



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section under regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/3108**

**Re: Property at 96 High Street, Dalkeith (“the Property”)**

**Parties:**

**Ms Cynthia Mercedes Figueredo Morel, residing at 33/1 Newhaven Main Street, Edinburgh, EH6 4NQ (“the Applicant”)**

**And**

**Katie Miller, residing at 6 Rosefield Place, Edinburgh EH15 1AZ (“the Respondent”)**

**Tribunal Members:**

**Paul Doyle (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached her obligations under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.**

**Background**

1. On 27 February 2019 the respondent let to the applicant the property at 96 High Street, Dalkeith. A Tenancy agreement was entered into which required payment of a deposit of £500. The tenancy ended on 30 June 2019.

## The Case Management Discussion

2. The applicant was present and was unrepresented. The respondent was present and unrepresented. The applicant participated in the hearing with the assistance of an interpreter. The following facts are admitted or proved.

### Findings in Fact

3. On 27 February 2019 the respondent let to the applicant the property at 96 High Street, Dalkeith. A Tenancy agreement was entered into which required payment of a deposit of £500. The tenancy ended on 30 June 2019.

4. On taking entry to the property the applicant paid the respondent a deposit of £500. The respondent moved to Canada on the date of entry and did not place the deposit with an approved tenancy deposit scheme. The respondent is not a commercial landlord. The property is the only rental property the respondent has, and the respondent has no previous experience of renting properties. The respondent did not seek advice from either a lawyer or a letting agent. The respondent no longer rents property. The respondent was entirely unaware of the obligation to pay the deposit into an approved tenancy deposit scheme.

5. The applicant vacated the property on 30 June 2020. The respondent was unhappy with the state of the property returned to her and told the applicant that she would not repay the deposit because of damage caused to fittings and fixtures in the property. On 26 September 2019 a letter was received at the respondent's father's house from CAB (on behalf of the applicant) addressed to the respondent demanding repayment of the deposit. On 27 September 2019 the applicant lodged her application with the tribunal.

6. On 10 October 2020 the respondent refunded the full deposit to the Applicant. The applicant did not check her bank statement until 10.30am on 6 February 2020 (after this hearing had started) and only realised during the course of this hearing that the deposit had been refunded four months ago.

7. On 10 October 2020 the respondent refunded the applicant in full. The respondent had no intention of depriving the applicant of repayment. Even though the tenancy deposit was unprotected for 7 months, the applicant has not suffered any loss as a result of the respondent's omission

### Reasons for Decision

8. It is beyond dispute that a deposit of £500 was paid at the start of the tenancy, and that that money was not placed in an approved deposit scheme. It is now agreed that the full deposit was repaid to the applicant on 10 October 2019.

9. The respondent now understands the requirements of the 2011 regulations. The Respondent repaid the deposit immediately after seeking advice. The respondent acknowledges her error.

11. The Applicant asked me to make a payment order. The purpose of the order is not to enrich the applicant. The purpose of the order is to punish the respondent; to mark society's displeasure; to protect society and to ensure the enforcement of the 2011 regulations in the future. The applicant has not suffered any loss. The respondent did not misappropriate the deposit funds, and in response to this application, refunded the applicant promptly. The respondent has learnt from this experience and will not ignore the 2011 regulations again.

12. As soon as the respondent became aware of the requirements of the 2011 Regulations she refunded the applicant, but there is an undisputed breach of the 2011 regulations. A payment order of £25.00 reflects the impact of the breach of the 2011 regulations.

13. The appropriate level of payment order is £25.00

### Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the applicant of Twenty-Five Pounds (£25.00) within 14 days of service of this order.

### **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.**

# P. Doyle

---

Legal Member 

6 February 2020