



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/PR/20/0076**

**Re: Property at 17 Knowehead Road, Dumfries, DG1 1UU (“the Property”)**

**Parties:**

**Miss Vickie Reid, Barnfield, West Cluden, Irongray, Dumfries, DG2 9UW (“the Applicant”)**

**Mr Lee Dawes, current whereabouts unknown, previously residing at Flat 1 Solway Gate, Brewers Fayre, Annan Road, Dumfries, DG1 3JX and 27 Airds Drive Georgetown, Dumfries, DG1 1UU (“the Respondent”)**

**Tribunal Member:**

**Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicant the sum of ONE THOUSAND SIX HUNDRED AND FIFTY POUNDS (£1650.00) Sterling**

## **1. Procedural background**

- 1.1. On 10 January 2020, the Applicant made an application (“the Application”) to the tribunal in terms of Rule 103 of the 2017 Rules, namely an application for an order for payment where the landlord (Respondent) has failed to carry out duties in relation to tenancy deposits.

1.2. The Applicant attached to the Application:

- 1.2.1. A “Short Assured Tenancy” agreement (unsigned/undated);
- 1.2.2. “Tenant’s Notice to End the Tenancy” dated 12 October 2019; and
- 1.2.3. Letter from Respondent to Applicant (undated) with settlement offer of payment of two months’ rent.

1.3. The tribunal’s administration confirmed that the Respondent is registered with Landlord Registration Scotland as the landlord of the Property with an address of Flat 1, Solway Gate, Brewers Fayre, Annan Road, Dumfries, DG1 3JX.

1.4. On 22 January 2020, the Applicant provided further information and advised that she had received her initial deposit back from the Respondent after chasing him for this and that the dispute relates to his failure to lodge the deposit in a deposit protection scheme. She also stated that the Respondent is an experienced landlord and has informed her that he has several properties that he rents out and the Property which she stayed in had been rented out previously so she submitted that he should be aware of the rules and regulations regarding deposits. The information was added to the case file.

1.5. On 17 January 2020, the Application was accepted for determination.

1.6. On 6 February 2020, the tribunal notified the parties that the Application had been referred to the tribunal and that a Case Management Discussion (“CMD”) had been fixed for 12 March 2020 at Cairndale Hotel & Leisure Club, English Street, Dumfries, DG1 2DF, 14.00 which both parties were required to attend. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application. Parties were advised that if they did not attend the CMD, this would not stop a decision or order from being made by the tribunal if the tribunal considered that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations he wished by 27 February 2020. The Application paperwork and notification of the teleconference was served on the Respondent by Sheriff Officers. The Sheriff Officers’ Report stated that the Respondent had moved from the address at Flat 1, Solway Gate, Brewers Fayre, Annan Road and no forwarding address was known.

1.7. On 12 March 2020, the Case Management Discussion took place. Reference is made to the Notes of the Case Management Discussion which were prepared by the legal member chairing the CMD, Ms Irvine. The CMD was

adjourned to a date to be notified due to the legal member's concerns about notification to the Respondent in respect of the Case Management Discussion.

1.8. On 14 April 2020, the Applicant sent an email to the tribunal's administration in which he stated that he had just received a document dated 6 February 2020 which had been served at his old work address which he had left on 22 January 2020. He stated that he appreciated that the date had passed for the scheduled meeting on 12 March 2020 and asked whether another meeting could be scheduled. He stated that due to current circumstances he was of no fixed abode and provided an email address for further contact. He stated that the Applicant did not pay a deposit and therefore he did not pay it into a scheme. He stated that she was convinced that she had although there was no evidence to prove this. He stated that as an offering of goodwill he offered to repay two months' rent in respect of compensation for delays in repairs to the Property being carried out even although she accepted the Property in that condition knowing that work was required. He stated that she had not accepted the payment which had been offered. In response, the tribunal informed the Respondent that due to the Covid-19 pandemic the tribunal was not in a position to fix a Case Management Discussion at that time and would notify him when one was fixed.

1.9. On 26 March 2020, a Service by Advertisement application was submitted by the Applicant to the tribunal. Due to the Covid-19 pandemic, this was received in the tribunal's offices on 15 June 2020. As the Respondent had been in contact with the tribunal's administration in the meantime to provide an email address and stated that he was of no fixed abode, service of documentation and notifications was to be made via the email address provided by him.

1.10. On 29 July 2020, the tribunal notified the parties that a Case Management Discussion teleconference had been fixed for 20 August 2020 at 1400h. Both parties were provided with dial in details. The Respondent was notified by email to the address he had provided in his correspondence in April 2020 in which he asked for it to be used for tribunal communications.

## **2. Case Management Discussion ("CMD") – 20 August 2020 at 1400h – by teleconference**

2.1. The Applicant attended the teleconference.

2.2. The Respondent did not attend the teleconference. The tribunal was satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing had been duly complied with, as notification was sent to the Respondent to the

email address provided by him with a request for tribunal communications to be sent to him at that email address. The tribunal proceeded with the application upon the representations of the Applicant and all the material before it.

2.3. The tribunal chair explained the nature and purpose of the CMD.

#### **2.4. The Applicant's submissions**

2.5. The Applicant stated that the tenancy agreement for the Property was produced by the Respondent and emailed to her and her partner, who was the joint tenant. She stated that she had met the Respondent in person when she viewed the house and then met him on the date of entry. The start date of the tenancy was 1 November 2018. The end date of the tenancy was 12 October 2019 as she stated she had provided one month's notice to end the tenancy after taking advice from Shelter.

2.6. The tribunal chair asked whether the Applicant was aware that the tenancy which was entered into should have been a Private Residential Tenancy as Short Assured Tenancies could not be created in November 2018. The Applicant was unaware of any issue with the tenancy and said that Shelter had not provided advice about that.

2.7. She stated that in terms of the tenancy agreement, a deposit of £550.00 was payable and should have been paid into My Deposits Scotland.

2.8. She stated that she paid a deposit of £550.00 to the Respondent, the day that they moved in and got the keys to the Property. She gave £1100.00 cash in an envelope which was for the deposit plus the first month's rent. The Respondent did not issue a receipt to the Applicant for the deposit or rent payments. The Applicant did not receive a Deposit Protection Certificate or any documentation from My Deposits Scotland.

2.9. The tribunal chair referred to the Respondent's written submissions in which he stated that the Applicant had not paid a deposit which is why he had not paid it into a scheme and invited the Applicant's comments.

2.10. The Applicant stated that she disputed this as she had paid a deposit in the way already described. She stated that she thought that she had emails or messages as documentary proof. The tribunal adjourned for 15 minutes to allow the Applicant to check her emails and messages. The Applicant submitted a document with pages of screenshots of messages between the parties in October 2019.

- 2.11. The messages show that the Applicant asked a number of times from 12 October onwards whether her deposit had been lodged with My Deposits Scotland as stated in the tenancy agreement and when it would be repaid. The Respondent did not respond to the majority of the messages. The Respondent replied on 24 October 2019 and 26 October 2019 stating that the deposit had been released and then stating that he would contact his solicitor to deal with it. The Applicant responded to him to state that she had not received it.
- 2.12. The tribunal chair asked if the Applicant had received her deposit back. She stated that she had turned up at the Respondent's work one day when he was sitting at the bar. She asked him to repay her deposit and told him that she would take legal action if he did not do so. She had given him her bank details. She stated that the Respondent paid £550.00 into her bank account that evening. She produced a screenshot of a payment of £550.00 from "L Dawes" to her account on 29 October 2019.
- 2.13. She stated that she disputed his suggestion that the settlement offer letter which had been lodged with the Application related to repairs issues at the Property. She stated that it related to the deposit issue. When she messaged the Respondent to say that she intended to go ahead with an Application to the tribunal about his failure to lodge the deposit, she had indicated that she would be happy to come to an agreement rather than proceed. She stated that he had offered the two months' rent rather than go through the tribunal process. She stated that they had the discussion on text message but the typed document which was lodged was signed by both of them. It refers to "recent conversations". She added a note on the agreement at the time of signing stating that funds must be received by 5pm on 9 January 2020 as agreed to prevent further action. She stated that the Respondent had not made payment following upon the agreement. She then made the Application to the tribunal.
- 2.14. In relation to the order sought, she stated that she was seeking a payment order for the maximum of three times the deposit. She stated that he is an experienced landlord and should have known about the regulations. She stated that she knows the people who rented the Property previously as they are family acquaintances. She believes from comments he made to her that he has several flats which are rented out but she does not know the addresses. When she went to the inspection he told her that he had bought a place in cash at an auction to rent out.

### **3. Findings in Fact**

- 3.1. The Applicant and another tenant, Mr Christian Koss, and the Respondent entered into a tenancy for the Property which started on 1 November 2018.
- 3.2. The tenancy was headed as a Short Assured Tenancy agreement within the meaning of Section 32 of the 1988 Act but should have been a Private Residential Tenancy agreement.
- 3.3. The tenancy agreement provided that on agreement of the tenancy a deposit of £550.00 will be paid by the tenant to the landlord or his agents, the deposit will be paid into a tenancy deposit scheme within the timescales laid out in the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) and the scheme administrator is “My Deposits Scotland”.
- 3.4. The Applicant and Mr Koss paid a £550.00 deposit to the Respondent on or about 1 November 2018.
- 3.5. The Respondent did not issue a receipt to the Applicant or Mr Koss in respect of the deposit payment.
- 3.6. The Applicant and Mr Koss did not receive a deposit protection certificate from the Respondent or My Deposits Scotland.
- 3.7. The Applicant and Mr Koss did not receive the information required from the Applicant in terms of Regulation 42 of the 2011 Regulations.
- 3.8. The tenancy ended on 12 October 2019.
- 3.9. The Application to the tribunal was made on 10 January 2020, within three months of the end of the tenancy.
- 3.10. The deposit should have been lodged with a deposit protection company within 30 working days of the start of the tenancy on 1 November 2018.
- 3.11. The Respondent has not lodged the Applicant’s deposit with a tenancy deposit protection scheme at any time.
- 3.12. Following the end of the tenancy on 12 October 2019, the Applicant repeatedly requested return of her deposit from the Respondent and repeatedly requested information about whether it was lodged with My Deposits Scotland.

- 3.13. The Respondent told the Applicant that he had complied with all legal obligations and that his solicitor would return her deposit.
- 3.14. The Respondent told the Applicant that her deposit had been returned on 24 October 2019 but it was not received by the Applicant.
- 3.15. The Respondent told the Applicant on 26 October 2019 that he would contact his solicitor as they deal with the deposit.
- 3.16. On 29 October 2019, the Applicant attended the Respondent's place of work and requested return of her deposit in person. She provided bank details to the Respondent.
- 3.17. On 29 October 2019, the Respondent made a bank transfer of £550.00 to the Applicant's account.
- 3.18. The Applicant and Respondent entered into correspondence about compensation to be paid by the Respondent for his failure to protect her deposit.
- 3.19. The Respondent and Applicant entered into an agreement that the Respondent would pay £1100.00 to the Applicant in respect of his failure in relation to the deposit, on or before 5pm on 9 January 2020.
- 3.20. The Respondent did not make payment to the Applicant of the agreed sum.

#### **4. Discussion**

- 4.1. The tribunal took account of the Applicants' written and oral submissions; and the Respondents' written submissions.
- 4.2. The tribunal preferred the evidence of the Applicant to that of the Respondent in relation to whether or not a deposit had been paid, as there was contemporaneous evidence after the end of the tenancy to support the Applicant's position that a deposit of £550.00 had been paid to the Respondent in respect of the tenancy, that he had retained it and not lodged it in a scheme and that he returned it directly to her from his own account. The tribunal also took account of the provision in the lease which provided for a deposit of £550.00 to be paid. The tribunal rejected the Respondent's submission that the Applicant had not paid a deposit, which was not supported by any evidence and was contradicted by the evidence produced by the Applicant.

- 4.3. In assessing the appropriate amount for a payment order, the tribunal had regard to the fact that the Applicant's deposit was unprotected throughout the tenancy from 1 November 2018 until 12 October 2019, when it should have been lodged within 30 working days of the start of the tenancy. The tribunal also took account of the issues that the Applicant had had in trying to obtain repayment of her deposit, which she should have been able to do through the scheme. The tribunal took account of the settlement agreement which the parties had entered into, in terms of which the Respondent had agreed to pay £1100.00 to the Applicant and the fact that he had not made payment.
- 4.4. For the reasons outlined and on the basis of the findings in fact, the tribunal decided to make an order for payment by the Respondent to the Applicant of the sum of £1650.00 which is three times the amount of the deposit. That sum was considered to be reasonable in all of the circumstances.
- 4.5. The tribunal chair informed the Applicant that the Payment Order could be enforced by the Applicant against the Respondent after the expiry of the permission to appeal period.

**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.**

Susanne Tanner

20 August 2020

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**Ms. Susanne L M Tanner Q.C.  
Legal Member/Chair**