



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and Rules 103 and 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/PR/21/2450**

**Re: Property at 13B Main Street, Kilsyth, G65 0AH (“the Property”)**

**Parties:**

**Mr David Hanley, 1 Baldoran Way, Milton of Campsie, G66 8FA (“the Applicant”)**

**Mitchells Asset Management Ltd, 604 Alexandra Parade, Glasgow, G31 3BS (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for payment in the sum of FOUR THOUSAND AND TWENTY SEVEN POUNDS AND FIFTY PENCE (£4,027.50) Sterling**

### **Background**

1. By application dated between 8 and 14 October 2021 (“the Application”), the Applicant applied to the Tribunal for an Order in terms of Regulation 10 of the Regulations. The Application comprised a copy of a tenancy agreement between the Parties indicating that any tenancy deposit would be lodged with MyDepositScotland and copy receipt dated 15 September 2020 showing payment of a deposit of £1,342.50. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 29 November 2021 at 14.00 by telephone conference. The CMD was intimated to the Parties. At the Respondent’s request the CMD was postponed and a fresh CMD was fixed for 17 January 2022 at 10.00 which date was intimated to the Parties.
2. Neither Party submitted written representations.

### **Case Management Discussion**

3. The CMD took place on 17 January 2022 at 10.000 by telephone. The Applicant took part. The Respondent did not take part.
4. The Applicant confirmed the detail of the Application. In respect of the sum sought, he confirmed that he was more concerned with a formal finding against the Respondent and return of the sum deposited by him. He confirmed that there had been no indication from the Respondent that the deposit paid by him had been lodged in terms of Regulations. He confirmed that the deposit had not been returned to him.

### **Findings in Fact**

5. From the Application and the CMD, the Tribunal made the following findings in fact: -
  - i) There had been a tenancy of the Property between the Parties from 15 September 2020 to 13 September 2021;
  - ii) A tenancy deposit of £1,342.50 was paid on 15 September 2020;
  - iii) The tenancy deposit was not lodged with an approved scheme in terms of the Regulations;
  - iv) The Respondent did not provide the Applicant with the information required by the Regulations.

### **Decision and Reasons for Decision**

6. The Tribunal had regard to the following Regulations: -

Regulation 3 which states:- *“(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. (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.”*;

Regulation 42 which states *“(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; and*

Regulation 10 which states *“If satisfied that the landlord did not comply with any duty in regulation 3 the Tribunal (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit”*

7. From the Findings in Facts, the Tribunal determined that the Respondent had breached both Regulations 3 and 42, in their entirety. Therefore, the Tribunal was bound to make an Order in terms of Regulation 10.
8. The Tribunal took the view that the tenancy deposit was not the Respondent's funds but was the Applicant's funds and, that as the Regulations are in place to protect the Applicant's funds, the Applicant was entitled to that full protection. He was entitled to know where his funds were held and how and when he could access those funds. The Tribunal took the view that the Respondent's failure to comply with the Regulations throughout the tenancy was well in excess of the statutory thirty-day time limit and so was at the extreme end of a breach of the Regulations. Accordingly, the Tribunal awarded the Applicant the full three times the deposit as requested by them.
9. Having made that decision, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "may do anything at a case management discussion .....including making a decision" and so proceeded to make an order for payment in the sum of £4,030.50.
10. In respect of the return of the tenancy deposit paid, the Tribunal advised the Applicant that it was unable to make an Order in this respect and that the Applicant should make a further application to the tribunal under Rule 111 of the Rules.

### **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.**

# **K. Moore**

**17<sup>th</sup> January 2022**

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**Legal Member/Chair**

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**Date**