



**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/21/2528**

**Re: Property at 19 Andrew Avenue, Lenzie, G66 5HF (“the Property”)**

**Parties:**

**Miss Laura Boyne, Mr Glenn Macnay, Gartclash Cottage, Langmuir Road, Kirkintilloch, G66 3TQ (“the Applicants”)**

**Mr Hugh Millar, 7 Clarence Road, Wimbeldon, Wimbeldon, SW19 8QF (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being satisfied that the Respondent as landlord of the property at 19 Andrew Avenue Lenzie G66 5HF (“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 Applicants the sum of one pound (£1).**
- 2. 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 Laura Boyne and Mr Glen MacNay on 20 October 2021. The applicants did not attend the CMD and were not represented. The respondent attended. The applicants were both sent the tribunal notification letter of 10 December 2021 by individual email. The tribunal was satisfied that the applicants were aware of the CMD and proceeded in their absence in terms of rule 24 and 29.**

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

- (1) Application dated 20 October 2021.
- (2) Private Residential Tenancy Agreement with a start date of 2 March 2020.
- (3) Applicant's banks statements.
- (4) Email to first named applicant by SafeDeposit Scotland Limited dated 12 October 2021.
- (5) Respondent's written submissions dated 26 December 2021.
- (6) Respondent's email to the tribunal dated 27 December 2021 with copy correspondence to SafeDeposit Scotland Limited dated 27 March 2020, 30 April 2020 and 1 May 2020.

## **Discussion**

4. Mr Miller set out his position that he is the owner of this one property. He was aware of his obligations in terms of the regulations. Unfortunately, he was unable to lodge the deposit as he had forgotten his log in details, and he was unable to get an answer at SafeDeposit Scotland Limited for several weeks despite repeated attempts. Once they did reply and gave him assistance, he lodged the deposit within 48 hours.
5. Mr Miller stated that this is the only property he rents out. He lived in the property before moving to London. He now has a new tenant in the property and has lodged the deposit timeously. The applicants continued to reside in the property until September 2021. In his written submission the respondent stated that he has a series of complimentary text messages from the first named applicant regarding the way he dealt with any matters that arose during the tenancy. He stated that he takes his obligations as a landlord seriously and he has an exemplary record with the local authority as a registered landlord. If he had not mislaid the log in details, he would have been able to lodge the deposit well within the 30 working days.

## **6. Findings in fact**

- The respondent is the owner of the property.
- The applicants rented the property from the respondent from 2 March 2020 until September 2021.
- The applicants paid a deposit of £995.
- The deposit was not lodged into an approved scheme within 30 working days of 2 March 2020.
- The deposit was lodged around 3 weeks late on 5 May 2020.

## **Reasons**

7. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair. The applicants did not attend the CMD, but the application was timeous and the respondent admitted the breach. He accepted that he lodged the applicants' deposit around 3 weeks late. He explained that he had lost his log in details, and he was unable to get a response from the deposit company for several weeks. He lodged copies of the emails he sent, the first of which dated 23 March 2020. He did not receive a substantive response until 1 May 2020. He transferred the deposit on 3 May 2020 and this was registered on 5 May 2020. It appears that SafeDeposit Scotland Limited may have been closed for several weeks due to the pandemic although the respondent accepted that if he had had the login details, he would have been able to lodge the deposit whether they were open or not.
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. This was a very minor breach. The tribunal was satisfied that had it not been for the pandemic, the respondent would have been able to comply with his duties. He was prevented from doing so because he was unable to get a response from the deposit company. The deposit was unprotected for a few weeks at most, and the applicants suffered no prejudice. They chose not to attend the CMD. The respondent only lets out this one property and he is not an experienced landlord, but he was fully aware of his obligation to lodge the deposit and he endeavoured to do so timeously. The breach was not wilful, and the tribunal decided a nominal penalty of £1 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.**

**18 January 2022**

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**Lesley A Ward Legal Member**

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**Date**