



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulation 3 of the Tenancy Deposit  
Schemes ( Scotland ) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/2936**

**Re: Property at 50/5 Manor Place, Edinburgh, EH3 7EH (“the Property”)**

**Parties:**

**Mr Liam Millard, Cambusbeg Farm, Cambusmore, Callendar, FK17 8LJ (“the Applicant”)**

**Mr Matthew Martin, 50/5 Manor Place, Edinburgh, EH3 7EH (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

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

**Background**

This is an application in terms of Rule 103 of the Tribunal rules received on 18<sup>th</sup> September 2019. The Applicant seeks an order where the landlord has failed to comply with Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 in respect of duties in relation to a tenancy deposit.

The Application was accepted by the Tribunal on 23<sup>rd</sup> October 2019. By letter of 13<sup>th</sup> November the Tribunal advised parties of the date, time and venue of the Case Management Discussion and invited parties to make written representations by 4<sup>th</sup> December 2019.

## **Case Management Discussion**

A Case Management Discussion took place at Riverside House, 2<sup>nd</sup> Floor, 502 Gorgie Road, Edinburgh, EH11 3AF on 13<sup>th</sup> December 2019. The Applicant was present and represented himself. The Respondent did not attend the Case Management Discussion. The Application and papers had been served on the Respondent at the Property at 50/5 Manor Place, Edinburgh by Sheriff Officer on 14<sup>th</sup> November 2019.

The Applicant Mr Millard requested that the Tribunal proceed in absence of the Respondent and in terms of Rule 29 of the Tribunal Rules of Procedure this request was granted as the application and papers had clearly been served on the Respondent.

The Tribunal in dealing with the Application had before it the following documents:-

The Application with supporting documents setting out the history of the matter according to the Applicant.

Screenshots of text messages and bank account entries

E mails

The Applicant's position was that he and another, a Michael Coles had initially rented the property, a two-bedroom flat through Airbnb from the Respondent. After the two week let through Airbnb the Applicant and Mr Coles agreed with the Respondent directly that they would lease the property at 50/5 Manor Place, Edinburgh with effect from a date around 19<sup>th</sup> October 2018 to a date initially agreed to be sometime in March 2019. The rent agreed was £1170 per month in total to be paid by each party at the rate of £585 per month and this included all bills except internet or phone. A deposit of £1170 was paid on November 1<sup>st</sup> 2018. This was paid by the Applicant on behalf of both he and Mr Coles and the Tribunal had sight of screen shots of what appeared to be copy bank statements from the Applicant which confirmed this. The Applicant and Mr Coles therefore paid £585 each to the Respondent by way of Deposit.

The Tribunal had sight of evidence of screenshot text messages lodged by the Applicant suggesting that a deposit had been agreed with the Respondent as there was a text message dated 20 October 2018 which appeared to be from the Respondent seeking confirmation that the rent and deposit had been paid. There was a further text from the Respondent on 31<sup>st</sup> October 2018 expressing concern about the delay in paying the deposit and there was a text from the Applicant on 1 November 2018 confirming the payment of the deposit in two payments and which was acknowledged by the Respondent. The agreement between parties was on a month to month basis but both the Applicant and Mr Coles asked to extend the agreement with the Respondent beyond March 2019 and this was agreed.

Both the Applicant and Mr Coles occupied the flat as their only residence when they had moved to Edinburgh to work on a long-term basis. The Applicant indicated that the Respondent knew they were both working and the Tribunal had sight of communications between parties over late payment of rent where it was clear that the Respondent knew where the Applicant worked and had been offered a discounted meal there in some way to make up for the late payment.

Sometime in May 2019 Mr Coles left the property and a new tenant moved in, a Mr Avinash Yadov. He paid a deposit of £585 and the Applicant refunded Mr Coles his share of the Deposit.

On 29<sup>th</sup> May 2019 the Applicant gave notice that he would be leaving the property with effect from 29<sup>th</sup> June 2019. There was communication between the parties to the effect that the last period when rent was due would be covered by a deduction from the deposit of £195 to cover the 10 days from 19<sup>th</sup> to 29<sup>th</sup> June 2019.

At no stage was a lease agreement provided or signed by the parties. Agreement between the parties was effected by email, text or verbally. The Applicant indicated he had sent a draft agreement to the Respondent for signing when he had entered into the agreement to lease the property with Mr Coles but had not ever received it back. He produced a draft agreement he had emailed to the Respondent on 3<sup>rd</sup> May 2019 to formalise the arrangements when Mr Yadav moved in but he again received no reply to this and it was not signed.

The Deposit paid by the Applicant was not returned( although he refunded Mr Coles himself when Mr Yadov move din ) and at no stage did he or either of the two others who lived there during the period between October 2018 and June 2019 receive any information to suggest that the Deposit had been paid into any of the approved tenancy deposit schemes in Scotland nor did they receive any of the information required in terms of Regulation 42 of the Tenancy Deposit Schemes (Scotland ) Regulations 2011.

The Tribunal made the following findings in fact

The Respondent entered into an agreement to lease the property to the Applicant and a Mr Coles around 19<sup>th</sup> October 2018.This agreement was constituted by text, email and verbally.

The Applicant was a tenant of the Respondent at the property until the end of June 2019.

This was a relevant tenancy for the purpose of the Regulations.

The Applicant and Mr Coles then Mr Yadar in turn paid a total of £1170 by way of Deposit.

This Deposit was not protected in one of the Deposit Schemes nor were any of the duties in Regulation 3 complied with.

The Respondent is in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland ) Regulations 2011.

### **Reasons for Decision**

The Tribunal was satisfied that this was relevant tenancy for the purposes of the Regulations and not a holiday home which would be exempt from the requirement to lodge the Deposit within one of the schemes. Whilst it was clear that initially the agreement was for a two week stay through Airbnb, the evidence before the Tribunal suggested that the Respondent had subsequently entered into a long term let directly with the Applicant and two successive tenants who occupied the property

on a long term basis as their only residence whilst they worked in Edinburgh. The agreement between parties, although not in writing amounted in the view of the Tribunal to a Private Residential Tenancy in terms of the 2016 Act and was not a Holiday Let as defined within the Act.

The Tribunal was satisfied on the information before it that a Hearing was not required and that the matter could be determined at the case management discussion. The Tribunal was satisfied that the 2011 Regulations had been engaged here and sanction on the Respondent was appropriate. The Tribunal had regard to the decision of Sheriff Welsh in *Jenson v Fappiano* from 2015. It was clear that all of the circumstances should be considered when deciding on sanction. The Tribunal had no information as to why the breach had occurred as the Respondent had not entered into the proceedings nor made representations. It was clear that the total deposit paid should be taken into account and also the fact that it had been unprotected for a period of around 8 months. The Tribunal did not have any information before it as to whether the Respondent leased other properties or if this was the first time he had been in this situation. It was clear from the Applicant that the arrangements around the tenancy were somewhat informal to say the least and the breach appeared to the Tribunal to be part of that overall approach to matters. Taking all the matters before the Tribunal into account the appropriate sanction appeared to be in the sum of £2000.

## **Decision**

The Tribunal having determined that the Respondent is in breach of Regulation 3 of the Tenancy Deposit Schemes ( Scotland ) Regulations 2011, imposes a sanction of £2000 to be paid to the Applicant.

## 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.

Valerie Bremner

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**Legal Member/Chair**

13 December 2019

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**Date**