



**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 (Regulations)**

**Chamber Ref: FTS/HPC/PR/20/0382**

**Re: Property at 11 Southpark Avenue, Room 6, G12 8JA (“the Property”)**

**Parties:**

**Mr Martin Wilson (“the Applicant”)**

**McMillan and Company Residential Limited (“the Respondent”)**

**Brunton Millar (“the Respondent’s Representatives”)**

**Tribunal Member:**

**Alan Strain (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of £500 to the Applicant**

**Background**

This is an application under Regulation 9 of the Regulations and Rule 103 of ***The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)*** in respect of an alleged failure to protect a tenancy deposit.

The Tribunal had regard to the following documents:

1. Application received 4 February 2020;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 7 June 2019;
3. My Deposit Scotland (**MDS**) Certificate confirming receipt of deposit on 31 December 2019;
4. Written Representations from Respondent dated 13 July 2020;
5. Tribunal Direction dated 7 July 2020;
6. Written Representations from Respondent dated 10 July 2020 in response to the Direction.

## **Case Management Discussion (CMD)**

The CMD proceeded by conference call in light of the current situation.

The Applicant participated in person and represented himself. The Respondent participated and was represented by his solicitor.

The Tribunal then heard from the parties.

The Respondent's position was that the deposit was not protected until 31 December 2019 due to oversight on their part. The Respondent is a professional landlord. They have been letting properties since 1981 and now let 38 properties. They are fully aware of the Regulations. Their office staff have the necessary knowledge to both arrange for deposits to be lodged with an Approved Scheme and also to arrange to release the deposits to tenants following the termination of tenancies.

The Respondents' financial year ended on 30 November 2019. Whilst preparing the year end accounts it came to their attention that the Applicant's deposit had not been lodged with My Deposit Scotland. Investigation of the reason for that could establish no explanation other than oversight. Having identified the oversight, the Respondent protected the deposit on 31 December 2019.

The member of staff that had been responsible for protecting the deposit was dismissed. Mr McMillan had taken personal responsibility for protecting deposits going forward.

The Applicant terminated his lease and vacated the Property on 21 March 2020. His deposit was repaid in full on 23 March 2020.

Since the bringing of this application the Respondent had made an offer to settle extra judicially.

The Respondent accepted their failure to comply with the Regulations and invited the Tribunal to take into account the fact that the deposit had not been at risk, had been in an account held by them and they had not received any interest from that. There had been no prejudice to the Applicant.

The Respondent's solicitor referred the Tribunal to the cases of ***Jenson v Fappiano 2015 SC Edin 6, Fraser v Meehan 2013 SLT (SHCT 119) and Knowles and Knowles (Applicants) v Crossgatehead Properties Ltd (Respondent) (FTS/HPC/PR/18/1353)***. These cases supported his submission that any award should be at the lower end of the scale.

## **Decision and Reasons**

The Tribunal considered that it had sufficient information to determine the matter at this stage and that the procedure was fair.

The Tribunal considered the evidence before it and made the following findings in fact:

1. The Parties entered into the PRTA commencing 7 June 2019;
2. The Applicant paid a deposit of £500 which was protected with MDS as of 31 December 2019;
3. The SAT ended on 10 November 2019;
4. The deposit was unprotected for a period of nearly 7 months;
5. The Respondent is an experienced professional landlord in business since 1981, with 38 let properties and was aware of the requirement to protect the deposit;
6. The Respondent's failure to protect the deposit was due to oversight by a member of staff who had been dismissed;
7. Mr McMillan now took personal responsibility for protecting deposits
8. The Respondent protected the deposit when the oversight came to their attention;
9. The Applicant received full repayment of the deposit on 23 March 2020.

It was not in dispute that the tenancy deposit had not been protected in breach of the regulations. Having made that finding it then fell to the Tribunal to determine what sanction should be made in respect of the breach. In so doing the Tribunal considered the cases referred to by the Respondent's solicitor and referred to and adopted the approach of the court in ***Russell-Smith and others v Uchegbu [2016] SC EDIN 64***. The Tribunal considered what was a fair, proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend upon its own facts and in the end of the day the exercise by the Tribunal of its discretion is a balancing exercise.

The Tribunal weighed all the factors and found it be of significance that the deposit was unprotected for nearly 7 months; the Respondent was an experienced professional landlord with knowledge of the requirement to protect the deposit; the failure to protect the deposit was due to oversight; the Respondent had taken steps to prevent such an oversight occurring in the future and the Applicant had suffered no prejudice.

In the circumstances the Tribunal considered the breach to be at the lower end of the scale and awarded the sum of £500.

### **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.**



13<sup>th</sup> July 2020

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Legal Member/Chair

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Date

