



**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/18/2188**

**Re: Property at 139 Wedderburn Crescent, Dunfermline, Fife, KY11 4RY (“the Property”)**

**Parties:**

**Miss Joanna Pawlowska, Mr Piotr Michalowski, 121 Lady Campbells Court, Dunfermline, Fife, KY12 0LE (“the Applicants”)**

**Miss Magdalena Mikiciuk, Mr Jakub Zahorowicz, 158 Wedderburn Street, Dunfermline, Fife, KY11 4SB (“the Respondents”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants are entitled to an order for payment by the Respondents in the sum of £400.00.**

**Background**

1. By application dated 17 August 2018 the Applicants complained to the Tribunal that the Respondents were in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 in that the Applicants deposit had been paid to the Respondents on 10<sup>th</sup> June 2018 but not lodged in an approved scheme until 27<sup>th</sup> July 2018. The Applicants submitted a copy of their tenancy agreement, Notice to quit, emails from Safe Deposits Scotland, Deposit Certificate and letter to the Respondent.
2. By Notice of Acceptance dated 5 September 2018 a legal member with delegated powers accepted the application and referred it to a Tribunal.

3. A case management Discussion was fixed to take place on 30 October at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy. Intimation of the hearing was given to both parties.

### **Case Management Discussion**

4. The Case Management Discussion was attended by the Applicants and by the First Respondent Miss Joanna Pawlowska. A Polish interpreter was also present.
5. It was a matter of agreement between the parties that the Applicants paid their deposit of £800.00 to the Respondents on 10<sup>th</sup> June 2018. It was also accepted that the deposit was not sent to Safe Deposits Scotland until 25<sup>th</sup> July 2018 and acknowledged to have been received by Safe Deposits on 27<sup>th</sup> July 2018.
6. Miss Pawlowska said that the delay in lodging the deposit had come about because she was new to being a landlord and at that time had applied for but had not obtained a Landlord Registration Number. In reply to a question from the Tribunal Miss Pawlowska accepted that it was possible to lodge the deposit with Safe Deposit Scotland whilst her Landlord Registration was pending.
7. Miss Pawlowska thought that she had been about two weeks late in lodging the deposit.
8. Miss Pawlowska said that she understood that in terms of Regulation 10 of the 2011 Regulations if the Tribunal found there had been a breach of Regulation 3 the Tribunal must make an award in favour of the Respondents of up to three times the amount of the deposit. Miss Pawlowska thought that account should be taken of the fact that the Applicants had been paid back £600.00 of their deposit at the end of their tenancy.
9. The Applicants explained that they had made a separate application to the Tribunal in connection with a claim for the wrongful termination of their tenancy by the Respondents and this was still pending. They confirmed they had received back from Safe Deposits £600.00 of their deposit. They thought that an appropriate sanction would be for the Tribunal to award them the maximum amount of three times the deposit to take account of the fact that they had been evicted from the property with only seven days notice and had to find another months rent and a deposit in order to move into a new property. There had also been no communication from the Respondents despite trying to contact them. Mr Michalowski said that it was also relevant that he had been off sick ill prior to the commencement of the tenancy and had still been recovering when he had been forced to move out.

## **Findings in Fact**

10. The parties entered in to a Private Residential Tenancy on 10 June 2018. The Applicants paid the Respondents a deposit of £800.00 on that day.
11. The Respondents did not pay the deposit into an approved scheme until 25 July 2018.
12. Safe Deposits Scotland acknowledged receipt of the deposit on 27 July 2018.
13. In order to comply with Regulation 3 of the 2011 Regulations the deposit had to be lodged within 30 working days of 10 July.
14. The deposit ought to have been lodged by 20 July.2018.
15. The tenancy ended on 20 July 2018.
16. The Applicants application is timeous in terms of Regulation 9 of the 2011 Regulations.

## **Reasons for Decision**

17. The Respondents accepted that the Deposit was not lodged on time. Although Miss Pawlowska thought she had been about 14 days late the 2011 Regulation calculate the time for lodging the deposit in working days. The Tribunal was of the view that there were five working days each week and therefor the deposit would require to have been lodged within a six week period from 10 June. The last day for lodging the deposit was therefore 20 July.
18. The Tribunal is obliged to consider all the relevant facts and circumstances in exercising its discretion in arriving at an appropriate amount to award the Applicants as a result of a breach of Regulation 3.
19. The Tribunal did not consider it was relevant to take into account the fact that the Applicants had received back £600.00 of their deposit. Nor was it relevant that the Applicants may have been wrongfully evicted from their home and put to additional expense as a result. That would be for the Applicants to argue before another Tribunal if they wished to pursue such a claim.
20. The Tribunal considered that the relevant issues here were that the deposit although lodged late was only by a period of seven days. This was the Respondents first time at becoming landlords and they were unclear as to the provisions for lodging the deposit prior to obtaining a landlord registration number.

21. It therefore seemed to the Tribunal that whilst it was appropriate to make an award as there was a breach of Regulation 3 it should be at the lower end of the scale and that in all the circumstances an award of one half of the deposit namely £400.00 was appropriate.

### **Decision**

22. For the foregoing reasons the Tribunal orders the Respondents in respect of their breach of Regulation 3 of the 2011 Regulations to make payment to the Applicants the sum of £400.00 in terms of Regulation 10(a) of the 2011 Regulations.

### **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.**

G Harding

  
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Legal Member/Chair

30 October 2018  
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Date