

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 9 of the The Tenancy Deposit  
Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/2151**

**Re: Property at 9 Garmaddie Lane, Dyce, Aberdeen, AB21 7LN ("the Property")**

**Parties:**

**Mr Olufemi Ajao, 94 St Fitticks Road, Aberdeen, AB11 8TN ("the Applicant")**

**Mr Maciei Arciuch, Modra 8, 15-157 Bialstok, Poland, Poland ("the  
Respondent")**

**Tribunal Members:**

**Morag Leck (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of the sum of £2125.00 in terms of Regulation 10(a) of the Tenancy Deposit Schemes (Scotland) Regulations ("the 2011 Regulations") should be made.**

**Background**

1. This is an application dated 11<sup>th</sup> July 2019 under Regulation 9 of the 2011 Regulations and Rule 103 of the Tribunal Procedure Rules in respect of an alleged failure to protect a tenancy deposit.
2. The applicant lodged with his application copies of the following documents:-
  - Short Assured Tenancy Agreement between the parties commencing 15 July 2015
  - Bank statement from HSBC dated 3<sup>rd</sup> May 2019
  - Order for the hire of a Rug Doctor machine
  - Various text messages between the Applicant and Respondent
3. A Case Management Discussion (CMD) was fixed for 22<sup>nd</sup> October 2019. The Applicant's representative lodged additional written submissions prior to

that hearing together with an invoice from the Respondent to the Applicant in the sum of £650. The Respondent lodged written submissions together with photographs in response to the initial application and further written submissions in response those made on behalf of the Applicant

4. In the course of that CMD it was accepted by parties that the tenancy terminated on 12<sup>th</sup> April 2019 and that the Respondent had paid to the Applicant £495 on 30<sup>th</sup> April 2019. However it was clear to the Tribunal that the issue could not be resolved without a further CMD as the Respondent doubted the deposit had been paid and the Applicant could not provide proof that he had actually paid the deposit. Accordingly the Tribunal continued the CMD and issued a Direction for various documents to be lodged with the Tribunal by 29<sup>th</sup> November 2019.
5. A further CMD was assigned for 11<sup>th</sup> December 2019 which with consent of parties was brought forward to 4<sup>th</sup> December 2019.
6. The Applicant's representative lodged copies of further documents prior to the CMD namely :-

Email from the Respondent to the Applicant dated 5<sup>th</sup> August 2015 confirming receipt of the deposit by the Respondent

Copy HSBC bank statement of the Applicant highlighting cheque payment of £1700

Affidavit of the Respondent in relation to payment of a tenancy deposit dated 21<sup>st</sup> November 2019

7. The Respondent lodged details from his bank account detailing a payment of £1700 to his account and by email to the Tribunal dated 19<sup>th</sup> November confirmed that the deposit had been paid by the Applicant.

#### **Case Management Discussion (CMD)**

8. The case called for a further CMD by conference call on 4<sup>th</sup> December 2019. Mr Luecke from the Aberdeen Law Project represented the Applicant. Mr Arciuch represented himself.
9. At the start of the CMD the Tribunal explained the procedure applicable. The Tribunal also explained that the application before the Tribunal for consideration had been made under Rule 103 of the Tribunal Procedure Rules and accordingly that the CMD would not consider any issue relating to repayment of the deposit or any other civil claims arising out of the tenancy but solely address the issue of whether the Respondent had complied with duties under the 2011 Regulations.
10. Thereafter the Tribunal referred to the outcome of the previous CMD and the Directions issued to parties. The Tribunal noted the documents submitted by both parties as listed above and acknowledged both parties had complied with the terms of the Direction. Mr Luecke had also provided a written explanation

as to why the Affidavit could not be lodged timeously which was accepted by the Tribunal.

11. The Tribunal clarified firstly with the Respondent that he now accepted the deposit of £850 had been paid which he confirmed.
12. Mr Luecke submitted that his previous submissions remained relevant. The further documentation lodged confirmed that the deposit had been paid. He sought an award to the Applicant in terms of the 2011 Regulations. He pointed out that the deposit had not been lodged for the entirety of the tenancy and the applicant sought an award for the maximum amount under the 2011 Regulations being £2550.
13. The Respondent submitted that his position remained as set out previously in that if the deposit was paid then he understood that he neglected to lodge it with a tenancy deposit scheme and he understood the consequences. He explained that this was not intentional. He and his wife were always compliant with the Regulations. On this occasion he had allowed the Applicant to pay by a few instalments as referred to in his written representations. His young daughter had been diagnosed with a serious illness around the same time. He appreciated that this was not an excuse but his attentions were focused on this and he forgot to deal with the matter. The first time he realised was when he logged into the account with Safe Deposits Scotland in April 2019 and noticed no deposit there. At that time he could not find any proof the deposit had been paid but he knew now that it had been. He confirmed to the Tribunal that he had rented the property previously and was aware of the Tenancy Deposit Scheme. He had been distracted and forgot. This was the only property he and his wife rented out. He acknowledged that the deposit had been paid in one amount and pointed out that he had allowed the tenant to pay the deposit over a few weeks so the assumption had been there would be two instalments but the tenant had paid in one instalment. In response to a query from the Tribunal regarding the email sent by him to the Applicant on 5<sup>th</sup> August 2015 which acknowledged receipt of the deposit, he advised that he had searched for the email and could not locate it but acknowledged it was possible that he had sent it. He referred to the alleged damage to the property detailed in his written representations and how he had sought to settle matters informally with the Applicant by returning part of the deposit.
14. Mr Luecke added that if the deposit had been lodged then there would have been an opportunity to address that situation through mediation. He referred to his written representations and case law cited by him as regards oversight and the purpose of the 2011 Regulations. The Applicant's deposit had been unprotected for the entirety of the tenancy.
15. The Respondent suggested that if the Applicant had asked him at any point about the deposit then he would have been aware of the position and rectified the situation. He added that they always complied. It was an oversight and not intentional.

16. Mr Luecke concluded by adding it was not a duty on the Applicant to check if the deposit had been lodged. The Regulations placed the burden on the Landlord and it was stipulated in the tenancy agreement that they had both signed. The deposit was not placed in scheme for the entirety of the tenancy. He submitted that oversight was not an excuse for the failure to lodge the deposit.

### **Findings in Fact**

17. The Respondent entered into a lease with the Applicant whereby the Applicant leased the Property from the Respondent from 15<sup>th</sup> July 2015.
18. The Rent due was £850 per month
19. The deposit paid by the Applicant to the Respondent was £850. This was not paid at commencement of the tenancy by the Applicant as he had requested further time to pay which was allowed by the Respondent. The deposit was paid into the Respondent's bank account by the Applicant on or around 30<sup>th</sup> July 2015.
20. The tenancy terminated on 12<sup>th</sup> April 2019
21. The Applicant did not receive any communication advising him of the matters stated in Regulation 42 (2) of the 2011 Regulations.
22. The applicant raised an application for payment of an order under Rule 9 of the 2011 Regulations on 10<sup>th</sup> July 2019
23. The Deposit was not placed in an approved scheme
24. Part of the deposit has been returned to the Applicant namely £495 with the remainder having been retained by the Respondent in connection with alleged significant costs for repairs and cleaning required to the property at the end of the tenancy.

### **Reasons**

25. In light of the fact that the failure to protect the deposit was agreed, the Tribunal considered that it had sufficient information to determine the matter and could proceed to make a decision at the CMD.
26. The Tribunal found that the Respondent had failed to comply with the duty set out in section 3 of the 2011 Regulations by failing to place the deposit in an approved scheme within 30 days of the beginning of the tenancy.
27. In terms of section 10 of the 2011 Regulations the Tribunal is therefore obliged to make an order that the Landlord pay the Tenant an amount not exceeding three times the amount of the tenancy deposit.

28. The Tribunal accepted that the Respondent had afforded the Applicant additional time to pay the deposit at the start of the tenancy and considered that taking into account his personal circumstances at that time, the failure to lodge the deposit may have been an oversight rather than deliberate on the part of the Respondent.
29. However the Respondent had accepted that he was fully aware of the requirement to comply with the legislation and aware of his responsibilities as a Landlord to lodge a deposit in an authorised scheme. He had an account with such a scheme namely, Safe Deposits Scotland. In this case the Respondent had failed to lodge the deposit for the entire tenancy in any tenancy deposit scheme which had spanned a period of nearly four years and during which time the Applicant's deposit was unprotected.
30. The Respondent has only returned part of the deposit due to the sums which he claims are due in relation to cleaning and repair costs incurred at the end of the tenancy. Accordingly the Applicant has been unable to take advantage of the process provided by the tenancy deposit schemes for recovering the entire deposit or resolving any dispute about whether the entire deposit should be returned.
31. Given the length of time that the deposit has been left unprotected and the fact that the Respondent has unilaterally decided on how much should be returned to the Applicant, the Tribunal considers the breach of the 2011 Regulations to be significant and that payment of an amount of two and half times the deposit is appropriate and reasonable in this case.

### **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.

**Morag Leck**

Legal Member

Date

4/12/19