



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Regulations 3 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/2572**

**Re: Property at 18 Shaw Court, Erskine, PA8 6DP (“the Property”)**

**Parties:**

**Ms Kim Warren, 5 Anderson Street (Flat 1), Hamilton, ML3 0QL (“the Applicant”)**

**Mr Owen Archdeacon, 12 Garnie Avenue, Erskine, PA8 7BE (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £500.**

**Background**

By application, received by the Tribunal on 16 August 2019, the Applicant sought an Order for Payment in respect of the failure of the Respondent to lodge a deposit in an approved tenancy deposit scheme and the failure of the Respondent to return the deposit at the end of the tenancy.

The application was accompanied by copies of a tenancy agreement between the Parties commencing on 1 June 2019, an e-mail from the Applicant to the Respondent dated 3 July 2019, giving 28 days’ notice of termination of the tenancy on 31 July 2019 and an e-mail from the Respondent to the Applicant dated 13 July 2019, confirming that the Applicant had paid a deposit of £425 on 17 May 2019 and £425 in respect of rent on 1 June and 1 July 2019.

On 5 September 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written

representations by 26 September 2019. The Respondent did not make any written representations to the Tribunal.

### **Case Management Discussion**

A Case Management Discussion was held at Glasgow Tribunals Centre, York Street, Glasgow on the morning of 11 October 2019. The Applicant was represented by Mr Kevin Richardson of Renfrewshire Citizens Advice Bureau, who asked the Tribunal to grant the application without a Hearing. He advised that the Respondent had refunded the deposit itself to the Applicant in late September, so the Applicant would not now be seeking repayment, but that the Applicant had had to borrow the money to fund the deposit for the property in which she is now living.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a Hearing.

Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") states that a landlord who has received a deposit must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme and provide the tenant with information required under Regulation 42 of the 2011 Regulations. Regulation 10 of the 2011 Regulations provides that if satisfied that a landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal was satisfied that the Respondent had failed to comply with the duty imposed on him by Regulation 3 of the 2011 Regulations, as he had not lodged the deposit with an approved scheme. It should have been lodged by 12 July 2019. The Tribunal accepted that, by then, the Applicant had given notice which would result in the tenancy being terminated on 31 July 2019, but the Respondent had not sought to explain his omission or to provide the Tribunal with any mitigating circumstances to be taken into account. The deposit had, however, been at risk for a relatively short time, given that the tenancy only lasted 2 months, although it had only been refunded after the Applicant was put to the trouble of applying to the Tribunal. The evidence did not suggest that the Respondent's failure had been wilful, but the process will have caused considerable stress and inconvenience to the Applicant.

In all the circumstances of the case, the Tribunal considered that an Order for Payment of £500 was fair, proportionate and just.

### **Decision**

The Tribunal determined that the application should be granted without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £500.

### **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.

George Clark

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Legal Member/Chair

11 October 2019

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Date