

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/19/2309

Re: Property at 3F1 23 Forrest Road, Edinburgh, EH1 2QH (“the Property”)

Parties:

Mr Elliot Boylan, Mr Munro Cockburn, Mr Keagan Gillies, Mr Fergus MacDougall, Mr Niall MacLean, 16 Chippendale Drive, Bangor, BT20 4LW; Post Office, Drumnadrochit, Inverness, IV63 6TX; 64 Dunnett Drive, Barrie, Ontario, L4N 0J6, Canada; 22 Croft Road, Inverness, IV3 8RS; 10 Morlich Gardens, Fife, KY7 6GB (“the Applicant”)

Ms Javeria Bashir, 17 Sandstone Place, London, N19 5TU (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with her duty as Landlord in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) by failing to lodge the Applicants’ Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme within 30 working days, and grants an Order against the Respondent for payment by the Respondent to the Applicants in the sum of Three Thousand Two Hundred Pounds (£3200) Sterling.

- **Background**
By application of 19 July 2019 the Applicants applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for an order for payment where a landlord has not paid a tenancy deposit into an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011. Along with the application the Applicants lodged emails from My Deposits Scotland and photographs from all the tenants confirming Elliot Boylan as their lead representative. The Tribunal wrote to Mr Boylan on 25 July requesting a copy

of the tenancy agreement, if available, evidence of the end date of tenancy, amended application details and confirmation that he was content with the ID from other tenants being passed to the Respondent. Mr Boylan responded with photographs of the tenancy agreement which were not very clear and amended details of the parties. He also confirmed that the ID information could be passed to the Respondent. The Tribunal wrote again on 13 August 2019 requesting a paper copy of the tenancy agreement and confirmation of the date of the end of the tenancy. A paper copy was duly submitted and a purported end date of 10 July 2019 was narrated on this. Also lodged by the Applicants were a Sheriff Officers demand for payment of Council tax from December 2018 and an inspection report that was illegible. Details of the application were unable to be served on the Respondent by Sheriff Officers but a copy of the papers was emailed to her. The Respondent contacted the Tribunal by email on 7 October 2019 admitting the late lodging of the deposit but referring to a number of difficult personal circumstances that she had been dealing with. She requested an extension to the hearing due to her financial circumstances. The Tribunal dealt with this as a postponement request and refused this.

- Case Management Discussion

The Case Management Discussion took place today. Munro Cockburn and Fergus MacDougall were in attendance on behalf of all the Applicants and Javeria Bashir was in attendance with a supporter, Benjamin Pirongs. Oral submissions were made by all parties. In particular, the Applicants confirmed that they were unaware of the reasons for the lodging of the inspection report and the council tax arrears letter. They confirmed that the emails from My Deposits Scotland of 25 June 2019 were the first they had heard of the deposit being lodged. They confirmed that payment of the £2700 deposit would have been made by bank transfer by Mr Macdougall although they all contributed to this. They thought this would have been in approximately mid September 2018 and could find an exact date if required. They confirmed that the tenancy had come to an end on 10 July 2019. They also confirmed that the original deposit was still being held by My Deposits Scotland as they wanted to find out the outcome of the Tribunal application before finalising the position with the original deposit. The Respondent's position was that the £2700 deposit had been paid to her on 11 September 2018. She advised that she always lodged deposits and provided a print out of all the other deposits she had lodged for the Property. The late lodging of this deposit was an error due to her father's death and her mother's illness. The Respondent offered to lodge evidence of her father's death and mother's illness but did not wish for this to be given to the Applicants. There was no dispute between the parties as to this so the Respondent did not lodge this evidence. She advised that her family had rented out property for years and she was fully aware of her obligations. She personally rented out two properties, soon to be three. Her personal circumstances had led to her being late applying for HMO license and late with taxes. Her HMO license had now been granted and a copy of the letter dated 15 July 2018 in relation to this was lodged along with a print out of other deposits lodged with My Deposits Scotland in respect of the same Property. The Respondent could not say exactly what date in June the deposit had been lodged but could find this out if required. The Respondent

still had her address at 17 Sandstone Place, London N19 5TU but had a correspondence address in Edinburgh of 4 Claremont Court, Edinburgh, EH7 4LA. The Respondent also wanted to add that the final month's rent had still not been paid by the Applicants. The Tribunal considered that this was more of an issue in relation to whether or not the original deposit should be returned and could be dealt with through My Deposit Scotland's normal procedures.

- Findings in Fact

1. The Applicants and Respondent entered into a tenancy agreement on or around 11 September 2018 which ended on 10 July 2019.
2. A deposit of £2700 was paid by the Applicants to the Respondent on or around 11 September 2018.
3. The deposit was lodged with My Deposits Scotland on or around 25 June 2019.

- Reasons for Decision

The Tribunal was satisfied that the Respondent did not comply with her duties in terms of Regulation 3 of the 2011 Regulations in respects of the Applicants' deposit of £2700.

Being so satisfied the Tribunal must make an order in terms of Regulation 10 of the 2011 Regulations for an amount not exceeding three times the amount of the tenancy deposit.

In reaching its decision, the Tribunal took into account of the Respondent's considerable experience of renting Property and also took into account her mitigating personal circumstances in awarding a sanction of over one times but less than two times the amount of the tenancy deposit.

- Decision

Having considered the submissions, both written and oral, from all parties along with the other evidence the Tribunal makes an Order for payment of the sum of £3200 by the Respondent to the Applicants.

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.

A Mathie

Legal Member/Chair

25 October 2019
Date