



**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/21/1971**

**Re: Property at 51 Dundas Street, Edinburgh, EH3 6RS (“the Property”)**

**Parties:**

**Mr Conor McCloskey, Flat 1208, 26 Dingwall Road, Croydon, CR0 9XF (“the Applicant”)**

**Mr John Alexander Leask, 3 Greenhill Gardens, Edinburgh, EH10 4BH (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be determined without a Hearing, that the Respondent had failed to comply with the duty imposed on him by Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and made an Order for Payment by the Respondent to the Applicant of the sum of £250.**

**Background**

1. By application, received by the Tribunal on 14 August 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 copies of a Private Residential Tenancy Agreement between the Parties commencing on 14 July 2020, which provided for a tenancy deposit of £900 and a Deposit Certificate from SafeDeposits Scotland, confirming that they received the deposit on 18 September 2020.

3. On 21 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 12 October 2021. The Respondent did not make any written representations to the Tribunal.

### **Case Management Discussion**

4. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 25 October 2021. The Applicant participated in the conference call, but the Respondent was not present or represented.
5. The Applicant confirmed that his tenancy had ended on 13 July 2021. He vaguely recalled having received a letter shortly after the tenancy began, confirming that the deposit had been lodged with a tenancy deposit scheme.

### **Reasons for Decision**

6. 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.
7. 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. 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.
8. The Tribunal noted that the tenancy commenced on Tuesday 14 July 2020 and calculated that the last date for lodging the deposit in an approved tenancy deposit scheme was 28 August 2020. It appeared, therefore, that it had been lodged 13 working days late, so 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 him.
9. The Tribunal noted that the deposit had been lodged only 13 working days late, so the risk of prejudice to the Applicant had been small, and that the Applicant had only become aware of the issue when the tenancy came to an end, so had not been caused anxiety or distress as a consequence. The purpose of the provisions in the 2011 Regulations is, however, to sanction a landlord, not to award compensation to a tenant. The Respondent had not

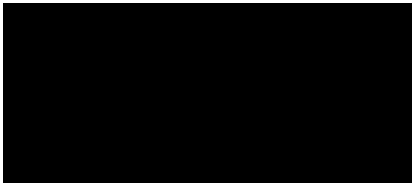
made any written representations to the Tribunal as to the reasons for his failure and had not attended the Case Management Discussion.

10. As the Applicant had stated that he had a vague recollection of receiving a letter confirming the deposit had been lodged, the Tribunal was unable to hold that the Respondent had failed to comply with the duty imposed on him by Regulation 42 of the 2011 Regulations.

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 £250.

### **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.**



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**Legal Member/Chair**

**25 October 2021**  
**Date**