



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/18/2630

**Re: Property at 3F3, 11 Hillside Street, Edinburgh, Midlothian, EH7 5DH (“the
Property”)**

Parties:

**Mr Guy Grimwade, 9 Bellevue Terrace, Edinburgh, Midlothian, EH7 4DT (“the
Applicant”)**

**Miss Yejide Onabule, Flat 3, Wheatcroft Court, 14 Wenlock Gardens, LONDON,
NW14 4XJ (“the Respondent”)**

Tribunal Members:

John McHugh (Legal Member) and Ann Moore (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent failed to comply with her obligation
under Regulation 3 of the 2011 Regulations to place the Applicant’s deposit in
an approved scheme within 30 working days of the deposit having been paid
and that the Respondent should pay the sum of £1150 to the Applicant within
31 days.**

Background

**The Applicant was the tenant and the Respondent the Landlord in terms of a lease of
a room within the Property dated 5 January 2017. The Applicant left the Property on
25 July 2018.**

The Hearing

A hearing took place at George House, Edinburgh on 10 April 2019. Both parties attended.

Findings in Fact

The Applicant was the tenant and the Respondent the Landlord in terms of a lease dated 5 January 2017.

The Respondent received a deposit of £575 from the Applicant on 28 December 2016.

The deposit was paid by the Respondent into an approved scheme on 15 May 2018.

The Applicant left the property on 25 July 2018.

The Applicant's full deposit was returned to him.

Reasons for Decision

There is no dispute between the parties that the deposit was paid to the Respondent on 28 December 2016 but was not placed in an approved scheme until 15 May 2018. There is no dispute that that constitutes a breach of Regulation 3.

The Tribunal has a wide discretion and must, if satisfied that the Respondent has failed to comply with her obligation under Regulation 3, make an order for payment of a sum not exceeding three times the amount of the tenancy deposit. In this case, we consider a payment equivalent to twice the deposit to be appropriate.

In reaching that decision, we have had regard to the fact that the deposit remained unprotected for a period of over a year. In particular, on the Respondent's own oral evidence, she became aware of an obligation to place deposits in an approved scheme during March 2018 when she had received a letter from a solicitor's firm instructed by a different tenant within the Property bringing this to her attention. Her evidence was that she took advice from her own solicitor who advised her that the tenant's solicitor was incorrect and that the advice was not to be relied upon because the letter in question had been written by a paralegal as opposed to a qualified solicitor.

Neither the letter nor any written legal advice have been produced to the Tribunal. The Respondent also advised that she had then been aware of the existence of a deposit scheme but had not realised that it was legally binding. She had placed some deposits in the scheme for a time, but not others. When she had reached the realisation that the placement of deposits in an approved scheme was mandatory, she had then complied with her obligation.

We find the Respondent's evidence on the question of when she became aware of the obligation to place deposits in an approved scheme to be unsatisfactory. Ignorance of the obligation is itself no excuse but there appears to us to have been a period between March and May when the Respondent was in possession of sufficient information to alert her to her legal obligations and that she continued to leave the Applicant's deposit at risk.

On the other hand, we have taken into account certain mitigating factors including that the Respondent did eventually place the deposit into an approved scheme and that the Applicant has received return of his full deposit.

We have taken no account of other factors which have been the subject of correspondence between the parties including any apparent failures by the Respondent to meet other legal obligations in relation to HMO licensing and landlord registration.

Decision

We find that the Respondent failed to comply with her obligation under Regulation 3 of the 2011 Regulations to place the Applicant's deposit in an approved scheme within 30 working days of the deposit having been paid and that the Respondent should pay the sum of £1150 to the Applicant within 31 days.

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.

J McHugh

John McHugh, Legal Member/Chair

10/4/19

Date