



**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 and Regulations 3 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/21/1754**

**Re: Property at 6 Northfield Farm Avenue, Flat 10, Edinburgh, EH8 7QN (“the Property”)**

**Parties:**

**Mrs Joanna Dziedzic, 7 River Walk, Dalgety Bay, KY11 9YF (“the Applicant”)**

**Miss Aleksandra Szmidt, c/o Zenlet, Mitchelston Drive Business Center, Michelston Drive, Kirkcaldy, KY1 3NB (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be determined without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £100.**

**Background**

1. By application, received by the Tribunal on 21 July 2021, the Applicant sought an Order for Payment in respect of the Respondent’s failure to comply with the requirement to lodge a tenancy deposit in an approved Tenancy Deposit Scheme, as required by The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 4 September 2020, which provided for a tenancy deposit of £875, and a Deposit Certificate from Safe Deposits Scotland confirming the deposit had been received on 22 October 2020.

3. On 9 September 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations to the Tribunal by 30 September 2021.
4. On 9 September 2021, the Respondent's representative, Mr Akhtar Ali of Zenlet, Kirkcaldy provided written representations to the Tribunal. He stated that the failure to register the deposit timeously had been entirely his fault. He was the letting agent, and, in his contract with the Respondent, he undertook full responsibility for lodging the deposit as required by law. He had attempted to lodge the deposit on 14 October 2020, two days prior to the deadline for doing so, but had encountered a technical problem. He had reported it to Safe Deposits Scotland on the following day, but the issue had not been resolved until 20 October and the BACS payment had not reached Safe Deposits Scotland until 22 October. The Respondent had been setting up Zenlet as a new business at the time and was under considerable work pressure, but he accepted that he should not have left it so late to begin the process of lodging the deposit, which had been repaid in full to the Applicant when the tenancy ended on 30 June 2021. He provided the Tribunal with copies of a number of emails between him and Safe Deposits Scotland, commencing on 15 October 2020.

### **Case Management Discussion**

5. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 12 October 2021. The Applicant attended and the Respondent was represented by Mr Ali, who repeated that he took full responsibility for the failure to lodge the deposit on time and stated that he had put in place measures to ensure it could not happen again. He recognised that he should have prioritised the lodging of the deposit and apologised if his failure had caused any distress to the Applicant.
6. The Applicant told the Tribunal that she had paid the deposit to Mr Ali on 17 September 2021, so her money was at risk from that date until it was lodged on 22 October. She wondered what would have happened if Zenlet's business had failed during that period. Mr Ali responded that all clients' funds held by him were protected.

### **Reasons for Decision**

7. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

8. Under Regulation 3(1)(a) of the 2011 Regulations, a landlord must within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme and provide the tenant with the information required under Regulation 42, and, under Regulation 10 of the 2011 Regulations, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit.
9. The Tribunal noted that the tenancy commenced on 4 September 2020 and that the last date for lodging the deposit in an approved tenancy deposit scheme was, therefore, Friday 16 October 2020. It had been lodged three working days later, on 22 October 2020. Accordingly, the Respondent had failed to comply with Regulation 3(1)(a) of the 2011 Regulations and the Tribunal was bound to make an Order for Payment against her. Mr Ali had stated that the failure to lodge the deposit timeously had been entirely his fault, but the duty imposed by the 2011 Regulations lies with landlords.
10. The Tribunal was satisfied that the Respondent's failure to lodge the deposit timeously had not been wilful. There was evidence that, whilst he may have left it very late, her agent had been attempting to lodge the deposit before the deadline of 16 October 2020, as evidenced by the email exchanges with Safe Deposits Scotland beginning on 15 October. The date on which the Applicant had paid the deposit to the Respondent's agents was not relevant to the Tribunal's decision and the deposit had been lodged three business days after 16 October. The Applicant had been unaware that the deadline had been missed until Safe Deposit Scotland confirmed to her that the deposit had been lodged, by which time it was securely held in an approved scheme.
11. Having taken into account all the evidence, written and oral, presented to it, the Tribunal decided that an appropriate sum to order the Respondent to pay to the Applicant under Regulation 10 of the 2011 Regulations was £100.

## **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.**

George Clark

**Legal Member/Chair**

**12 October 2021**  
**Date**