



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/PR/21/0929**

**Re: Property at 8/3 Grindlay Street, Edinburgh, EH3 9AS (“the Property”)**

**Parties:**

**Mr Alec Tidmarsh, 2/1 Easter Dalry Wynd, Edinburgh, EH11 2TW (“the Applicant”)**

**Mrs Louise Roberts, 9 Highlea Grove, Balerno, Edinburgh, EH14 7HQ (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with her duty as a Landlord in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicant’s Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme, grants an Order against the Respondent for payment to the Applicant of the sum of SIX HUNDRED POUNDS (£600) Sterling.

**Background**

1. By application dated 18 April 2021 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property) Chamber for an order for payment where a landlord has not paid a deposit into an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant lodged a copy of a Private Residential Tenancy Agreement between the Applicant and the Respondent and some 2 text messages between the parties.

2. On 4 May 2021, the Tribunal issued a Notice of Acceptance of the Application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
3. The Tribunal advised both parties on 16 June 2021 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 21 July 2021. On 16 June 2021 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 7 July 2021. This paperwork was served on the Respondent by Ian Wylie, Sheriff Officer, Glasgow on 17 June 2021. A certificate of execution of service was received by the Tribunal administration.
4. The Respondent lodged full written representations on 6 July 2021.

### **Case Management Discussion**

5. The Tribunal proceeded with the Case Management Discussion (“CMD”) on 21 July 2021. Both parties were personally present and represented themselves. At the beginning of the CMD the Applicant enquired whether the Tribunal had received his response to the Respondent’s written submissions which he had sent in the previous day by email. It had not. However the Tribunal explained that he would have an opportunity to address the Tribunal in full and could read out that response if he preferred.
6. There was no dispute between the parties on the salient facts of the case. In her written response the Respondent made full representations in which she admitted she had not placed the Applicant’s deposit into one of the three approved tenancy deposit schemes in terms of Regulation 3 of the 2011 Regulations. By way of mitigation for her failure, she made frank submissions regarding the stress she had been under during the COVID 19 pandemic both at work and at home. The Applicant’s deposit had been returned in full on 17 April 2021 after the tenancy terminated on 28 February 2021. She submitted that the Applicant had suffered no prejudice and asked the Tribunal to award a sanction at the lower end of the scale.
7. The Tribunal invited the Applicant to respond. He stated that he did not agree with the Respondent’s submission that the main reason she had not lodged the deposit was as she thought the Applicant would terminate the tenancy soon after he moved in due to the difficult relationship with another tenant in the Property. He had emailed her on 22 September 2020, about 6 weeks after the tenancy started on 1 August 2020 to ask that she communicate separately with him from the other tenant. He had made it clear that he wished to stay on in the tenancy. He sent another text on 17 October 2020 which went into more detail about the fraught relationship with the other tenant and submitted by that date the Respondent would have been aware that he may leave. He accepted the Respondent had paid the deposit in full on 17 April 2021. Other

than there being a delay in the repayment of the deposit he had suffered no prejudice by the Respondent's failure.

8. In response Mrs Roberts explained to the Tribunal that she had been contacted by the other tenant in the Property before 22 September 2020 and was aware of the strains and tension between the two. She accepted full responsibility for her failure and apologised to the Applicant and to the Tribunal for her failure.

### **Findings In Fact**

9. The Applicant entered into a Private Residential Tenancy Agreement with the Respondent with a start date of 1 August 2020. In terms of clause 8 of the tenancy agreement the Applicant agreed to pay a deposit of £600 at or before the start date of the tenancy agreement. The Applicant paid £600 deposit to the Respondent.
10. The Respondent did not pay the deposit of £600 into an approved scheme within 30 working days of the start of the tenancy.
11. The Respondent was under considerable stress at work and at home from the start of the tenancy and during the tenancy.
12. The tenancy terminated on 28 February 2021. The Respondent returned the full deposit of £600 to the Applicant on 17 April 2021.

### **Reasons For Decision**

13. For the purpose of Regulation 9(2) of the 2011 Regulations the Tribunal found that the application was made in time, the tenancy having terminated on 28 February 2021 and the application being made within three months on 18 April 2021. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy.
14. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional Landlord such as the Respondent. The

obligation is absolute on the Landlord to pay the deposit into an Approved Scheme.

15. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations.
16. The Tribunal considered that the Respondent's failure to comply with the 2011 Regulations was not wilful due to the extreme stress she was under at the time the tenancy started in August 2020 during the COVID 19 crisis. The Tribunal noted that the Respondent had correctly admitted her breach of the Regulations which had saved a lot of time and enabled the Tribunal to deal with the application expeditiously.
17. Whilst the Tribunal noted that the Respondent had assumed that due to the fragile relationship which existed between the Applicant and the other tenant in the Property the Tribunal did not find that that was justification not to pay the deposit into an approved scheme and did not accept that she should have assumed the Applicant would terminate his tenancy shortly after moving in. However, it was clear that she was under a great deal of stress. That was not a reason for the Respondent not to comply with her statutory duties as a landlord particularly when the deposit had not been paid into a scheme at any time during the tenancy.
18. Despite the Tribunal being satisfied that the Respondent had failed to comply with her duties under Regulations 3 (1) of the 2011 Regulations, the purpose of the 2011 Regulations had not been defeated. The Respondent paid the full deposit of £600 back to the Applicant after the tenancy had terminated, albeit over 6 weeks after the termination. The Applicant advised he had suffered no prejudice except for the late repayment of the deposit.
19. In all the circumstances, the Tribunal was not inclined to order the maximum amount of three times the Tenancy Deposit. The Tribunal considered that a fair, proportionate and just amount to be paid to the Applicant was £600, being the amount of the deposit.

### **Decision**

20. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicant of £600.

## **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.

**S. E**

Shirley Evans

21 July 2021

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Legal Member

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Date