



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 3,9 &10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”)**

**Chamber Ref: FTS/HPC/PR/21/1282**

**Re: Property at 2/3, 31 Minerva Way, Glasgow, G3 8GE (“the Property”)**

**Parties:**

**Matthew Hunter, Mr Alexander Duke, 1/1 25 Moir Street, Glasgow, G1 5AE; 31 Ilfracombe Crescent, Hornchurch, Essex, RM12 6RQ (“the Applicants”)**

**Mrs Julie Swayne, 72 Vale Avenue, Pacham, Brighton, BN1 8UA (“the Respondent”)**

**Tribunal Members:**

**Susan Christie (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order be granted for the Respondent to pay the sum of £600 to the Applicants.**

**Background**

1. The Applicants made the application to the Tribunal on 27 May 2021, and it was thereafter accepted by the tribunal. It is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”).
2. Written representations were submitted by the Respondent’s appointed representative and letting agent, Ms McPartlin of Infiniti Properties on 2 July 2021.

## **The Case Management Discussion (CMD)- 21 July 2021, by conference call**

3. Ms McPartlin represented the Respondent. Neither Applicant participated. The second named Applicant had e mailed the tribunal office today at 9.28am and stated that due to a scheduling clash they were unable to attend and seeking an alternative date. An e mail was sent in response requesting further details and reasons to allow the tribunal to consider the request as postponement can only be considered where good reason has been shown and it is necessary, noting also that there were two applicants. No response was received from the Applicants.
4. I proceeded with the CMD as I was satisfied that proper intimation of the day and time had been made on the Applicants. I was not satisfied that good reason had been given to postpone. I also noted that the Respondent, when asked, indicated that she had just been told of the e mail request and she would prefer it to be dealt with today.
5. The application itself and the accompanying paperwork was discussed in detail and the written representations of the Respondent's Representative were considered and clarification was sought including detail to determine the relevant timeline. The Respondent's Representative acknowledged that the incorrect mechanism was used to transfer the deposit over and was now aware of the correct way to do this. She did however consider that no monetary penalty should follow. I determined that I had sufficient information before me to decide and that the Parties would be issued with the written decision.

### **Findings in Fact**

- I. A Private Residential Tenancy (PRT) was entered into between the Parties with a start date of 28 August 2019.
- II. A deposit was taken of £850 and declared in clause 11 of the PRT.
- III. The Respondent's appointed representative and letting agent is Infiniti Properties who dealt with the let.
- IV. The tenancy ended by the Applicants giving written notice. The end date was 28 February 2021.
- V. The Deposit was not paid into an approved scheme until 6 March 2020.

### **The Regulations**

3.—

*(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—*

- (a) pay the deposit to the scheme administrator of an approved scheme; and*
- (b) provide the tenant with the information required under regulation 42.*

[

*(1A) Paragraph (1) does not apply—*

- (a) where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and*
- (b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord, within 30 working days of the beginning of the tenancy.*

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(2) *The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*

[

(2A) *Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—*

- (a) *the references to deposit were to each instalment of the deposit, and*
- (b) *the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.*

]2

(3) *A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*

- (a) *in respect of which the landlord is a relevant person; and*
- (b) *by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

(4) *In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.*

9.—

(1) *A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal]1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.*

(2) *An application under paragraph (1) must be made [...]2 no later than 3 months after the tenancy has ended.*

10.-

*If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal]1 —*

- (a) *must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and*
- (b) *may, as the [First-tier Tribunal]1 considers appropriate in the circumstances of the application, order the landlord to—*
  - (i) *pay the tenancy deposit to an approved scheme; or*
  - (ii) *provide the tenant with the information required under regulation 42.*

24.—

(1) *A landlord must apply to the scheme administrator for repayment of any tenancy deposit paid to an approved scheme on, or as soon as is reasonably practicable after, the end of the tenancy.*

(2) *The landlord's application must specify the date on which the tenancy ended and the amount of the tenancy deposit which, in the view of the landlord, should be—*

- (a) *repaid to the tenant; and*
- (b) *repaid to the landlord.*

(3) *The tenant may apply for repayment of the tenancy deposit, but if an application for repayment has been made by the landlord in accordance with paragraph (1), or is*

*made within 30 working days of the tenant's application, the scheme administrator must not progress the application.*

*(4) The tenant's application must be made to the scheme administrator and specify the date on which the tenancy ended and the amount of the tenancy deposit which, in the view of the tenant, should be—*

- (a) repaid to the tenant; and*
- (b) repaid to the landlord.*

*42.— Landlord's duty to provide information to the tenant*

*(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).*

*(2) The information is—*

- (a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;*
- (b) the date on which the tenancy deposit was paid to the scheme administrator;*
- (c) the address of the property to which the tenancy deposit relates;*
- (d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;*
- (e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and*
- (f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.*

*(3) The information in paragraph (2) must be provided—*

- (a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or*
- (b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.*

*(4) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments—*

- (a) paragraphs (2) and (3) apply as if the references to deposit were to each instalment of the deposit, and*
- (b) in relation to the information provided under paragraph (2)(a), confirmation of the cumulative amount of the tenancy deposit paid by the tenant in respect of each instalment after the first instalment.*

## **Reasons for Decision**

It is undisputed that the tenancy commenced on 28 August 2019; a deposit was taken of £850 and declared in clause 11 of the PRT; the Respondent's appointed representative and letting agent is Infiniti Properties who dealt with the let; the tenancy ended by the Applicants giving written notice; the end date was 28 February 2021, and the Deposit was not paid into an approved scheme until 6 March 2020. The Respondent's Representative had made written submissions and produced written documents showing that there had initially been a PRT between Mr Duke and Mr Griffiths for the Property and what was intended was a substitution of one tenant- Mr Hunter to replace Mr Griffiths. The way that was to be done had been decided on by the letting agent who had ended one tenancy and started a second tenancy with the Applicants one day later. The deposit from the first PRT was to be the deposit for the second PRT. Mr Griffiths had renounced any interest in the deposit to allow this to happen. The first deposit was to be collected then deposited of new. The letting agent states she now knows that there is a mechanism whereby one tenant could be

substituted for another in the scheme that would have achieved the same result. They did not know that at the time. The first PRT deposit had not been requested from the approved scheme until 21 November 2021. This was beyond the 30 working day period when the second PRT deposit should have been lodged in an approved scheme. There had been a further delay in the process as the approved scheme stated that the tenants listed on the first PRT had not promptly responded to allow the payment to be processed. The first PRT deposit was paid over to the letting agent on or around 13 January 2021. Again there had been a delay in placing the deposit that was now to be used for the second PRT into an approved scheme. It was registered as deposited on 10 March 2020. It was accepted that there had been delays. The letting agent was now using software to ensure that this did not happen again. Overall, they had better systems in place.

I had regard to the delays in lodging the deposit in the approved scheme at the beginning of the tenancy and then after it had been collected. I also had regard to the apparent delay on the part of one of the tenants to agree to the return of the deposit within a reasonable time. The terms of the regulations had not been complied with. The tenant Mr Hunter was exposed to a higher risk over the period, as his name was not on the original PRT

I am satisfied, having regard to the circumstances of this case and the terms of the regulations, an order for the Respondent to pay £600 to the Applicants should be made. This is not compensatory; it is a sanction.

### **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.**

**Susan Christie**

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**Legal Member/Chair**

21 July 2021  
**Date**