



**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/18/3230**

**Re: Property at 18 Woodlands Place, Kilmarnock, KA3 1UA (“the Property”)**

**Parties:**

**Mr Stuart McLintock, 34 Bruce Street, Kilmarnock, KA1 4LS (“the Applicant”)**

**Mr John Bordone, 1 Innellan Drive, Kilmarnock, KA3 1SS (“the Respondent”)**

**Tribunal Members:**

**Joseph C Hughes (Legal Member)**

**Decision:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:**

**BACKGROUND:**

- 1. The Applicant attended the Case Management Discussion with his mother, Ann McLintock, as a supporter.**
- 2. The Respondent attended with his sister, Lucia Bardone, as a supporter.**
- 3. The two supporters were permitted to provide some additional evidence during the Case Management Discussion.**
- 4. It is not disputed that the Respondent failed to pay the deposit of £475 into an approved scheme at any time he was in funds.**
- 5. The Respondent unilaterally paid the sum of £360, as part payment of the original deposit, to the Appellant. The deduction of £115 from the original full deposit of £475 was not agreed to by the Applicant. The said balance of the deposit (£360) was paid by cheque to the Applicant, by the Respondent, on 25<sup>th</sup> October 2018.**
- 6. The Applicant moved out of the property on 1<sup>st</sup> September 2018.**
- 7. The Applicant’s tenancy deposit was unprotected since 1<sup>st</sup> June 2016.**

8. The original deposit was paid to the Landlord's letting agent, Donald Ross, Ayrshire.
9. In an email dated 16<sup>th</sup> January 2019 the Respondent admitted his failure to lodge the Applicant's tenancy deposit into an approved scheme. He stated this was a genuine oversight between himself and the letting agent. The Respondent stated in his oral evidence that there had been a misunderstanding about who was attending to the deposit. He accepted he was aware of the existence of the Tenancy Deposit Scheme at the commencement of this tenancy.
10. The parties were advised that the Tribunal could only consider the case in terms of The Tenancy Deposit Schemes (Scotland) Regulations 2011. It is not relevant to hear evidence about anything not relevant to the non-protection of the tenancy deposit. Both parties sought to lodge additional evidence which was not directly relevant to the tenancy deposit but addressed wider issues which were not within the jurisdiction of the Tribunal. The Tribunal therefore did not allow the said additional evidence into the case and was not therefore as evidence.

#### **FINDINGS OF FACT:**

11. The Tribunal made the following findings in fact:
  - (a) The Applicant was the tenant of the property at 18 Woodlands Place, Kilmarnock KA3 1UA;
  - (b) The Respondent was the Landlord of the said property;
  - (c) The Applicant entered into a tenancy agreement on 1<sup>st</sup> June 2016. The tenancy deposit was £475. This is a relevant tenancy;
  - (d) The Applicant vacated the tenancy on 1<sup>st</sup> September 2018;
  - (e) The Respondent accepts that he failed to pay the deposit to the scheme administrator of an approved scheme;
  - (f) The Respondent unilaterally repaid the sum of £360 by cheque to the Applicant on 25<sup>th</sup> October 2018 as part payment of the original deposit. The remaining sum of £115 was retained by the Respondent without the specific agreement and consent of the Applicant;
  - (g) The Respondent stated he was aware of the Tenancy Deposit Scheme provisions at the commencement of this tenancy;
  - (h) The Applicant's initial deposit was paid to the Respondent's letting agent, who thereafter paid the deposit to the Respondent;
  - (i) There is an accepted breach of the Landlord's duties in respect of the tenancy deposit since 1<sup>st</sup> June 2016; and
  - (j) The Respondent is not permitted to withhold the tenancy deposit and is in breach of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations (2011).

## **REASONS FOR DECISION:**

- 12. The Respondent admits that he failed to lodge the tenancy deposit as required by law in an approved scheme. This deprived the Applicant from seeking recovery of the deposit through the scheme. The deposit was unprotected from 1<sup>st</sup> June 2016. The Respondent is in breach of his duties as a Landlord in respect of the tenancy deposit.**
- 13. It is appropriate that Order for Payment be granted. The Respondent should pay the tenant an amount to reflect the circumstances of this case. I selected a multiple of two times the original tenancy deposit, namely £950, which I considered to be an appropriate amount reflecting the extensive period the tenancy deposit was effectively unprotected and retained personally by the Respondent. I considered the failure to lodge the tenancy deposit from 1<sup>st</sup> June 2016 until 25<sup>th</sup> October 2018, when the partial payment was repaid to the Applicant, to be a significant breach of the Regulations.**
- 14. This breach deprived the Applicant the opportunity to access the approved scheme's Dispute Resolution mechanism in terms of Part 6 of the said 2011 Regulations. The Respondent decided to unilaterally restrict the amount of the tenancy deposit he returned to the Applicant without the Applicant's consent.**
- 15. The Applicant stated he had to borrow money from his parents to help pay the deposit for the property he rented after he left the Respondent's property on 1<sup>st</sup> September 2018. The Applicant stated he found this stressful.**

## **DECISION:**

- 16. The Tribunal granted an Order against the Respondent:**
  - (i) To pay the Applicant the sum of NINE HUNDRED AND FIFTY POUNDS (£950) Sterling in terms of Regulation 10(a) of the 2011 Regulations; and**
  - (ii) To pay the balance of the tenancy deposit namely ONE HUNDRED AND FIFTEEN POUNDS (£115) STERLING to an approved scheme in terms of Regulation 10(b) of the 2011 Regulations.**

## 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.

**J Hughes**

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*23rd January 2019*

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Legal Member/Chair  
'Joseph C Hughes'

Date