



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/CV/18/2699**

**Re: Property at 16 Mitchell Street, Crieff, PH7 3AG (“the Property”)**

**Parties:**

**Mr Grzegorz Przybyslawski, 30 Kestrel Way, Perth, PH1 5FT (“the Applicant”)**

**Mr James Schiavone, 30 Auchavan Gardens, Glenrothes, Fife, KY7 4TU (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £460.00.**

**Background**

1. By application dated 24 September 2018 the Applicant applied to the Tribunal for an order for payment in respect of (i) the return of his deposit of £410.00 in respect of the tenancy of the property; (ii) compensation of £105.00 for occupying the property without any gas supply for one week and (iii) compensation for waiting five months for the return of his deposit. The applicant provided the Tribunal with a copy of the Tenancy Agreement, notice by Landlord of Proceedings for Possession, Gas safety Warnings and copy correspondence between the parties.
2. By Notice of Acceptance dated 12 November 2018 a legal member of the Tribunal with delegated powers accepted the application and fixed a Case Management Discussion which was held on 19 December 2018.

3. Following the Case Management Discussion a hearing was assigned to take place at Perth on 27 February 2019.
4. Prior to the hearing which had been fixed to take account of the fact that the Respondent had advised the Tribunal that he would be out of the country until 22 February 2019 the Respondent intimated that he would be unable to attend the hearing as he was still out of the country. The Respondent gave no indication as to when he intended to return. In the circumstances the Tribunal determined to proceed with the hearing in the Respondent's absence.
5. The Respondent sent an email to the Tribunal on 19 February 2019 with written representations. These were sent to the Applicant in advance of the hearing.

#### The Hearing

6. The hearing was attended by the Applicant and his partner Silvia Portal who was a witness. There was no appearance by or representation on behalf of the Respondent.
7. At the commencement of the hearing the Tribunal noted that Ms Portal had been a joint tenant of the property along with the Applicant and could therefore have been a party to the Application. Ms Portal however indicated that she was happy for the application to proceed in the sole name of the Applicant.
8. The applicant confirmed he and Ms Portal entered into a Short Assured tenancy of the property commencing on 1 July 2015. Ms Portal advised that the property consisted of a one bedroom flat that was only occupied by herself and the Applicant. The tenancy ended on 31 March 2018 after they moved out due to a gas leak and the gas supply having been cut off.
9. The Applicant confirmed the monthly rent had been £410.00 and that a deposit of £410.00 had been paid at the commencement of the tenancy. There had been no rent arrears.
10. According to Ms Portal throughout the tenancy there had been some issues over delays in having remedial works carried out at the property but the Respondent did respond to queries generally within a few days.
11. Ms Portal said that they were advised in January 2018 that the Respondent wished to sell the property and were given notice. Then on 24 March 2018 she smelled gas and contacted the Respondent who told her to contact Scottish gas. She did so and they told her to turn off the gas at the mains. She was unable to do so as the handle for this was missing. An engineer from Scottish gas attended at the property and told her that the fitting was incorrect and that the wall of the property would be full of gas. The gas supply was turned off.

12. According to the Applicant the Respondent offered to waive rent for one month if they moved out into bed and breakfast accommodation. However because of the cost involved the Applicant and Ms Portal opted to remain in the property for one week whilst they tried to obtain emergency accommodation from Perth & Kinross Council. During that time they had no heating and no means of cooking food. They had to rely on take-away meals which were expensive.
13. The applicant said that during his occupancy of the property there had been no annual gas safety checks carried out and the property had no carbon monoxide detectors.
14. Following the end of the tenancy Ms Portal said she contacted the respondent by texts to request the return of the deposit. The Respondent had replied saying he was in Inverness and would deal with it on his return. This was on 11 May 2018.
15. The applicant pointed out to the Tribunal that Clause 6 of the Tenancy Agreement provided for the deposit to be repaid within 28 days of the end of the tenancy or as soon as possible.
16. The applicant referred the Tribunal to his letter to the Respondent dated 19 May 2019 requesting the return of the deposit. Ms Portal said she received a reply from the Respondent on 29 May saying until the property was inspected nothing could be done. She said there was a further text on 26 June saying that the Respondent was working away until 17 July and would deal with the deposit on his return.
17. The applicant said that subsequently he had made an application to the Tribunal under the Tenancy Deposit Scheme Regulations but his application had been out of time and that had led to the current application.
18. In response to a question from the Tribunal both the Applicant and Ms Portal denied jumping off the stairs on to the floor as had been suggested by the Respondent. Ms Portal explained that she had an injury to her foot and ankle and could not jump. The applicant said that he had surgery some time ago and that he too would not jump down stairs. There had been no children at the property. In any event he was of the view that if the gas pipe was under the floor it should be located in such a way that it would be safe.
19. With regards to the macerator in the bathroom not working the Applicant said that when he and Ms Portal left the property the toilet was working normally and they were not responsible for any damage. Similarly the sliding door to the bathroom had been opening and closing normally.
20. The applicant felt he was entitled to the equivalent of one weeks rent as compensation for living in the property for a week without any means of heating the property or cooking food. The sum of £105 that was sought was reasonable.

21. With regards to the claim for compensation for the delay in refunding the deposit the Applicant saw this as being linked to the fact that the Respondent had failed to lodge the deposit in an approved scheme. If he had then the deposit would have been returned soon after the tenancy ended and therefore the Tribunal should award compensation for this.

#### Findings in Fact

22. The parties entered into a Short Assured Tenancy that commenced on 1 July 2015 and ended on 31 March 2018.

23. The monthly rent was £410.00 and there was a deposit paid to the Respondent at the commencement of the tenancy in the sum of £410.00.

24. The deposit was not lodged in an approved Tenancy Deposit Scheme.

25. The tenancy was terminated as a result of there being a gas leak at the property and the Applicant and Ms Portal having to find other accommodation.

26. Following the end of the tenancy the Applicant and Ms Portal requested the return of the deposit from the Respondent.

27. The Deposit or any balance should have been returned within 28 days or as soon as possible.

28. The Respondent has failed over 11 months to inspect the property and deal with the deposit properly.

29. The Respondent has failed to produce any evidence to support any retention of the deposit.

30. The applicant suffered inconvenience and discomfort living in the property from 24 March 2018 until 31 March 2018 without any gas for heating or cooking.

#### Reasons for Decision

31. The Applicant and Ms Portal were convincing witnesses and the Tribunal found them to be credible and reliable. Despite being given every opportunity to attend the hearing the Respondent chose instead to submit by way of written representation an email that was vague and totally lacking in detail. He indicated that he had obtained a report but did not take steps to lodge this with the Tribunal.

32. The hearing had specifically been fixed for a date that would accommodate the Respondent's work. He had some 11 months to carry out an inspection of the property following the termination of the tenancy. It appeared to the tribunal that the Respondent was not prepared to treat the matter with the

seriousness that was required and had adopted a cavalier attitude to both the Applicant and the Tribunal.

33. The Tribunal was satisfied that the gas leak could not be attributed directly to the applicant or Ms Portal nor could it be shown that if there was a problem with a broken joist or the macerator that this had been caused by them. The Tribunal therefore concluded that the whole deposit should be returned to the Applicant.
34. The Tribunal was satisfied that the Applicant had suffered some discomfort and inconvenience living in the property without any means of heating or cooking and that an appropriate amount of compensation would be £50.00.
35. The tribunal did not think there was any ground for awarding the Applicant compensation for the delay in the Respondent dealing with the return of the deposit. Although the tenancy agreement provided for the deposit being returned in 28 days the clause did not introduce any sanction for a delay and of course the Applicant would have had a remedy against the respondent for failing to lodge the deposit in an approved scheme if an application to the Tribunal had been made timeously. The tribunal therefore dismissed this aspect of the claim.

#### Decision

36. The Tribunal finds the Applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £460.00.

#### 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

27 February 2019  
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Date