

**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**

**Chamber Ref: FTS/HPC/PR/18/1399**

**Re: Property at 7/6 Scotland Street, Edinburgh, EH3 6PP ("the Property")**

**Parties:**

**Ms Reem Althobaiti, 101/5 East London Street, Edinburgh, EH7 4BF ("the Applicant")**

**Coulters Lettings Ltd, 32 North West Circus Place, Edinburgh, EH3 6TP ("the Respondent")**

**Tribunal Members:**

**Fiona Watson (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an Order shall be granted against the Respondents in the sum of ONE THOUSAND SEVEN HUNDRED AND FIFTY POUNDS (£1750) STERLING**

- **Background**

An application was submitted by the Applicant under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Application sought return of a tenancy deposit in the sum of £1750, together with an order for payment of three times the deposit, on the basis that the tenancy deposit had not been lodged in a tenancy deposit scheme.

- **The Case Management Discussion**

A Case Management Discussion took place on 28 August 2018. The Applicant was personally present. The Respondent was represented by Sam Paulo and Sophie Strand of Coulters Lettings Ltd, the Respondent's managing agents.

The Applicant advised the Tribunal that she had now received her deposit back and wished to move her application for an order to be granted for three times the amount of the tenancy deposit, as it had not been lodged timeously within a tenancy deposit scheme. The Tribunal was advised that the tenancy commenced on 2 February 2018. The Applicant paid a deposit of £1750 together with three months' rent in advance. The Respondent was issued with a Notice to Leave on 3 May 2018, and the tenancy deposit was lodged with Safe Deposits Scotland on 9 May 2018. The Applicant lodged confirmation of the date the deposit was lodged from Safe Deposits Scotland. The Applicant submitted that the Respondent had breached her obligations under the Tenancy Deposit Schemes (Scotland) Regulations 2011 by not lodging the deposit within 30 working days of the start of the tenancy, under Regulation 3.

Mr Paulo advised that Coulters Lettings Ltd changed over the tenancy management software they were using in December 2017/January 2018 to "SME." They chose this software as it allowed bulk uploads to Safe Deposits Scotland. They suffered a series of technical problems with the software. They had been advised that the deposits had been uploaded to Safe Deposits Scotland and the system showed this as having been done. However, upon carrying out a reconciliation of their client account in March/April 2018 it became clear that funds which should have been sent to Safe Deposits Scotland via the SME system had not been, and were still sitting in Coulters' designated client account. Coulters thereafter carried out manual lodging of these deposits. The Applicant's deposit was one of these missed deposits, and it was lodged with Safe Deposits Scotland on 9 May 2018.

Mr Paulo confirmed that they had failed to lodge the deposit in a tenancy deposit scheme on behalf of the landlord within the correct time period as required under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. Mr Paulo also confirmed that he was unaware as to whether the prescribed information had been issued to the tenant as is required under Regulation 3(1)(b) of the said Regulations. Mr Paulo cited a lack of employee training, as well as the issues with their management software, as being a reason as to why this also had not been carried out.

Mr Paulo submitted that he considered that an award of three times the deposit would be excessive and unreasonable, given the circumstances surrounding why the deposit had not been lodged. The deposit had been held in their designated client account during that period, and had further been returned to the tenancy less the sum of £40 deducted for cleaning, which had been agreed with the Applicant.

The Applicant submitted that the management software failure was not an excuse, that this was a large amount of money and it should have been protected during the period in which she resided in the property.

- Findings in Fact

1. The parties entered into a Private Residential Tenancy which commenced on 2 February 2018

2. The Applicant paid a deposit of £1750 to the Respondent's agents, Coulters Lettings Ltd
3. The Respondent's agents failed to lodge the deposit into a designated tenancy deposit scheme within 30 working days of the beginning of the tenancy, as required under Regulation 3(1)(a)
4. The Respondents agents failed to provide the Applicant with the information required under Regulation 3(1)(b) and Regulation 42

- Reasons for Decision

The Tribunal was satisfied from the Respondent's agent's explanation that there was no intention to deprive the Applicant of her deposit, nor was there any malice intended. Whilst the Tribunal noted that there appeared to be an unnecessary and unexplained delay in carrying out the client account reconciliation in March/April and then subsequently lodging the deposit in a scheme on 9 May 2018, it was acknowledged that the deposit was in fact lodged after the issue had been identified. It was also acknowledged by the Tribunal that the deposit had remained in the agents' designated client account during the period of the tenancy, and had been returned minus £40 for a cleaning cost which had been agreed by the Applicant.

- Decision

To grant an order against the Respondent in the sum of ONE THOUSAND SEVEN HUNDRED AND FIFTY POUNDS (£1750) STERLING

### 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.

# Fiona Watson

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Legal Member/Chair

28/8/18.  
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Date