

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/19/3297

Re: Property at 45 Wellington Street, Dunoon, PA23 7LA ("the Property")

Parties:

Mr Steven Mure, H6, Hunters Quay Holiday Park, Dunoon, PA23 8HP ("the Applicant")

Stewart Shaw Property Rentals and Stewart Shaw Nil Rate Band Trust, 10 Jane Street, Dunoon, PA23 7HX ("the Respondent")

Tribunal Members:

Alan Strain (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent pay the Applicant the sum of £1,500.

Background

This was an application under Regulation 9 of the Regulations and Rule 103 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)*. The Applicant sought an award in respect of the Respondents failure to protect a tenancy deposit.

The Tribunal had regard to the following documents:

- 1. Application received 15 October 2019;**
- 2. Private Residential Tenancy Agreement (PRTA) commencing 9 November 2018;**
- 3. Emails between the Parties in September 2019;**
- 4. Respondents' responses to Directions.**

Case Management Discussion (CMD)

The case had called for a CMD on 16 December 2019. At that time the Applicant had appeared but the Respondents had not. The Respondents had been amended and the Tribunal had issued Directions to the Respondents to confirm the designation of the landlord. The Tribunal adjourned the CMD to 7 February 2020.

The Respondents confirmed that the landlord was the Stewart Shaw Nil Rate Band Trust. They also advised that they would not be attending the CMD. The Tribunal issued a further Direction seeking details from the Respondents to enable it to deal with the case at the CMD on 7 February 2020.

The Respondents provided information in response to the Direction by email of 29 January 2020.

The Applicant appeared in person and represented himself.

The Tribunal considered the documentation and decided that it had sufficient information to make a Decision and the procedure had been fair.

The Tribunal made the following findings in fact from the papers:

1. The Parties entered in to the PRTA commencing 9 November 2018 and ending September 2019;
2. The Applicant paid a deposit of £500 at the commencement of the PRTA;
3. The Deposit was not protected and never returned;
4. The Respondents are experienced landlords who let over 22 Properties and have 35 years' experience;
5. The Respondents explain that they were aware of the obligation to protect the deposit but that it was not protected due to clerical error.

The Tribunal had regard to the case of ***Russell-Smith and Others v Uchegbu [2016] SC EDIN 64***. The Tribunal had to determine what was a fair, just and proportionate sanction in the circumstances of the case, always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend on its own facts and in the end of the day the exercise by the Tribunal of its judicial discretion is a balancing exercise.

The Tribunal found it of particular significance that the deposit had never been protected; the deposit had not been returned; the Respondents were experienced landlords with a large portfolio of property and were asserting that the failure to protect the deposit was down to clerical error.

The Tribunal also noted that the correct designation of the landlord had not been completed in the PRTA and the Respondents had not appeared or made any written representation at the original CMD despite having had notification served on them by Sheriff Officers. This had put the Applicant to additional time and expense.

In all the circumstances the Tribunal considered that a maximum award was justified, fair and proportionate. A landlord, such as the Respondents, should have had

adequate systems in place to ensure compliance with the Regulations. Their actions had prejudiced and continued to prejudice the Applicant by their failure to return his deposit and their dealings with the Tribunal.

The Tribunal accordingly ordered the Respondents to pay the Applicant the sum of £1,500.00.

Given the confirmation that the landlord was the Stewart Shaw Nil Rate Band Trust the order for payment was made solely against them.

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.

Alan Strain

Legal Member/Chair

7 February 2020

Date