



**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/19/2142

Re: Property at 143/12 Lochend Road, Edinburgh, EH7 6ES (“the Property”)

Parties:

Miss Elzbieta Bak, 143/12 Lochend Road, Edinburgh, EH7 6ES (“the Applicant”)

**Miss Charmaine Gittens, 20 Dewartown, Gorebridge, Midlothian, EH23 4NX
 (“the Respondent”)**

Tribunal Members:

Lynsey MacDonald (Legal Member)

Decision (in absence of the Respondent)

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 £1,875 and that the tenancy deposit should be paid into an approved scheme.

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 9th July 2019.
- 1.2.** In support of the application the Applicant lodged a copy of a tenancy agreement commencing 24th November 2017, along with a section 32 notice.

- 1.3. The Tribunal fixed a Case Management Discussion for 19th September 2019. The Case Management Discussion was intimated to parties. Both parties were advised that they were required to attend the Case Management Discussion, and were informed that the Tribunal could at the Case Management Discussion make any decision on the application that could be made at the full Hearing, if the Tribunal had sufficient information and considered the procedure to have been fair.
- 1.4. Both the Applicant and the Respondent lodged written representations in advance of the Case Management Discussion.

2. The Case Management Discussion

- 2.1. The Applicant attended the Case Management Discussion, along with her representative, Mr Andrew Wilson of *Community Help and Advice Initiative*.
- 2.2. The Respondent did not attend the Case Management Discussion. The Respondent had previously sought confirmation that she need not attend the Case Management Discussion and it had been confirmed that in the event her representative attended, she did not need to attend. There appears to have been some confusion about whether the Respondent's representative was informed that he should attend, but it was clear that he did not intend to do so.
- 2.3. The Applicant had no objection to proceeding in the absence of the Respondent, and on the basis of her written representations.
- 2.4. The Tribunal was satisfied that the Respondent's failure to attend at the Tribunal was deliberate and informed, and on the basis that the Tribunal would proceed on the basis of the written representations lodged on her behalf. Accordingly the Tribunal considered that it was fair to hear the Case Management Discussion in the absence of the Respondent.
- 2.5. In her written submissions the Respondent accepted that she had received a deposit from the Applicant, and that she had not paid the deposit into an approved scheme. In mitigation she relied upon the following factors:
 - (a) The rent had not increased over the six years that the Applicant was a tenant;
 - (b) The Applicant had given the Respondent conflicting information about her employment status and ability to pay rent; and
 - (c) There were "infringements of the lease" during the course of the tenancy.

The Respondent also made reference to the timing of the raising of the application and the Applicant being in rent arrears.

- 2.6. In the detailed written submissions lodged on behalf of the Applicant, the Applicant relied upon a number of factors which aggravated the Respondent's failure to pay the deposit into an approved scheme:
 - (a) The lengthy period over which the deposit had been unprotected; and
 - (b) The repeated nature of the failure to pay the deposit into an approved scheme, namely on each occasion where the tenancy was renewed by provision of a new lease.
- 2.7. In addition, the Applicant confirmed that the tenancy was ongoing, notwithstanding that the Respondent had attempted to terminate it. She confirmed that as at the date of the Case Management Discussion, the tenancy deposit had not been returned to her, and she had not been given information that it had been paid into an approved scheme. She advised that she was currently paying rent at the rate of £625 per calendar month, along with payments in respect of rent arrears. The Applicant's position was that the total amount of rent arrears was currently £150, however there was a separate dispute about a rent increase, which may affect the amount of rent owed. She confirmed that the tenancy deposit had not been attributed to payment of rent arrears.

3. Findings in Fact

- 3.1. The Applicant and the Respondent entered into a tenancy agreement in 2013.
- 3.2. In the following years the Respondent required the Applicant to sign a number of further tenancy agreements. The most recent tenancy agreement provides a start date of 24th November 2017, and an end date of 24th May 2018. The most recent tenancy agreement allows for monthly continuation of the lease.
- 3.3. The Applicant paid a deposit of £625 to the Respondent when she rented the property from the Respondent in 2013.
- 3.4. The tenancy agreement is continuing, notwithstanding the Respondent's efforts to terminate it.
- 3.5. The Respondent has not returned the deposit to the Applicant.
- 3.6. The Respondent did not pay the deposit into an approved scheme.
- 3.7. The Applicant's deposit remains unprotected.

4. Reasons for Decision

- 4.1. The Tribunal proceeded on the basis of the written documents and representations, together with oral evidence and submissions from the Applicant.
- 4.2. As the Respondent accepted that she had failed to pay the deposit into an approved scheme, there was little in dispute between the parties. The only matter for the Tribunal was to determine the level of compensation to be paid to the Applicant.
- 4.3. The Tribunal agrees with the Applicant's submission that the Respondent's breach is not a trivial one. Prior to the submission of the Application the breach had been continuing for around six years. Indeed, it is a breach which is ongoing, as the Respondent has still not paid the deposit into an approved scheme. The Tribunal notes that Applicant was aware of the requirement to pay the deposit into an approved scheme, as that is expressly referred to in the tenancy agreement.
- 4.4. The Tribunal did not consider either the matters raised in mitigation by the Respondent, or the timing of the raising of the application, to be relevant to the question of compensation for the breach.
- 4.5. Whilst noting that the Applicant has suffered no actual loss as a result of the deposit being unprotected, the Tribunal is satisfied that a breach of this nature is at the uppermost end of the scale of non-compliance with the Regulations. Accordingly the Tribunal considers that it is appropriate to mark the breach with the maximum penalty.

5. Decision

- 5.1. The order for payment of compensation is granted in the amount of £1,875, which represents three times the amount of the deposit.
- 5.2. The Tribunal orders the Respondent to pay the tenancy deposit into an approved scheme.

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.

Lynsey MacDonald

Legal Member/Chair

19/09/19.

Date