

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under 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/19/3641**

**Re: Property at Flat 1/1, 3 Willowbank Place, Alexandria, G83 9GF (“the Property”)**

**Parties:**

**Mr Joseph Sartine, Flat 1/1, 3 Willowbank Place, Alexandria, G83 9GF (“the Applicant”)**

**Ms Donna Mayer, C/O Caledonia Bureau Ltd, 130-132 High Street, Dumbarton, G82 1PQ (“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 decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £250.**

**Background**

By application, received by the Tribunal on 11 November 2019, the Applicant sought an Order for Payment in respect of the failure by the Respondent to lodge a tenancy deposit in an approved tenancy deposit scheme.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 29 June 2018 at a monthly rent of £625, with a deposit also of £625.

On 24 December 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 14 January 2020.

On 8 January 2020, the Respondent’s solicitors, BTO Raeburn Hope, Helensburgh, advised the Tribunal that the Respondent regretted her oversight in not lodging the

funds with the appropriate deposit company. This had been a result of her lack of knowledge of the law. They stated that she had acted in good faith throughout and provided evidence that the deposit had been lodged in a separate account on 5 July 2019. They asked that no further action or penalty be taken against the Respondent, given that she had acted in good faith in lodging the deposit, albeit in the incorrect manner and with the incorrect body. They stated that the deposit had now been lodged with SafeDeposits Scotland.

### **Case Management Discussion**

A Case Management Discussion was held at Glasgow Tribunals Centre, 20 York Street, Glasgow, on the afternoon of 27 January 2020. The Applicant was present. The Respondent was represented by her husband, Mr James Murdoch.

The Applicant told the Tribunal that he had become concerned, when a repair issue he had reported to the Respondent had not been dealt with, that there might be difficulties in recovering the deposit at the end of the tenancy. This had caused him to check the position and he had ascertained that the deposit had not been placed in any scheme.

Mr Murdoch explained that, at the time that the tenancy started, the Respondent was dealing with the grave illness of a close family member, who had died a week later. The Respondent had not, therefore, dealt with the deposit at the time in the way that she now realised she should have done. She had, however, lodged it in a separate account. The Property was the Respondent's only rented property. She fully accepted that ignorance of the law is no excuse, but she had not in any way sought to gain financially from her failure.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations provides 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 to enable it to make a Decision without a Hearing.

Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") states that 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 information required by Regulation 42 of the 2011 Regulations. Under Regulation 10 of the 2011 Regulations, 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 Respondent's solicitors had confirmed in their letter of 8 January 2020 that the Respondent had not lodged the deposit as required by Regulation 3(1) of the 2011 Regulations. Accordingly, the Tribunal was bound to make an Order for Payment against the Respondent.

The Tribunal accepted that the Respondent had lodged the deposit in a separate bank account, that her failure to comply with the Regulations had been due to her lack of knowledge of the law and that she had now lodged the funds with an approved tenancy deposit scheme. The Tribunal also noted the Respondent's personal circumstances as outlined by Mr Murdoch. Nevertheless, the Applicant's money had been at risk for a period of some 18 months and ignorance of the legal obligations imposed on landlords was no excuse. The Tribunal regarded the

Respondent's failure as serious, but felt that it was mitigated by the fact that she had placed the deposit in a separate bank account and that she had lodged in in an approved scheme whenever she had been notified of the present proceedings and had become aware of her failure. Having considered carefully all the facts and circumstances, the Tribunal decided that a fair, just and proportionate amount to order her to pay to the Applicant was £250.

### **Decision**

The Tribunal determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £250.

### **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.

**George Clark**

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Legal Member/Chair

27 January 2020  
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Date