



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**

**Chamber Ref: FTS/HPC/PR/19/1617**

**Re: Property at 21 Crosier Walk, Aberdeen, AB24 2PQ (“the Property”)**

**Parties:**

**Miss Aikaterini Roungeri, Athens, Greece, Amipsiou 12, 11143 Attiki, Greece (“the Applicant”)**

**Mr George Eweka,  
Trading as City Housing Inc, 39 Danestone Terrace, Aberdeen, AB23 8HQ (“the Respondent”)**

**Tribunal Member:**

**Martin McAllister (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 sum of One Thousand Three Hundred (£1,300) Pounds to the Applicant.**

**Background**

**This is an application under the Tenancy Deposit Schemes (Scotland) Regulations. Intimation of the case management discussion was made on the Respondent on 13 August 2019 and the relevant certificate of citation by sheriff officers was before the Tribunal. The Respondent had been invited to make written representations by 19 September 2019. None had been received.**

**Preliminary Matters**

**The Applicant participated in the case management discussion by conference call. She resides in Greece. There was no appearance by the Respondent.**

The purpose of a case management discussion was explained to the Applicant.

## Discussion

The Applicant referred me to the short assured tenancy agreement which had been lodged with the application. It was in respect of the Property and stated the rent to be £525 per month, a deposit of £525 and a term of 5 May 2017 until 4 May 2018. Ms Roungeri said that the lease had continued after 5 May 2018 for another year. She said that she paid the deposit of £525 to the Respondent and had concerns when she heard from others that she may not get the deposit back and that it may not have been lodged in a deposit scheme.

She directed me to the terms of a letter from My Deposits Deposit Protection dated 10 April 2018. This letter stated that it could only deal with deposits from England and not from Scotland and stated specifically that the Respondent had used the insurance scheme provided by the company, that it is not licensed to protect any deposit from Scotland and that the deposit protection under the England and Wales system had been cancelled. The letter states that "Your landlord has been informed of this error and, to date, has not provided us with any evidence of correct protection of your deposit."

The Applicant stated that she raised the matter with the Respondent who assured her that she would get the deposit back. She said that she was persistent in asking him about the matter and to provide her with evidence that the deposit had been placed in a deposit scheme. She said that no reassurance had been given.

Ms Roungeri said that she lived in the Property with her boyfriend and that they had a fight in early February 2019 as a consequence of which she was removed by the police, was charged and subsequently appeared in court and was fined. She said that she was prevented by the court in returning to the Property and that the Respondent provided her with alternative accommodation at 24 Tansfield Walk until she returned to Greece on 22 April 2019. She said that she paid rent for the Property for February, March and April 2019 and that she was not in arrears of rent.

The Applicant said that no paperwork was put in place for her removal to 24 Tansfield Walk and that, as far as she was concerned, she was still liable for the rent for 21 Crozier Walk in terms of the short assured tenancy agreement which was before the Tribunal.

## Findings in Fact

1. Parties were parties to a short assured tenancy agreement dated 2 May 2019.
2. The term of the tenancy was from 5 May 2017 to 4 May 2018.
3. The term of the tenancy extended, in terms of the lease, on a month to month basis from 5 May 2018.
4. The tenancy came to an end on 4 May 2019.
5. The Applicant paid a deposit of £525 to the Respondent.
6. The Respondent attempted to secure the deposit with a company not licensed to accept such deposits for Scottish properties and was aware

on or around 10 April 2018 that the deposit was not protected in terms of the 2011 Regulations.

7. The deposit of £525 has not been returned to the Applicant.
8. The Respondent has not complied with the obligations incumbent on him in terms of Regulation 3 of the 2011 Regulations.

#### Reasons for Decision

I accepted that the Respondent had chosen not to provide any evidence and that proper intimation had been made on him. I saw no reason for a Hearing to be fixed and, in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 proceeded to determine the matter.

I found the evidence of the Applicant to be credible and persuasive. The tenancy agreement set out the level of the deposit to be £525 and I accepted that this was paid. I accepted the Applicant's evidence that the deposit had not been repaid to her. I also accepted that the Letter from My Deposit Protection of 10<sup>th</sup> April 2019 evidences that the Respondent had attempted to use that scheme and that on or around 10<sup>th</sup> April 2018 he would have been aware that he would have to use a deposit scheme approved in Scotland.

In terms of Regulation 9 (2) of the 2011 Regulations any application requires to be made within three months of the tenancy ending. This case was somewhat unusual because the Applicant did not reside at the Property after the beginning of February 2019. I accepted that, notwithstanding some court process preventing her from staying at the Property, she was still liable to pay rent and did so. I therefore accepted that the application was submitted timeously and that the tenancy did not end in February 2019 but endured to May 2019.

In terms of Regulation 10 if I am satisfied that the Respondent has not complied with any duty in regulation 3 of the 2011 Regulations I must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit. I consider this to be at the more serious end of the scale. The deposit has not been protected for a period of two years and has not been repaid. I do, however, consider that the Respondent appears to have attempted to protect the deposit by using an English scheme although, when alerted to the fact that this was not possible, he did not take steps to deal with the matter by lodging the deposit in an appropriate scheme. I therefore consider it appropriate that the tariff should be £1,300. Had the Respondent not made an attempt to secure the deposit, albeit with an inappropriate scheme, I would have made an order for payment of a greater sum.

## 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.

**M.M**

Martin J. McAllister  
Legal Member/Chair

4<sup>th</sup> October 2019