



**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/18/0354

Re: Property at 33/7 Water Street, Edinburgh, EH6 6SZ (“the Property”)

Parties:

Miss Aiva Laukubriede, 33/7 Water Street, Edinburgh, EH6 6SZ (“the Applicant”)

Mr George Barr, 3 Rowling Crescent, Falkirk, FK2 8RH (“the Respondent”)

Tribunal Members:

John McHugh (Legal Member)

Decision (in absence of the Parties)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order should be made requiring the Respondent to make payment to the Applicant of the sum of £800.

Neither the Applicant nor the Respondent attended or were represented at the Case Management Discussion which had been scheduled to take place on 11 September 2018.

There was no explanation for the non-attendance of the Respondent. The Applicant had by email of 23 August 2018 informed the Tribunal that she would be unable to attend the Case Management Discussion and invited the Tribunal to consider dealing with the Application in her absence.

The Tribunal elected to exercise its power under Rule 18 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules to determine the application without a hearing. The Tribunal considers that the written material available contains sufficient facts which are not disputed to allow the case to be determined and that proceeding in this way will not be contrary to the interests of the parties.

Findings in Fact

The Respondent was the landlord and the Applicant the tenant under a tenancy agreement dated 18 June 2015.

On or around 18 June 2015, the Applicant paid to the Respondent a tenancy deposit of £400.

The deposit has not been placed in an approved scheme.

The tenancy came to an end on or around 4 February 2018.

The present Application was submitted to the Tribunal on 9 February 2018.

Reasons for Decision

The Respondent has accepted by his email of 4 July 2018 to the Tribunal that the Applicant's deposit was not placed in an approved scheme. He narrates in that email various complaints of the Respondent having breached various obligations arising under the tenancy agreement.

A requirement is imposed upon the Tribunal when it becomes satisfied (as the Tribunal in this case is) that the deposit has not been placed in an approved scheme. The Tribunal does not consider that the complaints raised by the Respondent are relevant to the matter under consideration. Even if it were true that the Applicant was in breach of certain obligations arising under the tenancy agreement (and no finding is made here in that respect), this provides no justification or explanation for the Respondent's failure to place the deposit in an approved scheme. Similarly, the Respondent has identified no factors in mitigation which might be considered in determining the appropriate amount for the order to be made under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. There is no explanation at all for his failure.

It should be made clear that although the Applicant provided to the Tribunal in her email of 23 August 2018 certain information regarding the Respondent's failure to obtain appropriate HMO registration, including a letter of 16 November 2017 from City of Edinburgh Council advising that a Suspension of Rent Order had been made against the Respondent, no consideration has been given to that information since it had not been provided to the Respondent and he has had no opportunity to comment upon it.

The tenancy agreement makes reference to the deposit being £400 although the Respondent's email of 4 July makes passing reference to a figure of £300. The Tribunal considers that the reference by the Respondent to a figure of £300 is in error and finds the true figure to be that contained in the tenancy agreement and in the Application.

In all the circumstances, we consider that an order requiring a payment of twice the deposit amount is appropriate.

Decision

We determine that the Respondent must pay to the Applicant the sum of £800.

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.

John McHugh

John McHugh, Legal Member/Chair

11 September 2018

Date