

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/PR/18/3207

**Re: Property at 68 Chesser Loan, Edinburgh, EH14 1UG
 (“the Property”)**

The Parties:

**Ms Karin Larmont, 1/1 Westburn Middlefield, Edinburgh, EH14 2TJ
 (“the Applicant”)**

**Community Help & Advice Initiative, 5th Floor, Riverside House, 502 Gorgie Road, Edinburgh, EH11 3AF
 (“the Applicant’s Representative”)**

**Mr Jamie Lawson, present whereabouts unknown, previously residing at 11/7 Dalmeny Street, Edinburgh, EH6 8PF and 68 Chesser Loan, Edinburgh, EH14 1UG
 (“the Respondent”)**

Tribunal Member:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that an order must be made in terms of Regulation 10 of the 2011 Regulations requiring the Respondent to pay to the Applicant the sum of ONE THOUSAND FIVE HUNDRED AND SEVENTY FIVE POUNDS (£1575.00) STERLING

1. Procedural background

- 1.1. On 28 November 2018, the Applicant's Representative made an application ("the Application") to the tribunal.
- 1.2. The following documents were attached to the Application:
 - 1.2.1. A copy of the Short Assured Tenancy Agreement dated 29 August 2014 between the Applicant and the Respondent in respect of a tenancy of the Property;
 - 1.2.2. Section 33 Notice dated 2 May 2018;
 - 1.2.3. Copy email correspondence between the Applicant and the Respondent dated 21 October 2018; and
 - 1.2.4. Signed authorisation from the Applicant for the Applicant's Representative to act on her behalf.
- 1.3. On 14 December 2018, the Application was accepted for determination by the tribunal.
- 1.4. By letter of 8 January 2019, the tribunal notified the parties that the Application had been referred to the tribunal and that a Case Management Discussion had been fixed for 25 January 2019 at 1000h at George House, Edinburgh. Parties were advised that the tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application. Parties were advised that if they do not attend the Case Management Discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations he wished by 22 January 2019.
- 1.5. Service on the Respondent care of his agents Beveridge and Kellas, Solicitors, of the Application paperwork and notification of the CMD was unsuccessful.
- 1.6. On 9 January 2019 Mr Uttley, Partner of Beveridge and Kellas Solicitors, confirmed that he was not instructed by the Respondent in connection with these tribunal proceedings and had no instructions to accept service on his behalf. He indicated that he was instructed by the Respondent in separate proceedings at Edinburgh Sheriff Court in relation to repossession of the Property and provided details thereof. Mr Uttley also stated that his understanding was that as at 9 January 2019, the Respondent was residing at the Property although he noted that the tribunal papers stated a different address.
- 1.7. Service on the Respondent at the Respondent's address in the Application paperwork and notification of the CMD was attempted on 10 January 2019 but was unsuccessful.

- 1.8. The CMD fixed for 25 January 2019 was cancelled.
- 1.9. On 21 January 2019, the Applicant's Representative sent an email to the tribunal's administration stating that the address on the Application was that on the Landlord register and the address of his solicitor was that of the solicitors who had issued the Notice to Quit to the application in May 2018. The Applicant's Representative stated that the Property was for sale and that the Agents acting were McEwan Fraser Legal, Solicitors, Edinburgh.
- 1.10. A further email was sent by the Applicant's Representative on 21 January 2019 stating that the Applicant's understanding was that the Respondent was receiving mail at the Property and enquiring whether this was sufficient for service.
- 1.11. By letter of 6 February 2019, the tribunal notified the parties that a Case Management Discussion had been fixed for 1 March 2019 at 1000h at George House, Edinburgh. Parties were advised that the tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application. Parties were advised that if they do not attend the Case Management Discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations he wished by 23 February 2019.
- 1.12. Service was attempted on the Respondent at the Property of the Application paperwork and notification of the CMD on 6 February 2019. Service was unsuccessful.
- 1.13. On 13 February 2019 the CMD scheduled for 1 March 2019 was cancelled and the Applicant was asked for another address at which to attempt service on the Respondent.
- 1.14. On 13 February 2019 the Applicant's Representative sent a letter to the tribunal in relation to the addresses previously provided for the Respondent. The Applicant's Representative stated that given the issues with service on the Respondent it was difficult to avoid the inference that the Respondent was seeking to avoid being held to account for his actions by refusing communication with the tribunal. Reference was made to the Applicant's means and inability to hire tracing agents and the overriding objective of the tribunal in Rule 2. The Applicant's Representative submitted that the Applicant had satisfied the requirements of Rule 103 by providing sufficient information. The Applicant's Representative also submitted that the Tribunal could, on its own initiative, require one or both of the solicitors instructed by the Respondent to provide an address or convey papers to their client.
- 1.15. On 26 February 2019 the tribunal responded to the Applicant's representative stating that Regulation 6A of the tribunal's Rules applied from 20 February 2019, which allowed service on the Respondent by advertisement on the tribunal's website. The Applicant's Representative was asked to confirm

whether they wished the tribunal to proceed with service by advertisement. On 20 March 2019 the tribunal directed the Applicant's Representative to respond.

- 1.16. On 26 March 2019, the Applicant's Representative confirmed that they wished to proceed with service by advertisement.
- 1.17. By letter of 17 April 2019, the tribunal notified parties that a CMD had been fixed for 4 June 2019 at 1130h at George House, 126 George Street, Edinburgh. Parties were advised that the tribunal may do anything at a Case Management Discussion which is may do at a hearing, including making a decision on the application. Parties were advised that if they do not attend the Case Management Discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.
- 1.18. The tribunal served the Respondent by Advertisement of the case management discussion notification letter dated 17 April 2019 on the website of the tribunal between 26 April 2019 and 4 June 2019.
- 1.19. On 26 April 2019, the tribunal issued Directions to the Applicant and Applicant's Representative.
- 1.20. On 10 May 2019, the Applicant's Representative sent a written response to the Directions, attaching a written submission, a copy Notice to Quit and Section 33 notice, both dated 2 May 2018 and copy email correspondence between the Applicant and the Respondent for the period 31 August 2018 to 21 October 2018.
- 1.21. The Respondent did not make any contact with the tribunal's administration or submit any written representations.

2. CMD – 4 June 2019 at 1400h at George House, 126 George Street, Edinburgh

- 2.1. Mr Wilson from the Applicant's Representative attended on behalf of the Applicant.
- 2.2. The Respondent did not attend or make any contact with the tribunal's administration or the venue in advance of the CMD. The tribunal was satisfied in terms of Rule 29 of the tribunal's rules that the requirements of Rule 24(1) regarding the giving of notice of a hearing had been duly complied with and proceeded with the application upon the representations of the Applicant's Representative and all the material before it.
- 2.3. Mr Wilson provided copies of a letter from Safe Deposits Scotland and two searches from My Deposits Scotland and Letting Protection Service, dated 4 June 2019. All showed that no deposit was held in the name of the Applicant in respect of the Property. Mr Wilson stated that in response to the Directions, he had contacted the schemes to confirm what the Applicant had already been

advised on the telephone, that no deposit was held in her name for the Property.

- 2.4. In relation to the direction to produce any available evidence of payment of the deposit by the Applicant to the Respondent, Mr Wilson referred to the written submissions in which he stated that the Applicant paid in cash and does not remember being issued with any receipt. He referred to the Short Assured Tenancy, paragraph 4, which stated that the deposit shall be £525. Mr Wilson referred to the email correspondence in which the Applicant repeatedly asked the Respondent about her deposit, to which he failed to respond. Mr Wilson submitted that there is a tenancy agreement in which the Respondent received rent for 4 years, at which time the Respondent instructed solicitors to end the tenancy in May 2018. The inference is that the Respondent was accepting that the tenancy was all lawful and accepting rent. Mr Wilson submitted that on the balance of probabilities, the deposit is stated in the tenancy agreement to be £525 and that, along with the acceptance of rent over the four year period and the correspondence between the parties, is evidence of the deposit of having been paid by the Applicant to the Respondent.
- 2.5. Mr Wilson submitted that on the basis of the evidence and submissions for the Applicant, there was a clear breach of the Regulations in respect of the Respondent's failure to lodge the deposit of £525 for the period of four years. For the reasons outlined in his written submissions and with reference to the cases cited therein (*Tenzin v Russell* [2015] CSIH 8A and *Jenson v Fappiano* 2015 SCEDIN 6, Edinburgh Sheriff Court, 28 January 2015) he invited the tribunal to make an order for payment for the full amount of three times £525.00, namely £1575.00.
- 2.6. The tribunal chair asked Mr Wilson about the written submission that Mr Lawson is an experienced landlord. Mr Wilson stated that in the Respondent's first email message which has been lodged, he mentions his other property at 6 Laichpark Place, claiming that there is damage done by a previous tenant. Mr Wilson submitted that that suggests that he has at least two properties. Mr Wilson did not have any information that he is a landlord with a huge portfolio. However, in relation to whether he should have been aware of his obligations in respect of the tenancy deposit, Mr Wilson submitted that he was organised enough to employ solicitors simply to end the tenancy and that he must have been advised at various points by them. He was also registered as a landlord with the Council (with the address provided on the Application). It is another step in the process of being a landlord. Mr Wilson invited the tribunal to infer from that he should be aware of his obligations.
- 2.7. Mr Wilson also made reference to the length of time over which the deposit was unprotected, which was four years.
- 2.8. The tribunal chair asked whether the Applicant had received her deposit back or had any notice of deductions, as she requested in the email correspondence. Mr Wilson stated that she has not received any money back, nor has she had any contact from any of the schemes about deduction or any

list of deductions from the Respondent. Mr Wilson stated that he had not raised a separate payment application seeking repayment of the deposit of £525.00.

3. Findings in Fact

- 3.1. The Applicant and Respondent entered into a Short Assured Tenancy dated 29 August 2014 for the initial period 1 September 2014 to 1 September 2015. The tenancy continued by tacit relocation thereafter until it came to an end on 29 August 2018 by service of a Notice to Quit.
- 3.2. The Application to the tribunal was made on 28 November 2018, which was within three months of the end of the tenancy.
- 3.3. The Applicant paid a deposit of £525.00 in cash on or about 29 August 2014.
- 3.4. The deposit should have been lodged with a deposit protection company within 30 working days of 1 September 2014 and the Applicant should have been provided by the Respondent with the prescribed information in respect of deposit protection.
- 3.5. The Respondent did not lodge the Applicant's deposit with any of the deposit protection schemes in Scotland at any time.
- 3.6. The Applicant has not received her deposit back from the Respondent following the end of the tenancy, despite repeated requests for the same and repeated requests for a note of any proposed deductions.
- 3.7. The Respondent registered as a Landlord with City of Edinburgh Council and provided an address which was used by the Applicant on the Application.
- 3.8. The Respondent was letting two properties at the time at which the Applicant was his tenant of the Property.
- 3.9. The Respondent told the Applicant that he was moving back into the Property after she moved out at the end of the tenancy.
- 3.10. The respondent instructed solicitors in relation to repossession proceedings in respect of the Property which were raised at Edinburgh Sheriff Court.
- 3.11. The Respondent instructed solicitors to end the Applicant's tenancy of the Property.
- 3.12. The Property is, in June 2019, being marketed for sale by a firm of solicitors.
- 3.13. The Respondent has failed to engage with the tribunal process despite service by advertisement on the tribunal's website, following a number of

service attempts at addresses including the Property address and the address provided by him to City of Edinburgh Council landlord registration.

4. Discussion

- 4.1. The tribunal took account of the Applicants' written and oral submissions; and documentary evidence.
- 4.2. The tribunal accepted on the evidence that on the balance of probabilities the deposit of £525.00, as mentioned in Clause 4 of the tenancy agreement, had been paid.
- 4.3. In considering the appropriate level of payment order, the tribunal had regard to the fact that the deposit was unprotected for the period of four years, when it should have been lodged within 30 working days of the start of the tenancy. The tribunal took account of the fact that the Landlord owned and let at least two properties at the time the Applicant was his tenant. The Respondent instructed solicitors to end the Applicant's tenancy at the Property and no doubt took advice from them in relation to his obligations. The Respondent was a registered landlord so was aware of the requirement to meet that obligation. The Respondent should have been aware of his obligations to lodge the Applicant's deposit with a deposit protection scheme. The Respondent has failed to respond to the Applicant's repeated requests for return of her whole deposit and/or a note of any deductions therefrom. The Applicant has lost the opportunity to claim her deposit back via a deposit protection scheme or to challenge any proposed deductions, which is one of the purposes of the schemes. The Applicant has not received return of her deposit from the Respondent despite the fact that the tenancy ended in August 2018. The tribunal took the view that the Respondent's failure to lodge the deposit and provide information was blatant and over a lengthy period. The Respondent has failed to reply to the Applicant's reasonable requests for return of her deposit or for information. The Respondent has also had the opportunity to engage with tribunal process but has failed to do so and may, in fact, have taken steps to evade service. The Respondent had not lodged any written submissions challenging the Application despite successful service by advertisement and did not attend the Case Management Discussion despite notice of the same.
- 4.4. For the reasons outlined, the tribunal decided to make an order for payment by the Respondent to the Applicants of the maximum amount permissible in terms of the 2011 Regulations, namely three times the deposit amount of £525.00, which is £1575.00.
- 4.5. The tribunal chair informed the Applicant's Representative that the Payment order could be enforced by the Applicants against the Respondent after the expiry of the permission to appeal period. The tribunal Chair also advised the Applicant's Representative about the review and recall procedures.

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.

4 June 2019

Susanne L M Tanner Q.C.
Legal Member/Chair