

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/19/1618**

**Re: Property at Flat 4/1, 25 Trefoil Avenue, Glasgow, G41 3PB (“the Property”)**

**Parties:**

**Mr Johar Mirza, Flat 4/1, 25 Trefoil Avenue, Glasgow, G41 3PB  
 (“the Applicant”)**

**Miss Anne Duffty, c/o Friends Legal, 5<sup>th</sup> Floor, The Centrum Building, Queen  
 Street, Glasgow, G1 3DX  
 (“the Respondent”)**

**Property Bureau, Melville House, 70 Drymen Road, Bearsden, Glasgow, G61  
 2RH  
 (“the Respondent’s Representative”)**

**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 an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicant the sum of TWO HUNDRED AND FIFTY POUNDS (£250.00) STERLING**

## **1. Procedural background**

- 1.1. On 28 May 2019, the Applicant submitted an application ("the Application") to the tribunal in terms of Rule 103 of the 2017 Rules.
- 1.2. The Applicant attached to the Application:
  - 1.2.1. A paper apart with Application Details (Section 7C); and
  - 1.2.2. A copy of a Private Residential tenancy agreement between the Applicant and another (Ms Sofia Liaquat) and the Respondent for the Property dated 11 December 2017.
- 1.3. On 30 May 2019, the tribunal's administration confirmed with Landlord Registration Scotland that the registered landlord for the Property is the Respondent.
- 1.4. On 30 May 2019, the tribunal's administration obtained the Title Sheet for the Property (GLA168218) which shows the registered proprietor since 11 February 2005 as the Respondent.
- 1.5. On 10 June 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 that he provide confirmation from the three deposit protection schemes in Scotland that they do not hold his tenancy deposit, or if they do hold it, to state when it was lodged with them.
- 1.6. On 10 June 2019, the Applicant submitted a deposit protection certificate from Safe Deposits Scotland stating that the Applicant's deposit of £1087.50 was received on 29 January 2018.
- 1.7. On 26 June 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 that he confirm when the tenancy ended.
- 1.8. On 26 June 2019, the Applicant confirmed that he still resided at the Property.
- 1.9. On 11 July 2019, the Application was considered by a legal member acting under the delegated powers of the Chamber President. A request for further information was sent to the Applicant asking whether the Application was

made jointly with the second tenant at the Property, named on the PRT agreement and, if so, to amend the Application form to include her details.

- 1.10. On 11 July 2019, the Applicant replied stated that this is not a joint application.
- 1.11. On 31 July 2019, the Application was considered by a legal member acting under the delegated powers of the Chamber President. The Application was accepted for determination by the tribunal. The Applicant was informed by letter of 1 August 2019.
- 1.12. On 5 August 2019, the tribunal requested that the Applicant provide a postal address for the Respondent.
- 1.13. On 5 August 2019, the Applicant produced a duplicate copy of the PRT agreement lodged with the Application and stated that the Respondent's given address was care of the Respondent's Representative, as letting agents.
- 1.14. On 6 August 2019, the tribunal's administration wrote to the Applicant asking that he provide an address for the Respondent which is not a care of address in order that the tribunal can serve formal documentation and to inform the Applicant about the possibility of making an application for service by advertisement.
- 1.15. On 12 August 2019, the Applicant produced correspondence between himself and the Respondent's Representative in which the Respondent's Representative provided an address for the Respondent care of Ms Louise Cameron, Friends Legal, 5<sup>th</sup> Floor, The Centrum Building, Queen Street, Glasgow, G1 3DX.
- 1.16. By letter of 22 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 conference call on 3 October 2019 at 1000h. Parties were provided with the details for joining the Conference Call. Parties were advised that the tribunal may do anything at a Case Management Discussion which is 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 she wished by 13 September 2019. Service on the Respondent was effected by Sheriff Officers leaving the

documents with Stephen Logue of Friends Legal, 5<sup>th</sup> Floor, The Centrum Building, Queen Street, Glasgow, G1 3DX.

1.17. On 23 August 2019 the Application paperwork and notification of CMD was served on the Respondent at her address care of her solicitors by Sheriff Officers.

1.18. On 27 August 2019, the tribunal sent Directions dated 26 August 2019 to the Respondent, requiring her to comply with the tribunal's orders by close of business on 10 September 2019.

1.19. On 9 September 2019, the Respondent submitted written representations. Within the representations the Respondent admitted that she had failed to comply with the requirement to lodge the Applicant's deposit timeously, stating that it had been lodged one day late by the Respondent's Representative acting on her behalf. This was said to be due to human error by a staff member who got mixed up with the date due to the four public holidays that fell in the period between receipt of the funds and the latest date for depositing into the scheme. The Respondent confirmed that she would be representing herself at the Case Management Discussion. She provided a correspondence address care of Friends Legal, as above. The Respondent produced documents including:

1.19.1. A Security Deposit sheet for the Applicant (and the joint tenant) for the Property produced by the Respondent's Representative;

1.19.2. a copy of the Deposit Protection Certificate for the Property;

1.19.3. a Deposit Summary Sheet from the deposit protection company;  
and

1.19.4. excerpts from the PRT agreement for the Property.

## **2. Case Management Discussion ("CMD") – 3 October 2019 at 1000h, by Conference Call (legal member at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT)**

2.1. The Applicant attended the CMD by Conference Call at 1000h.

2.2. The Respondent did not dial into the Conference Call on the details provided or make any contact with the tribunal's administration. The tribunal clerk attempted to contact the Respondent by using the email address she had used to contact the tribunal. There was no reply. The legal member waited until 10.10 to see if the Respondent dialled into the call, which she did not.

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 and proceeded with the Application upon the representations of the Applicant and all the material before it.

### **3. Discussion**

3.1. The tribunal chair began by asking the Applicant if he wished to make any submissions in response to the Applicant's written submissions and documents lodged in response to the Direction, in particular the fact that the Respondent had admitted that the deposit was lodged one working day late due to human error by the Respondent's Representative in calculating dates.

3.2. The Applicant referred to his written submissions and stated that the Application was based on Regulation 3 and 42. In relation to Regulation 3, the Applicant stated that there was an admitted breach, so the first part of the test was satisfied. He submitted that the next point to consider was what order for payment should be made.

3.3. The Applicant stated that by his calculation, including seasonal holidays, it was perhaps two days late rather than one but stated that materially it probably would not make a difference. He stated that it was received by the deposit protection company on Monday 29 January 2018 when it should have been lodged by Friday 26 January 2018.

3.4. The Applicant recognised that the matter of what order the tribunal might make was a discretionary one and he referred to his written submissions with the Application. He stated that it may well be that the declaration that there has been a breach may be considered sufficient. The Applicant wished to add some oral submissions. He went on to state that the Respondent is not an amateur. She has been renting for seven years assisted by a commercial letting agent. She is relying on the Respondent's Representative to lodge her deposit. If they chose to wait until the very last minute they run the risk of late lodging on her behalf. It was entirely up to them to ensure that it was lodged in a timely manner. The Respondent in this case would not be left without recourse. She could make a claim against the commercial letting agent. The letting agent should be aware of the Regulations and time limits.

3.5. In relation to the Regulation 42 complaint, the Applicant stated that the prescribed information was never provided. He received the deposit protection certificate from the company. He adopted his general submissions made in relation to the Regulation 3 breach. In addition, he stated that

Regulation 42(2) provides that the information is to include the date on which the tenancy deposit was paid to the scheme administrator. The Applicant only received that information directly from the administrator and not from the Respondent. The other statement that is required in Regulation 42 is that the landlord has applied to be on a register maintained by the local authority and this was not received. No form has been sent out at all from the Respondent or the Respondent's Representative with any of the prescribed information.

3.6. The Applicant stated that he remains a tenant in the Property. He said that he had been in correspondence with the Respondent's Representative prior to the Application. He sent a list of complaints, including complaints about deposit protection. These were sent to the Respondent's Representative because that is the Respondent's "care of" address on the PRT. He does not have another address for the Respondent. The Respondent's Representative has been quite secretive about the Respondent's address. The other items in the complaints were property related issues such as gas safety and electrical safety. The Respondent stated that he has not had a response from the Respondent's Representative in relation to why this has happened and they have not responded to any of the complaints.

3.7. The Respondent added that he has made a complaint to the tribunal against the Respondent's Representative under the Letting Agent Code of Practice. It has not been referred for determination yet as he has been asked by the tribunal to provide further information. LA/19/1728.

#### **4. Findings in Fact**

4.1. The Respondent is the registered proprietor of the Property.

4.2. The Respondent is registered with Landlord Registration Scotland as the landlord of the Property.

4.3. The Respondent and another and the Applicant entered into a Private Residential Tenancy agreement for the Property dated 11 December 2017.

4.4. The start date of the tenancy was 11 December 2017 and the tenancy is continuing.

4.5. The Application to the tribunal was made on 28 May 2019, while the tenancy was continuing.

4.6. The Applicant paid a deposit of £1087.50 to the Respondent's Representative on or about 11 December 2017.

- 4.7. The deposit should have been lodged with a deposit protection company within 30 working days of 11 December 2017 and the Applicant should have been provided by the Respondent with the prescribed information in respect of deposit protection.
- 4.8. The Applicant's Deposit was lodged on 29 January 2018.
- 4.9. The Applicant's Deposit was lodged one working day late.
- 4.10. The reason for late lodging was human error in calculation of dates by an employee of the Respondent's Representative.
- 4.11. The Applicant was not provided with the prescribed information in terms of Regulation 42 of the 2011 Regulations at any time.
- 4.12. The Applicant made a complaint to the Respondent's Representative about the failures in respect of deposit protection and provision of information and he has received no response.

## **5. Discussion**

- 5.1. The tribunal took account of the Applicants' written and oral submissions; and documentary evidence, and the Respondent's written submissions and documentary evidence.
- 5.2. In considering the appropriate level of payment order, the tribunal had regard to the fact that the Respondent admitted that the Applicant's deposit of £1087.50 had been received by the Deposit Protection Scheme one working day late, which in the tribunal's view is a breach of a minor nature. The tribunal took account of the fact that the reason for late lodging was human error in calculation of dates over the festive period by the Respondent's Representative but also took into account the fact that it could have been lodged at any time within the 30 working day period to ensure that it was lodged timeously. The tribunal took the view that the failure to provide the prescribed information was more serious than the late lodging, particularly in light of the fact that the Applicant had made a complaint to the Respondent's Representative and had received no reply, nor has the Respondent or her Representative rectified that breach by providing the prescribed information to date, either directly or in response to the Application.
- 5.3. For the reasons outlined, the tribunal decided to make an order for payment by the Respondent to the Applicant of £250.00.

5.4. The tribunal chair informed the Applicant that the Payment order could be enforced by the Applicant against the Respondent after the expiry of the permission to appeal period.

**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.**

**3 October 2019**

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