



**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/19/2694**

**Re: Property at 23 Northfield Farm Avenue, Edinburgh, EH8 7QY (“the  
Property”)**

**Parties:**

**Miss Sylwia Drozd, 91/4 London Road, Edinburgh, EH7 5TT (“the Applicant”)**

**Mr James Murdoch, 91 Mountcastle Crescent, Edinburgh, EH8 7SE (“the  
Respondent”)**

**Tribunal Members:**

**Yvonne McKenna (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for payment should be granted in the sum  
of £400.**

**1. Background**

- 1.1. The applicant sought an order for payment of compensation in respect of the Respondent’s failure to pay her tenancy deposit into an approved scheme. An application in terms of Rule 103 (Application for order for payment where landlord has not paid the deposit into an approved scheme) was received by the Tribunal on 28<sup>th</sup> August 2019.

**1.2 In support of the application the Applicant lodged**

- a copy of the tenancy agreement commencing 16<sup>th</sup> May 2015
- a certificate from Safe Deposit Scotland together with Deposit Summary confirming the deposit of £500 was paid into that scheme on 2<sup>nd</sup> February 2016.
- AT5 dated 11<sup>th</sup> May 2015

- 2 Notices to Leave dated 26/07/2019 (stating that the Applicant would provide 30 days' notice and leave on 25<sup>th</sup> August 2019) and 02/08/2019 (stating that the Applicant would provide 2 months and leave on the 1<sup>st</sup> October 2019).
- A copy of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

1.3 No Case Management Discussion took place in advance of the Hearing.

## 2. The Hearing

2.1 The Applicant attended to hearing personally. She was not represented. The Respondent attended the Hearing personally. He was not represented. The Hearing took place at Riverside House, Edinburgh at 10am on 25<sup>th</sup> October 2019.

2.2 In advance of the Hearing the Respondent lodged written representations. The Applicant had not received a copy of the representations in advance of the Hearing as it transpired that she had provided an incomplete e-mail address. She was given a copy and a short adjournment of 15 minutes to read over the same. The representations were brief in nature. She indicated after the adjournment that she had ample time to read over and consider these.

2.3 In his written representations the Respondent accepted that he had delayed in registering the deposit which he accepted he had received from the Applicant into an approved scheme. He accepted that the tenancy had commenced on 16<sup>th</sup> May 2019 and that the deposit had not been paid within the 30day period that the law provided for. He accepted that he had paid this into an approved scheme on 2nd February 2016. He stated that this had been an oversight on his behalf and was not for any monetary gain. In mitigation in his representations and at the Hearing he relied on the following factors;

- At the time the tenancy commenced the Respondent was having a difficult home life. His wife suffered from severe Alzheimer's disease and he was looking after at home on a full-time basis having given up his work to do so. He maintained that this was a 24/7 job and that he was dealing with double incontinence, mood swings, and feeding his wife at mealtimes. He said that at this time that he was exhausted, stressed out and was suffering from depression. He said that his wife went into care the following year but that at the time that the deposit ought to have been paid into an approved scheme, that he had been dealing with her at home for over 6 years and that it was a very trying time. He said that he was having to get up during the night and was sleep deprived.
- He stated that over the four-year period that the Respondent leased the Property to the Applicant that he had been a good and a fair landlord and that he had not increased the rent at all over the period. He had never leased a property before. This was his only property that he rented out. He said that it is now placed for sale. With regard to the suggestion that the Property had any defects he said that he could not be responsible for children sitting on a

step outside but that he had reported the incidents to the police himself and he had purchased a heavy duty padlock to board up the outside gate to prevent this happening. He said that all that was required in the bedroom was a "lick of paint". He had agreed to brighten the room up but had been unable to do so before the Applicant left as had fallen from a ladder injuring his femur.

2.4 The Respondent accepted that he was at fault with regard to this application before the Tribunal and suggested that if an award were to be made it should be in the region of £300-400.

2.5 The Respondent agreed that he received two Notices to Leave from the Applicant. He told the Applicant after he received the first Notice that two month's notice was needed. The Applicant left the Property on 26<sup>th</sup> August 2019. He said that he was prepared to accept instalments towards the last months rent over the following months at the rate of £200, £200 then £180. The monthly rental was £580 per calendar month. This had not been accepted by the Applicant and the case was adjudicated by the Safe Deposit Scotland Adjudicator as she was not prepared to accept a compromise arrangement for the rent due during this notice period.

2.5 The Applicant relied upon a number of factors which she said aggravated the Respondent's failure to pay the deposit into an approved scheme; -

- The period of time that the deposit had been unprotected
- She said that the case had been adjudicated by Safe Deposit Scotland at the end of the tenancy. She had received £20 back from her deposit. She said that the decision of the Adjudicator (which was not shared with the Tribunal) was that two months' notice was required and she had only given one month's notice, and this was the balance due to her after this was considered. She had not appealed that decision.
- She accepted that the Respondent's wife was ill but stated that as a landlord he required to manage his property according to the law and that it appeared that he was unfit to deal with this kind of business.
- She said that many things happened which caused her to leave including children sitting on her doorstep smoking and leaving lit matches at her door. Also, she said that the condition of the flat did not permit her to stay longer. She said that there was mould on her bedroom ceiling and that the bedroom needed to be painted and that she had been asking the Respondent for over a year to attend to this

2.6 the Applicant was asked what award she was inviting the Tribunal to make. She was of the view that a double multiplier of the rent was appropriate namely £1160.

## **Findings in Fact**

3.1 The Applicant and the Respondent entered into a tenancy agreement on 11<sup>th</sup> May 2015. The term of the tenancy was from 16<sup>th</sup> May 2015 until 15<sup>th</sup> November 2015. The term was extended, in terms of the lease, on a month to month basis

3.2 The Applicant paid to the Respondent a deposit in the sum of £600 at the beginning of the tenancy.

3.3 The Applicant left the Property on 26<sup>th</sup> August 2019.

3.4 The Respondent paid the deposit of £ 600 into Safe Deposit Scotland on 2<sup>nd</sup> February 2016. The deposit was unprotected during the period from 16<sup>th</sup> May 2015 to 2<sup>nd</sup> February 2016.

3.5 The Applicant received the sum of £20 back from Safe Deposit Scotland following their adjudication and after deduction of a month's rental of £580 to represent the one month's notice period that she had not afforded to the Respondent.

## **Reasons for Decision**

4.1 The Tribunal proceeded on the basis of the written documents and representations, together with oral evidence of both parties.

4.2 As the Respondent accepted that he had failed to pay the deposit into an approved scheme, there was little in dispute between the parties. The only matter for the Tribunal to determine was the level of compensation to be paid to the Applicant.

4.3 The Tribunal was satisfied that the Respondent's behaviour had not been wilful and was rightly characterised as an oversight in view of his difficult home circumstances. However the Tribunal did not consider it satisfactory to suggest that the Respondent was able to absolve himself of his responsibilities as a Landlord on that basis. It is the Landlord's obligation to ensure that they abide by their obligations under the Regulations. The Respondent had a duty to comply and for the period at the beginning of the Lease he had failed to do so. In all the circumstances the Tribunal consider that an Order for Payment of £400 was fair, proportionate and just. In fixing this amount the Tribunal had particular regard to the dicta of Sheriff Ross in the case Rollett V Mackie UTS/AP/19/0020.

### **Decision**

5.1 The Order for payment of compensation is granted in the amount of £400.

### **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.

  
Legal Member/Chair

25/10/19  
Date