



**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 (“the 2011 Regulations”)**

**Chamber Ref: FTS/HPC/PR/19/2544**

**Re: Property at Garden House, Ayton Castle Estate, Ayton, Eyemouth, Berwickshire, TD14 5RD (“the Property”)**

**Parties:**

**Mrs Moira Brown, Langlees Cottage, Langlees Farm, Oakley, Dunfermline, KY12 8HA (“the Applicant”)**

**Mr Brian Parsons, Mr Richard Syred, Ayton Castle, Ayton, Eyemouth, Berwickshire, TD14 5RD (“the Respondent”)**

**Tribunal Members:**

**Anne Mathie (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application against the second Respondent is refused on grounds of timebar and that a payment order in the sum of £2160 is granted against the first Respondent.**

- **Background**

This is an application in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Chamber Rules”) for an order for payment where landlord has failed to carry out duties in relation to tenancy deposits. An application was submitted on the applicant’s behalf by her former agents and received by the Tribunal on 13 August 2019. The first Respondent was named on the application form but his name was repeated as an “additional Respondent” on a paper apart to the application. The application sought a payment order in the sum of £3240 being three times the original deposit sum of £1080 which is the maximum sanction in terms of Regulation 10 of the 2011 Regulations. Along with the

application form the Applicant's former agents submitted a copy of the tenancy agreement.

By letter dated 15 August 2019, and emailed to the Applicant's former representatives, the Tribunal queried the respondent's details:

*"Please clarify the name of the second respondent in your application. The same respondent has been named on the application form and the paper apart with the details of a second respondent."*

The applicant's former representatives replied by email of 16 August with an amended paper apart providing details of the second respondent.

The Tribunal wrote to the Applicant's former representatives again on 4 September asking for confirmation of the end date of the tenancy, asking why the Respondents' names were different to the Landlord's name on the tenancy agreement, asking for evidence of payment of the deposit and whether, and from whom, the original deposit had been paid to the Applicant.

The Applicant's former representatives emailed the Tribunal on 17 September 2019 advising that the end date of the tenancy was 15 May 2019. They also advised that the Respondents took ownership of the Property in July 2014 and provided copies of various letter in connection with the deposit and a receipt. They also confirmed that the Applicant had received the full amount of the deposit back at the termination of the tenancy directly from the Landlord's agents.

The application was assigned to a Case Management Discussion today. In advance of the Case Management Discussion the Respondent's representatives submitted written representations. They submitted that the Tribunal had no jurisdiction to hear the application on the grounds of timebar. They submitted that the application had not been "lodged in the manner set out in Rule... 103" on the grounds that it only stated one of the Landlords details. They quoted Rule 103 which states:

*"the application must state (i) the name and address of the tenant or former tenant; (ii) the name, address and profession of any representative of the tenant or former tenant; and (iii) the name, address and registration number (if any) of the landlord..."*

They submitted that even if the application was deemed to be made timeously (which they denied) that the Respondent Richard Syred ought to be removed from the application as his details were received by the Tribunal on 16 August 2019 which is outwith the timescale permitted by the 2011 Regulations.

They further referred to Rule 5(3) of the Chamber Rules which provides that *"If it is determined that an application has not been lodged in the prescribed manner...the Tribunal...may request further documents and the application is to be held to be made on the date that the...Tribunal receives the last of any*

*outstanding documents necessary to meet the required manner for lodgement.”*

In respect of the merits of the case, the Respondents' representatives submitted that there were mitigating factors that should be taken into account including that the Respondents had employed a factor to deal with the deposit and the failure to lodge the deposit in a recognised scheme was an administrative oversight on the part of the factor.

- **Case Management Discussion**

The application called for a Case Management Discussion today. The applicant did not attend but was represented by her solicitor, Iain Burke of Bannerman Burke Law. The Respondents did not attend and neither did their solicitors. There was a delay in commencing the Case Management Discussion due to the Tribunal making enquiries with the Respondents' solicitors as to their attendance. The Tribunal received a call at approximately 10.25am from the Respondents' solicitors advising they had instructions to not attend the Case Management Discussion. The Tribunal considered the paperwork and oral submissions from the Applicant's solicitor. He submitted that the Applicant did not know the identity of the Respondents for some time after they took ownership of the Property. There was no new lease. There had been a long history of problems with the tenancy. He submitted that the Tribunal had discretion in relation to Mr Syred being included as a second Respondent. His position was that the case was not timebarred and that the Respondents had flagrantly breached the 2011 Regulations. He advised that there were no mitigating factors and that three times the original deposit was an appropriate sanction in the circumstances. The Tribunal also took into consideration the written representations lodged on behalf of the Respondents. It was unfortunate that their solicitors were not in attendance. The Tribunal was unable to ascertain any further mitigating circumstances apart from those already detailed in the written representations.
- **Findings in Fact**
  1. The Applicant and former Landlord had entered into a tenancy agreement which commenced 22 September 2006.
  2. The Respondents purchased the Property on 15 July 2014 and the tenancy agreement continued.
  3. The original deposit of £1080 was paid to the former Landlord's agents in July 2014.
  4. The deposit was never lodged in an approved scheme by the Respondents in breach of Regulation 3 of the 2011 Regulations.
- **Reasons for Decision**

The Tribunal determined that the application was not timebarred. The application had been lodged in the manner prescribed by Chamber Rule 103 even although only one of two Landlords names was detailed. In coming to this decision the Tribunal took into account the overriding objective contained in Chamber Rule 2 which states that *“the overriding objective of the First-tier Tribunal is to deal with the proceedings justly.”* Chamber Rule 3 provides that

effect must be given to the overriding objective when “(a) exercising any power under these Rules: and (b) interpreting any rule.” However the details of the second Respondent were received by email on the 16 August 2019. It is a matter of agreement between the parties that the tenancy ended on 15 May 2019. Regulation 9 of the 2011 Regulations provides that an application for an order under Regulation 10 must be made no later than 3 months after the tenancy has ended. The application against the second Respondent was not made until the Tribunal received the second Respondent’s details on 16 August 2019 which is more than 3 months after the tenancy ended and according to the Tribunal finds the application against the second Respondent to be timebarred. In determining the amount of the sanction the Tribunal took into account the fact that the deposit was unprotected from July 2014 until May 2019, a period of almost five years and, in mitigation, that the Respondents had employed the services of a factor to deal with the deposit arrangements.

- Decision  
That the application against the second Respondent be refused on the grounds of timebar and that a payment order be made against the first Respondent in the sum of £2160 which is two times the amount of the original deposit.

### 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.

Anne Mathie  
Legal Member/Chair

15 November 2019  
Date