



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2016 and Regulations 3 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/21/2162**

**Re: Property at 74A Balsusney Road, Kirkcaldy, KY2 5LH (“the Property”)**

**Parties:**

**Mr Christopher Easson, 20 Salisbury Street, Kirkcaldy, KY2 5HN (“the Applicant”)**

**Mrs Shona Jarrett, 8 Old Edinburgh, Boarhills, St Andrews, KY16 8PZ (“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 decided 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 £850.**

**Background**

1. By application, received by the Tribunal on 7 September 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 10 December 2020 at a monthly rent of £425 and with a deposit of £850.
3. The Applicant provided evidence of payment of the deposit on 7 December 2020. He added that the Respondent was an experienced landlord who had rented out multiple properties.
4. On 14 October 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 by 4 November 2021. The Respondent did not make any written representations to the Tribunal.

### **Case Management Discussion**

5. A Case Management Discussion was held on the morning of 22 November 2021. Both Parties were in attendance. The Applicant told the Tribunal that he had nothing to add to the facts as stated in his application.
6. The Respondent told the Tribunal that she accepted that she had failed to lodge the deposit with an approved tenancy deposit scheme within 30 working days of the commencement of the tenancy. She recalled that she had attempted to do so, but there had been an issue with her bank rejecting an on-line payment to a payee she had not used before. This had been during the COVID-19 lockdown restrictions, and she had simply forgotten to take up the matter directly with her bank and had subsequently forgotten that the lodging of the deposit had not been done. She told the Tribunal that the only reason she was a landlord at all was that she had been unable to sell the Property, so had rented it out to the Applicant. Her stepson now lived there. She said that, whilst she was not a professional landlord, she was well aware of the legal requirement to lodge tenancy deposits in an approved scheme and she asked the Tribunal to accept that it had been a genuine mistake on her part. She had only discovered her mistake on 15 October 2021, when the papers for this case and those relating to her other property that the Applicant had moved into in June 2021 were served on her and she had then immediately lodged the deposit with an approved tenancy deposit scheme, in relation to that property.

### **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. 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 in this case commenced on 10 December 2020, and accepted the evidence of the Respondent that the tenancy deposit had been lodged on 15 October 2021, albeit now in relation to a different property. It should have been lodged by 28 January 2021, thirty working days after the start of the tenancy, allowing for the statutory holidays over the Christmas and New Year periods. The tenancy of the Property must have ended on 9 June 2021, as the tenancy of the other property began on the following day. Accordingly, the Applicant's money had been at risk for approximately four months and two weeks.
10. The Tribunal accepted the Respondent's statement that there had been a problem, not of her making, with her attempt to lodge the deposit and that she had subsequently forgotten to follow up on the issue. The Tribunal was, on the same day, considering the matter of the deposit in relation to the second property rented by the Applicant from the Respondent, where the Applicant, not knowing that the deposit was not protected, had assumed that it had been "transferred" to the second property. The view of the Tribunal was that, as the Respondent had accepted, there was no excuse for the failure to lodge the original deposit, but that, the error had been genuine, and the Respondent had rectified the position whenever she became aware of her failure. The Tribunal also noted that the period of time during which the deposit for the Property had been at risk was just over four months and that the deposit was now lodged in an approved scheme. The Tribunal could not speculate on what might have happened had the Applicant ceased to be a tenant of the Respondent in June 2021, but nevertheless had to take account of the fact that the effect of the Respondent's failure would have been that the Applicant would have been denied access to an independent adjudication by the tenancy deposit scheme, had there been any dispute as to whether his deposit should be refunded in full.
11. Having considered all the facts and circumstance of the present application and taking into account the fact that the Respondent's failure did not appear to be deliberate or wilful, the Tribunal decided that an appropriate sum to order the Respondent to pay to the Applicant under Regulation 10 of the 2011 Regulations was £850.

## **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

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Legal Member/Chair

22 November 2021  
Date