



**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**

Chamber Ref: FTS/HPC/PR/19/0232

Re: Property at 100A Balunie Avenue, Dundee, DD5 1RJ (“the Property”)

Parties:

**Ms Toni Whitton, c/o Shelter Scotland, 1 South Ward Road, Dundee, DD1 1PN
 (“the Applicant”)**

Mr Mark Low, 16 Sandhaven Gardens, Dundee, DD5 1RJ (“the Respondent”)

Tribunal Members:

Helen Forbes (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment should be granted in favour of
the Applicant in the sum of £1,100.**

Background

By application under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) received between 21st January and 12th February 2019, the Applicant applied for an order in terms of Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”). The parties entered into a tenancy agreement in respect of the Property, commencing on 17th March and ending on 24th November 2018. A deposit in the sum of £450 was paid by the Applicant on 1st October 2018. At the end of the tenancy, the Applicant discovered that the deposit had not been paid into a tenancy deposit scheme. The deposit was not returned to the Applicant.

The case called for a Case Management Discussion (“CMD”) on 2nd May 2019. There was no dispute that the Applicant had paid the deposit and the Respondent had failed to pay it into a tenancy deposit scheme. The Respondent claimed that the

Applicant had damaged the Property and should not have the deposit returned. The Tribunal made an order in respect of Regulation 10 directing the Respondent to pay the sum of £450 into an approved scheme within 7 days and to supply the Tribunal with evidence of the payment. The Respondent was also required to provide a document setting out his defence within 14 days of the date of the Direction being served upon him. Both parties were required to provide details of witnesses and documentation within 21 days.

The case called for a further CMD on 25th June 2019. At that time, no parties appeared or were represented. No documents had been received in respect of the Direction previously made. The Tribunal was satisfied that the Direction had been validly served on the Respondent. A letter dated 21st May 2019, giving notice of the date, time and place of the CMD, had been returned to the Tribunal office undelivered. The Tribunal adjourned the case to a further CMD.

The Case Management Discussion

A Case Management Discussion (“CMD”) took place on 12th August 2019 at the Dundee Carers’ Centre, Seagate House, 132-134 Seagate, Dundee. The Applicant was in attendance and represented by Linda Bulle of Shelter Scotland. The Applicant’s father, Ian Whitton, was present as a Supporter. The Respondent was not in attendance. The Tribunal was satisfied that the requirements of Rule 24(1) had been complied with and notice of the CMD given, and that it was appropriate to continue with the CMD in terms of Rule 29. Shortly after the CMD began, the Supporter mentioned that the Respondent had passed by the window. The Tribunal Clerk made investigations, but there was no sign of the Respondent and he did not attend.

Ms Bulle said that she had not received notification of the last CMD on 25th June 2019, hence the non-attendance. She said that the Respondent had not carried out the requirements of the Direction made at the earlier CMD. On 9th August 2019, she had contacted the three rent deposit schemes and the deposit had not been lodged with any of the schemes.

The Applicant said that she had been under the impression that the deposit had been lodged with a scheme, only becoming aware that this was not the case at the end of the tenancy. Responding to questions from the Tribunal, the Applicant said, as far as she was aware, this was the first time the Respondent had let the Property. She also believed he was still residing at the same address.

Ms Bulle said that the Applicant had suffered loss of earnings while attending the CMDs. She had to borrow money from a family member for the deposit in her next tenancy as this deposit was not returned to her, and she had suffered distress as a result of this matter.

Findings in Fact

1. The parties entered into a tenancy agreement in respect of the Property, commencing on 17th March 2018. The tenancy ended on 24th November 2018.

2. The Applicant paid a deposit of £450 to the Respondent at the start of the tenancy.
3. The Respondent did not pay the deposit into a tenancy deposit scheme, thus breaching Regulation 3.
4. The deposit was not returned to the Applicant at the end of the tenancy.
5. The Respondent did not comply with the Direction of the Tribunal of 2nd May 2019 to lodge the deposit retrospectively in a scheme.

Reasons for Decision

The Tribunal considered it was a serious matter that the deposit had not been lodged within 30 days of the tenancy commencing, as required by Regulation 3, and that the deposit had remained unprotected for the duration of the tenancy. The Tribunal also considered it a serious matter that the Respondent had failed to comply with the Direction of the Tribunal in respect of lodging the deposit in a tenancy deposit scheme. This would have been to the advantage of both parties and would have allowed adjudication over the return of the deposit. The Respondent did not lodge a note of his defence as ordered by the Tribunal and he did not attend the CMD to put forward his defence. As far as the Tribunal was aware, the Respondent was a first-time landlord in respect of this Property, and was unaware of the Regulations. In the circumstances, the Tribunal considered it fair and reasonable to grant an order for payment in the sum of £1,100 in favour of the Applicant.

Decision

The Tribunal determined that an order for payment should be granted in favour of the Applicant in the sum of £1,100.

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.



Legal Member/Chair

12th August 2019

Date