



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 120-122 of the Housing (Scotland) Act 2006, Section 16 of the Housing (Scotland) Act 2014 and Regulations 3 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/0797**

**Re: Property at 4 Hawthorn Bank, Duns, Scottish Borders, TD11 3HH (“the Property”)**

**Parties:**

**Miss Petra Harsanyi, 18 Springfield Avenue, Duns, Scottish Borders, TD11 3BF (“the Applicant”)**

**Mr David Lawson, trading as D&F Lawson (Lawson Lettings), 41 Bridgend, Duns, Scottish Borders, TD11 3ES (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a hearing and made an Order for Payment by the Respondent to the Applicant of £750.**

**Background**

By application, received by the Tribunal on 12 March 2019, the Applicant sought an Order for Payment in respect of the Respondent’s failure to lodge a tenancy deposit with an approved tenancy deposit scheme, as required by Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 1 April 2018 at a monthly rent of £500 and providing for payment of a deposit of £500, evidence by way of a bank statement showing a payment of £1,000 to Denis Lawson Ltd on 29 March 2019, copy e-mails dated 8 March 2019 from SafeDeposits Scotland and Letting Protection Services Scotland and dated 11 March 2019 from MyDeposits Scotland, in which all three organisations confirmed that the deposit was not lodged with them. The Applicant also provided evidence that the tenancy had ended on 14 December 2018. The Applicant stated in the application that the Respondent had not refunded any part of the deposit at the end of the tenancy and she was seeking refund of the full

deposit and an Order for Payment of three times the deposit, with interest at 8% from 28 April 2018 to the date of payment.

On 23 April 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 15 May 2019. The Respondent, Mr David Lawson, did not make any written representations, but requested a postponement, as he was to be on holiday on the date scheduled for the Case Management Discussion. That request was granted by the Tribunal.

### **Case Management Discussion**

A Case management Discussion took place at Glasgow Tribunals Centre, 20 York Street, Glasgow on the morning of 13 June 2019. The Applicant was present and Mr David Lawson participated by way of a conference call facility.

Mr Lawson told the Tribunal that the failure to lodge the deposit had been a complete oversight. The Property was one of only two owned and let out by the Respondent and this had been a genuine mistake. He commented on the fact that the deposit had not been returned to the Applicant at the end of the tenancy because of damage caused by the Applicant. In particular, there had been damage to the rear door, the cost or repair of which would considerably exceed the amount of the deposit.

The Applicant told the Tribunal that she had left the Property in a better condition than it had been in at the start of the tenancy. She had painted all the rooms. The damage to the back door had resulted from its having to be forced open and shut due to swelling caused by rainwater and, had the deposit been lodged with an approved scheme, she would have disputed the right of the Respondent to retain the deposit to meet the cost of repairing the door.

The Respondent added that the painting carried out by the Applicant had not been to a professional standard and had not been authorised.

The Applicant asked the Tribunal to make the maximum award, as she had been caused financial hardship by the failure to recover the deposit at the end of the tenancy.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations states that the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a hearing.

Under Regulation 3 of the 2011 Regulations, a landlord must, within 30 working days of the beginning of the tenancy, pay the deposit to the scheme administrator of an approved scheme and provide the tenant with certain information required under Regulation 42.

Regulation 10 of the 2011 Regulations provides that, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal was satisfied on the basis of the evidence before it that the Respondent had failed to comply with the duty imposed by Regulation 3 of the 2011 Regulations to lodge the deposit of £500 with an approved tenancy deposit scheme. Accordingly, the Tribunal was bound to make an Order for Payment.

The Applicant had sought a full refund of the deposit plus a payment of three times the deposit, but the Tribunal cannot make an Order for Payment exceeding three times the amount of the deposit, so the maximum amount that could be included in the Order would be £1,500 in total.

The Tribunal noted the Parties' comments about damage to the back door of the Property. It is not the function of the Tribunal to determine what amount, if any, of a deposit should be refunded to an outgoing tenant, but the view of the Tribunal was that there appeared to be no suggestion that the damage to the door was other than as a result of its having become swollen and having to be forced open and shut. That would have been the responsibility of the Respondent to rectify as part of the obligation to ensure the Property continued to meet the repairing standard. It would have been a matter for the Parties to discuss with the scheme administrator had the deposit been lodged with an approved tenancy deposit scheme, but the Respondent's failure to comply with the duty to lodge the deposit had denied both Parties the opportunity to argue the matter in the correct forum, namely with the tenancy deposit scheme administrator.

The Tribunal noted the Applicant's statement that the failure to return the deposit had caused her financial hardship, but could not speculate on the question of whether all or any of the deposit would have been refunded had the matter been determined by an approved tenancy deposit scheme administrator, so was not able to take this matter into account in arriving at its determination.

The Tribunal was of the view that the failure of the Respondent did not merit an Order for Payment as high as three times the amount of the deposit. The Respondent had stated that it had been a complete oversight and, whilst that did not excuse the failure to secure the deposit, the Tribunal accepted that it had been an administrative error rather than a wilful failure to comply. Nevertheless, the Applicant's money had been at risk throughout the eight month period of the tenancy and the amount of the Order must reflect that fact.

Having carefully considered all the evidence before it, the Tribunal decided that £750 was an appropriate amount to order the Respondent to pay to the Applicant. The Tribunal was not prepared to require the Respondent to pay interest on that sum.

### **Decision**

The Tribunal determined that the application should be granted without a hearing and made an Order for Payment by the Respondent to the Applicant of £750.

### **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.**

Mr George Clark

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Legal Member/Chair

13 June 2019

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Date