



**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 (“the Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/PR/20/0539**

**Re: Property at 99, Jerviston Street, Motherwell, ML1 4JS (“the Property”)**

**The Parties:**

**Miss Kirsten McMurray residing at 6, Limekilnburn Road, Quarter, Hamilton, ML3 7XA (“the Applicant”)**

**Simon Campbell residing sometime at 26, Rolanden Avenue, Bellshill, ML4 3EW and now at 10, Croftpark Street, Bellshill (“the Respondent”) per his agents Property Angels, 14, Main Street, Bothwell, G71 8RF (“the Respondent’s Agents”)**

**Tribunal Members:**

**Karen Moore (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order in the Sum of ONE THOUSAND AND FIFTY POUNDS STERLING (£1,050.00) be granted.**

**Background**

1. By application received between 18 February and 3 March 2020 (“the Application”), the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a determination and an order in terms of Rule 103 of the Rules and Regulation 9 of the

Regulations. The Application comprised an application form, copy tenancy agreement commencing on 1 June 2016 narrating a deposit of £350.00 to be paid and a statement stating that the Respondent's Agents had lodged the said deposit with SafeDeposits Scotland, an approved tenancy deposit scheme provider on 4 February 2020.

2. On 12 March 2020, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion ("CMD") was fixed for 17 August 2020 at 14.00 by telephone conference call. The Application and CMD was intimated to the Respondent by Sheriff Officer at his home address.
3. The CMD took place on 18 August 2020 at 14.00. The Applicant took part. The Respondent did not take part and was not represented. The Tribunal explained the role of the Tribunal and its powers within the Scottish Courts Administration.

### **Summary of Discussion**

4. The Tribunal advised the Applicant that it had read and was familiar with all of the background papers. The Tribunal asked the Applicant to confirm that she had paid a tenancy deposit, the amount paid, to whom it was paid and the date on which it was paid.
5. The Applicant advised that she had paid a tenancy deposit of £350.00 to the Respondent's Agents on 1 June 2016 when she signed the lease. She did not receive notification that the deposit had been lodged and with which tenancy deposit scheme provider.
6. The Applicant advised the Tribunal that her tenancy ended on 1 February 2020 and it was not until after that date that she received an email from SafeDeposits Scotland welcoming her to the tenancy deposit scheme and advising her that the deposit had been lodged on 4 February 2020.
7. The Applicant further advised the Tribunal that she contacted the Respondent's Agents for an explanation and read out to the Tribunal their email reply which stated that the deposit had been lodged but had been "misallocated" by SafeDeposits Scotland. The Applicant advised the Tribunal that, on contacting SafeDeposits Scotland, they advised that had searched their records but found no trace that the deposit had been "misallocated" and reaffirmed that the deposit had been lodged on 4 February 2020. Accordingly, the information from the Respondent's Agents was incorrect.

8. The Tribunal noted that the Applicant sought an order for the maximum award of three times the deposit.

### **Findings of the Tribunal.**

9. From the Application and the CMD, and having no reason to disbelieve the Applicant who stated her case and answered the Tribunal's questions in a straightforward and measured manner, the Tribunal found the following facts to be established: -
- i) There was a tenancy between the Parties beginning on 1 June 2016;
  - ii) The Applicant paid a tenancy deposit of at least £350.00 to the Respondent's Agents at that time;
  - iii) The tenancy deposit of £350.00 was lodged with SafeDeposits Scotland on 4 February 2020 by the Respondent's Agents;
  - iv) The information required in terms of Regulation 42 of the Regulations was not provided to the Applicant;

### **Decision of the Tribunal and Reasons for the Decision.**

10. The Tribunal had regard to Regulation 3 of the Regulations which states:-

*"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; and (b) provide the tenant with the information required under regulation 42"* and to Regulation 42 of the Regulations which states: \_

*"The landlord must provide the tenant with the information .... (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."*

11. Having found that the Respondent had not lodged the tenancy deposit within the timeframe set out in Regulation 3 and had not provided the information required by Regulation 42, the Tribunal determined that the Respondent had not complied with these Regulations.
12. The Tribunal had then had regard to Regulation 10 of the Regulations which states:- *"If satisfied that the landlord did not comply with any duty in regulation 3 the tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit"*.

13. Accordingly, having been satisfied that the Respondent did not comply with Regulation 3 of the Regulations, the Tribunal was obliged to grant an order.
14. The Tribunal then had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussion .....including making a decision*” and proceeded to make an order in terms of Regulation 10 of the Regulations.

#### **Order and Reasons for the Order.**

15. The Tribunal took account of all of the information before it. The Tribunal had regard to the purpose of the Regulations which is not only to ensure that landlords lodge tenancy deposits with an independent agency but also advise tenants where deposits are held to reassure tenants that their cash deposits are not being misused. In this instance, the Applicant did not have the reassurance that the tenancy deposit, being her funds and hers alone, was held securely for the duration of the tenancy.
16. The Tribunal had regard to the actions of the Respondents’ Agents, presumably on his instructions, in providing the Applicant with, at best incorrect information, and, at worst misleading and false information, with regard to when the deposit was lodged and found these actions to be duplicitous and unacceptable.
17. In all the circumstances, the Tribunal determined that the maximum order of three times the deposit is fair, reasonable and proportionate and so granted an order for £1,050.00.

#### **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.**

**Karen Moore**

**18 August 2020**

**Legal Member/Chair**