

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



**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/18/3537**

**Re: Property at 54 Mid Street, Cornhill, AB45 2EH ("the Property")**

**Parties:**

**Mr Michael Bruce, Ms Jackie Shearey, 25 Seaview Road, Sandend, AB45 2UE  
("the Applicants")**

**Mrs Catherine Steele, Woodlands, Mid Street, Cornhill, AB45 2EH ("the  
Respondent")**

**Tribunal Members:**

**Helen Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that an order for payment by the Respondent to the  
Applicants of £500 should be made in terms of Regulation 10 of the Tenancy  
Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").**

**Background**

The Applicant made an application to the Housing and Property Chamber dated 23<sup>rd</sup> December 2018 seeking an order in the sum of 3 times the deposit of £500. The following papers were included with the application:

- (i) Tenancy agreement between the parties – tenancy commenced on 1<sup>st</sup> November 2016
- (ii) Safe Deposit Scotland printout
- (iii) Emails between parties for the period 16<sup>th</sup> to 26<sup>th</sup> October 2018

By email dated 18<sup>th</sup> January 2019, Mr Bruce asked that Ms Shearey be added as a party to the application.

The Tribunal also had before it Sheriff Officer's citation of service on the Respondent dated 1<sup>st</sup> March 2019, and written representations made by the Respondent dated 6<sup>th</sup> March 2019.

## **Case Management Discussion**

A Case Management Discussion took place at Banff Sheriff Court on 20<sup>th</sup> March 2019. The parties were in attendance. Mr Grant Steele was also present as a supporter to the Respondent.

### **Preliminary Matter**

The Tribunal member pointed out that there had been a question over whether Mr Steele should be added as a party as he is also the landlord of the Property. Although Mr Bruce had indicated by email to the Housing and Property Chamber dated 18<sup>th</sup> January 2019 that he was happy to proceed against both, the application had only proceeded against Mrs Steele. Parties were content for matters to remain as they were, and for the case to proceed against Mrs Steele.

Mr Bruce informed the Tribunal that he felt the Respondent was in breach of contract as she had not lodged the tenancy deposit of £500 until after the tenancy ended on 30<sup>th</sup> September 2018. The Applicants remained in the Property by agreement until 3<sup>rd</sup> October 2018. A third party had mentioned to him at the end of the tenancy that the deposit must be lodged in a scheme. He asked the Respondent for the name of the scheme and discovered at that stage that it had not been lodged. He received a text message on 8<sup>th</sup> or 10<sup>th</sup> October from Safe Deposits Scotland to the effect that the deposit had been lodged. Adjudication was carried out through SDS before some of the deposit was returned to the Applicants. Mr Bruce said he had heard that another tenant of the Respondent had also received a text message from SDS at the same time, and he suspected other tenants had been left in the same position as he had. Mr Bruce had no further evidence in relation to this matter. Ms Shearey said that the application had been made as a matter of principle as there was no leeway and no give and take by the landlords at the end of the tenancy.

The Respondent, Mrs Steele, said that she was undergoing chemotherapy for terminal cancer at the time the tenancy commenced. As a landlord of three properties, she was well aware of the requirement to lodge the deposit with a scheme; however, due to the stress of her diagnosis and the side-effects of her treatment, she had forgotten to lodge the deposit in this case. On 6<sup>th</sup> October 2018, expecting a dispute over the state of the Property at the end of the tenancy, she logged into Safe Deposit Scotland. It was only then she discovered that the deposit had not been lodged. She immediately lodged the sum of £460, as there was agreement between the parties that the sum of £40 could be deducted from the deposit to cover a bed that the Applicants were purchasing from the Respondent. The Respondent said there was no ill intention or malice in not lodging the deposit; it was simply the case that, due to her illness, she forgot. She referred the Tribunal to a screen print-out from SDS that showed deposits had been lodged for all three

properties. Historical information was not immediately available but could be sought from SDS to show that she had always lodged the deposits in the past. The Respondent said she felt the application had been made purely for financial gain, and reiterated the point made in her written representations that the application should be rejected as it was made for a purpose other than a purpose specified in the application. The Tribunal member pointed out that the case had been passed by a convenor at the appropriate stage in the procedure, and there was no power to reject the application at this stage. She also pointed out that the Applicants were entitled to the protection of the Regulations and their motive for making the application was not a factor to be taken into account.

Both parties complained about the conduct of the other at the time of the ending of the tenancy, and there was disagreement about the state in which the Property was left. The Tribunal member pointed out that this could not be taken into account for the purposes of today's hearing.

The Tribunal member said that she could make a decision at the Case Management Discussion or continue matters to a full hearing, although it seemed there was little by way of disputed facts in this case, other than the matter of whether, historically, the deposits for other properties had been lodged. The parties indicated they were keen for matters to proceed to a conclusion at this hearing, rather than proceed to an evidential hearing.

### **Findings in Fact**

1. The parties entered into a tenancy agreement commencing on 1<sup>st</sup> November 2016.
2. The tenancy ended on or around 30<sup>th</sup> September 2018.
3. A deposit of £500 was paid by the Applicants to the Respondent at the start of the tenancy.
4. The Respondent did not lodge the deposit with an approved scheme until 6<sup>th</sup> October 2018, when it was lodged with Safe Deposits Scotland.
5. The Respondent did not provide her landlord registration number and information about the deposit within the timescale stated in Regulation 42(3) of the Regulations.
6. The deposit was unprotected throughout the duration of the tenancy.
7. The Applicants had the benefit of the adjudication process provided by Safe Deposits Scotland.
8. The Respondent and her husband are registered landlords.
9. The Respondent was seriously ill at the time the tenancy commenced and she was undergoing chemotherapy with significant side effects.

### **Reasons for Decision**

The Respondent did not comply with the requirements of Regulations 3 and 42 of the Regulations. This is not disputed. The deposit remained unprotected throughout the duration of the tenancy. This is a serious matter. The Respondent lets several properties and is aware of the necessity of having to lodge the deposit.

The Tribunal accepted that the Respondent had forgotten to lodge the deposit and took into account the fact that the deposit was lodged as soon as the Respondent became aware of her oversight, thus ensuring that the Applicants had the benefit of the adjudication process in relation to the deposit.

The Tribunal also took into account the mitigating circumstances of the Respondent's serious illness and the side-effects of her treatment, accepting this as a reason for the oversight.

The Tribunal must order a sanction for the breach of Regulation 3. Taking all the circumstances into account, the Tribunal considered that the amount of the sanction be set at one times the deposit – the sum of £500.

### **Decision**

The Tribunal makes an order for payment of the sum of FIVE HUNDRED POUNDS (£500) STERLING by the Respondent to the Applicants.

### **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.

Ms Helen Forbes

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**Legal Member/Chair**

**20<sup>th</sup> March 2019**  
**Date**