



**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/21/1496**

**Re: Property at 29/7 Jeffery Street, Edinburgh, EH1 1DH (“the Property”)**

**Parties:**

**Miss Anna Darling, Miss Lucy Robertson, 29/7 Jeffery Street, Edinburgh, EH1 1DH (“the Applicant”)**

**LK's Invitations, Grant Property Management Solutions Ltd, 14 Coates Crescent, Edinburgh, EH3 7AF (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 29/7 Jeffrey Street Edinburgh EH1 1DH (“the Property”) did not comply with a duty in Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, makes an order for the Respondent to pay to the Applicant the sum of one hundred pounds (£100).**

1. This was a case management discussion ‘CMD’ in connection with an application in terms of Rule 103 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’ for an order for a penalty in terms of Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, (‘the regulations’). The application was made by Miss Anna Darling and Miss Lucy Robertson on 21 June 2021. The applicants attended the CMD. The respondent was represented by Ms Diane Simpson and Ms Lillian Napier of Grant Property Investment Management.

2. The tribunal had before it the following copy documents: -

- (1) Application dated 21 June 2021.
- (2) Tenancy agreement dated 12 April 2021.
- (3) Respondent's submission dated 28 July 2021.
- (4) Letter to applicants in terms of regulation 42 of the regulations dated 21 June 2021.

### **Discussion**

3. It was agreed that the applicants paid the deposit on 30 April 2021, the tenancy started on 30 April 2021 and the deposit was lodged on 18 June 2021, around 5 days outwith the required period of 30 days from the start date of the tenancy.

### **The applicant's position.**

4. The applicants were concerned that his deposit was unprotected for several days. The applicants conceded that at least one day in May 2021 was likely to be a public holiday and therefore the deposit was lodged around 4 days late. Much of what the applicants had to say concerned the letting agents, Grant Property Investment Management, rather than the respondent. The applicants did not accept that issues due to covid were relevant. They stated that they had other issues with the letting agents and the late lodging of the deposit was the 'last straw'.

### **The respondent's position.**

5. The deposit was not lodged timeously due to an oversight on the part of the respondent's letting agents. Ms Simpson stated that the sum of £1400 was in their client account and was picked up in an audit. The respondent has one property with them as letting agent under the auspices of LK's Invitation and one in his sole name. She stressed that the oversight was wholly the fault of Grant Property Investment Management, and the respondent delegated this role to them. They have now put systems in place to ensure that this does not happen in the future.

### **6. Findings in fact**

- The respondent is the owner of the property.
- The applicants rented the property from the respondent from 30 April 2021 until present.
- The applicants paid a deposit of £1400 to the respondent's agents Grant Property Investment Management on 30 April 2021.
- The deposit was not lodged into an approved scheme within 30 working days of 30 April 2021
- The deposit was lodged around 4 days late, on 18 June 2021.

## Reasons

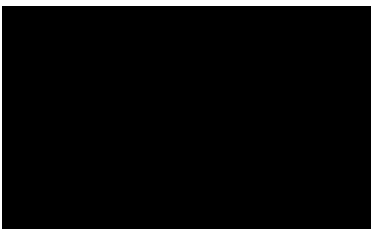
7. This was a breach of the regulations as the respondent's failed to lodge the deposit into a scheme within 30 working days. This was due to the respondent's agent's oversight.
8. The tribunal reviewed all of the recent cases regarding tenancy deposit schemes and noted that in the case of Kirk-v-Singh 2015 SLT (Sh Ct) 111 sheriff Jamieson was mindful of the need to:-

*proceed to impose a sanction which is "fair, proportionate and just having regard to the seriousness of the noncompliance.*

9. The tribunal considered this to be a minor breach. The breach was not wilful and there has been little prejudice to the applicants as the deposit was lodged with an appropriate scheme around 4 days late. Further, the applicants were given all of the required information in terms of regulation 42 of the regulations. The error was on the part of the letting agent to whom the respondent delegated the responsibility. On the other hand, the tribunal noted that the deposit was large. Accordingly, the tribunal decided a penalty of £100 was fair, proportionate and just in all of the circumstances.

## 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.**



**12 August 2021**

\_\_\_\_\_  
**Lesley A Ward Legal Member**

\_\_\_\_\_  
**Date**