

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 9 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011 (Regulations)**

Chamber Ref: FTS/HPC/PR/19/0650

**Re: Property at 20 Kinclaven Gardens, Finglassie, Glenrothes, KY7 4UR ("the
Property")**

Parties:

**Miss Demi Leung, c/o 14 Kinnordy Place, Glenrothes, KY7 4UP ("the
Applicant")**

**S.F. Property Company Limited, Beaufield, Balado, Kinross, KY13 0NH ("the
Respondent")**

Tribunal Members:

Alan Strain (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the Respondent be ordered to pay the Applicant the
sum of in respect of his breach of the Regulations.**

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of the
Tribunal Procedure Rules in respect of an alleged failure to protect a tenancy deposit
in respect of the Property.

The matter had called previously for a Case Management Discussion (**CMD**) on 27
June 2019 and the issues for determination had been identified as follows:

1. Was the Applicant's lease for the Property with SF Properties;
2. Was the landlord during the period of Miss Leung's tenancy Mr Farish as
Managing Director of SF Properties or was the landlord another person;
3. Who had the obligation in terms of the Regulations to lodge any deposit held
within 30 working days of the start of the tenancy with one of the approved

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schemes and to give information to the tenant as to the whereabouts of the deposit.

The Tribunal had regard to the following documentation during the course of the Hearing:

1. Application received 27 February 2019;
2. Letter of 1 August 2018 from Mr Farish to Npower;
3. Letter of 30 July 2018 from Mr Farish to Applicant;
4. Deposit Receipt dated 30 July 2018 signed by Miss Phee;
5. Applicant's bank statements 1 September 2018 to 29 January 2019;
6. Correspondence from 3 Deposit Schemes;
7. Landlord Registration;
8. Whats App messages from 25/09/18 to 24/01/19 between the Parties;
9. SMS messages between the Parties from 01/11/18 to 07/02/19;
10. Confirmation from Tenancy Deposit Schemes in Scotland.

Hearing

The Applicant attended in person and represented herself. The Respondent Mr Farish dialled in and participated by conference call. The Respondent was not represented.

At the outset of the proceedings the Tribunal had the Parties confirm the issues – which they did as per the CMD Note.

The Applicant gave evidence on her own behalf. Her evidence was to the effect that she had entered in to the tenancy with Mr Farish. Miss Phee had simply been assisting Mr Farish whilst he was absent abroad. She had viewed the Property with Mr Farish and had communicated directly with him. She paid the deposit of £450 in cash to Miss Phee for Mr Farish. She referred to the deposit receipt and correspondence from Mr Farish to Npower and providing bank account details for rental payments.

She entered in to a lease which stated Mr Farish was the landlord but had not retained copies of this. She referred to bank statements showing the monthly rent payments in to Mr Farish's Company's bank account. She also spoke to various texts, Whats App messages and correspondence with Mr Farish in which he confirmed he had the deposit and acted as landlord.

The Applicant spoke to the landlord registration in Mr Farish's name.

The Applicant was cross examined by Mr Farish.

Mr Farish then gave evidence on his own behalf.

Mr Farish's position was that he was not the landlord and that his friend and former employee Miss Phee had let the Property. She was the landlord. He had not received the deposit or the rent. He had simply done a favour for a friend.

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He maintained that he did not know the Applicant but accepted he had shown her the flat.

He was referred to the letter of 1 August 2018 to Npower and 30 July 2018 to the Applicant providing bank details and describing himself as "Director/Landlord". His evidence was that these letters and his signature were templates stored on his office PC. Ms Phee had authority to issue such letters on his behalf.

He maintained that neither he nor his company had received the deposit. He accepted that the rent payments had been made in to his Company Account.

He also accepted that he was the registered landlord for the Property and 3 others which he had let since 2002. His rental properties were managed by Fife Lettings. The other Properties had the deposits protected.

He initially gave evidence that he had not had any SMS correspondence with the Applicant. When referred to the transcripts of the SMS conversations produced by the Applicant he accepted that he must have corresponded with her as stated.

The Tribunal referred him to various of the SMS messages which referred to the deposit and which appeared to suggest he was the landlord. One such message made reference to the leases and sending copies; another to his legal team and the termination of the lease.

He still maintained the position that he was not the landlord, that the landlord was Miss Phee and he had not received the deposit.

He denied that he had communicated with the Applicant by Whats App.

The Applicant was afforded the opportunity to cross examine Mr Farish – which she did.

The Tribunal did not accept Mr Farish's evidence. He did not present as a credible or reliable witness. His responses to questions from the Tribunal were evasive. He contradicted himself on a number of occasions such as saying he did not have SMS correspondence with the Applicant then conceding that he had. The admitted content of the SMS messages, the letters to NPower and the Applicant all supported the conclusion that he had been paid the deposit and was acting as landlord.

For Mr Farish to suggest that he was not the landlord and had not received the deposit flew in the face of the documentary evidence and his concessions regarding receipt of the rent.

Even if Mr Farish had not issued the letters of 1 August 2018 to Npower and 31 July 2018 to the Applicant he accepted that Miss Phee had authority to issue such letters on his behalf.

The Tribunal formed the view that Mr Farish's evidence was contrived and did not accept it.

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The Tribunal accepted and preferred the evidence of the Applicant and the documentation that she had produced.

Having considered the documentary and oral evidence the Tribunal made the following findings in fact:

1. The Applicant and Mr Farish entered in to a Lease of the Property commencing 31 July 2018 and ending 28 February 2019;
2. The monthly rent was £450;
3. The Applicant paid Mr Farish a deposit of £450 by cash on 30 July 2018;
4. The deposit was used to cover the last month's rent on the Property;
5. Mr Farish communicated with the Applicant by SMS as detailed in the Production containing SMS messages between the Parties from 01/11/18 to 07/02/19;
6. Mr Farish was the registered landlord in respect of the Property at the time it was let to the Applicant;
7. Letter of 1 August 2018 to Npower was issued on Mr Farish's authority;
8. Letter of 31 July 2018 to the Applicant with bank details was issued with Mr Farish's authority;
9. Mr Farish communicated with the Applicant through Whats App as detailed in the Production showing messages from 25/09/18 to 24/01/19 between the Parties;
10. Mr Farish's lawyers had been involved in the termination of the Lease;
11. Mr Farish was an experienced landlord.

The Tribunal considered and adopted the approach of the Court in the case of ***Russell-Smith and Others v Uchegbu [2016] SC EDIN 64***. The Tribunal assessed the appropriate level of sanction in a fair, proportionate and just way having regard to the circumstances of the case, the purpose of the Regulations and the gravity of the breach.

In this case the Tribunal took in to account:

1. the length of time the deposit had been unprotected. This was relatively short given the duration of the lease was only for about 7 months;
2. the deposit had been used for payment of the last month's rent;
3. the Respondent was an experienced and registered landlord;
4. the Respondent did not accept responsibility for the deposit or its protection;
5. the Respondent sought to actively evade responsibility for the deposit and its protection.

Every case will depend on its own specific facts and in the end of the day the Tribunal must exercise judicial discretion. Having done so the Tribunal determined that the level of sanction in the particular circumstances of this case should be £1,350. This was the maximum that the Tribunal could award.

The Tribunal were extremely critical of the Respondent, his evasive responses and far from credible evidence. The content of some of the SMS correspondence from the Respondent was inappropriate.

Right of Appeal

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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.

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Legal Member/Chair

8 August 2019

Date