Respondent's written representations and document were sent to the Applicant.

1.11. The Applicant did not comply with the tribunal's Directions.

1.12. On 12 September 2019, the tribunal sent a second set of Directions dated 11 September 2019 to the Respondent, requiring him to comply with the tribunal's orders no later than close of business on 18 September 2019. The Respondent was required to provide (in addition to material falling within the orders in the First Direction, which was due no later than 9 September 2019):

*1. Any screenshot or bank statement showing the date and amount of any refund of the Applicant's Deposit by the Respondent (Appendix A was missing from the Respondent's submission received on 9 September 2019).*

*2. A full copy of a signed and dated lease or occupancy agreement which specifies the full address of the Property let by the Respondent to the Applicant (Appendix B was incomplete in the Respondent's submission received on 9 September 2019 as it included only paragraphs 13 onwards and it was not signed by the Respondent).*

*3. Any documentary evidence that the Respondent was resident in the Property throughout the period of the Applicant's tenancy or occupancy agreement.*

*4. A written submission about any exception being claimed by the Respondent in relation to lodging the Applicant's deposit and providing the prescribed information; which must include references to any legislation relied upon with copies of any such legislation (the quotation from mygov.scot in the submission of 9 September 2019 which states "You're also a resident in the property", is not legislation and does not meet the requirement to refer to applicable legislation).*

*5. A copy of the Council Tax bill for the Property throughout the period of the Applicant's tenancy or occupancy arrangement.*

1.13. The Respondent did not comply with the tribunal's second Directions.

1.14. There was no further correspondence from either party prior to the Case Management Discussion ("CMD") on 23 September 2019.

## **2. Case Management Discussion ("CMD") – 23 September 2019 at 1130h at Riverside House, 2<sup>nd</sup> Floor, 502 Gorgie Road, Edinburgh, EH11 3AF**

2.1. The Applicant failed to attend the CMD and made no contact with the tribunal prior to the CMD.

2.2. The Respondent failed to attend the CMD and made no contact with the tribunal prior to the CMD.

2.3. The tribunal was satisfied in terms of 29 of the 2017 Rules that the requirements of Rule 24(1) regarding the giving of notice of a hearing had been duly complied with.

2.4. The tribunal waited until 11.45h and neither party attended at the venue.

2.5. The tribunal Clerk checked with the venue assistant and the tribunal's administration and received confirmation that no contact had been made by either party with either the venue or with the tribunal's administration.

### 3. Discussion

3.1. The tribunal considered that in the absence of the parties at the CMD and their respective failures to comply with the Directions issued by the tribunal, it was not able to make sufficient findings to determine the case.

3.2. The tribunal therefore considered whether to adjourn the Case Management Discussion to a further date or to dismiss the proceedings.

3.3. The tribunal considered that the Applicant, in failing to comply with the tribunal's Directions of 26 August 2019, failing to attend the CMD on 23 September 2019 and failing to make any contact with the tribunal's administration has failed to cooperate with the tribunal to such an extent that the tribunal could not deal with proceedings justly and fairly.

3.4. The tribunal therefore decided to dismiss the Applicant's case in terms of Rule 27 of the tribunal's rules; and dismissed the whole of the proceedings.

**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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**Susanne L M Tanner Q.C.**  
**Legal Member/Chair**

**23 September 2019**