



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

**Chamber Ref: FTS/HPC/PR/19/3331**

**Re: Property at 35 Sunnyside Street, Falkirk, FK1 4BJ (“the Property”)**

**Parties:**

**Miss Aisha Small, 35 Sunnyside Street, Falkirk, FK1 4BJ (“the Applicant”)**

**Mr Mark Anderson, 7 Torry Bay Court, Main Street, Newmills, Dunfermline, KY12 8TH (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**BACKGROUND**

1. By lease dated 7 & 8 June 2019 the Applicant let the Property to the Respondent;
2. The start date of the tenancy was 17 June 2019;
3. The lease required payment of a tenancy deposit in the sum of £395.00. This was paid on 7 June 2019,
4. The tenancy deposit was not lodged with an approved tenancy deposit scheme until 7 October 2019;
5. The Applicant presented an application to the Tribunal on 17 October 2019. The tenancy was continuing at that time;

**THE CASE MANAGEMENT DISCUSSION**

6. A Case Management Discussion was assigned for 13 January 2020 at 10am. Both parties attended. Neither was represented although the Respondent had a supporter, Mr B Arthur. The role of a supporter, as defined in Rule 11 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 was explained and followed,
7. The Respondent accepted he had received the tenancy deposit and, indeed, produced a bank statement showing it had been received on 7 June 2019,
8. The deposit funds were not lodged with an approved scheme until 7 October 2019,
9. The Respondent accepted this was an error on his part. It was, quite simply, due to an oversight. The funds were always available. They had not been used by him for any other purpose. The matter was drawn to his attention by Falkirk Council after the Applicant had sought advice from them about housing matters and he lodged the deposit funds immediately thereafter,
10. The Respondent is not an inexperienced landlord. He has let a total of five properties over the past 10 years. He has never before, however, had any issues nor difficulties with tenancy deposits. He had never been cited as a defender at court nor as a respondent in the Tribunal in the past,
11. The Applicant sought an order for payment of £1,185.00, being equivalent to three times the deposit amount. That is, of course, the maximum amount the Tribunal can order in terms of regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 "(the TDS regs)". She explained that the maximum amount should be ordered due to the fact that there were defects and issues with the Property, in particular dampness and problems with the heating and the door lock, and in addition, due to the dampness issues, she believed she and her two children had suffered health problems,
12. The Applicant also placed reliance on the fact that she had to borrow money to pay the deposit and initial rent payment and that she now needed funds to assist with a new tenancy she has acquired which will be commencing in the near future,

## **FINDINGS IN FACT**

13. The Tribunal found the following facts to be admitted or proved:-
  - i. By lease dated 7 & 8 June 2019 the Applicant let the Property to the Respondent;
  - ii. The start date of the tenancy was 17 June 2019;
  - iii. A tenancy deposit in the sum of £395.00 was paid to the Respondent on 7 June 2019,
  - iv. The tenancy deposit was not lodged with an approved tenancy deposit scheme until 7 October 2019;
  - v. The Applicant presented an application to the Tribunal on 17 October 2019. The tenancy was continuing at that time;

## **REASONS FOR DECISION**

14. This was a clear breach of the TDS regs,
15. Having said that, the Tribunal did not consider it to be a flagrant breach, in the sense of being deliberate or premeditated, nor was it at the upper end of any

scale of such breaches. In reaching that conclusion the Tribunal took in to account the following:-

- i. While the Respondent had experience as a Landlord and was aware of the TDS regs, this failure appeared to be a genuine oversight on his part,
  - ii. The deposit funds had always remained available and had not been disbursed by the Respondent for any other reason;
  - iii. The funds were lodged with an approved scheme immediately the Respondent became aware of the problem,
  - iv. The Respondent has never before breached the TDS regs,
  - v. The Respondent was forthright in admitting his fault and did not attempt to deceive nor mislead the Applicant nor the Tribunal in relation to the matter,
16. The matters relied upon by the Applicant in support of her request for an order for payment of the maximum amount available were not factors the Tribunal considered to be relevant to a determination of the penalty to be imposed on the Respondent. While they were no doubt important matters to the Applicant, the Tribunal required to confine its considerations to the tenancy deposit, the reason for the failure to lodge it and the history of the Respondent in relation to such matters. In the event that there were defects in the property and health issues arising from those the Applicant would need to seek redress for those matters in a different way. Any issue in relation to how the Applicant raised the deposit funds initially was also a matter for her and not a relevant consideration for the Tribunal. Similarly, the fact that the Applicant had a desire to raise funds to assist with a new tenancy was not a relevant consideration,
17. The Tribunal considered that the purpose of the scheme was not to bestow a windfall on tenants. While any order made results in a payment to tenants, the purpose of the TDS regs was to impose a penalty on errant landlords and the nature and extent of the breach, the reason for it and the history of the landlord in such matters were the main factors to be considered,
18. The Respondent indicated that he was encountering financial difficulties and that is why he was presently seeking to sell the Property. He has also been advised that his employment is being ended at the end of March. His financial position, while not fully detailed to the Tribunal, is not good and about to get worse. In the circumstances he requested time to pay the amount ordered (£395.00) at £100.00 per month. The Tribunal considered that to be reasonable and made a time to pay order accordingly.

## **DECISION**

The Tribunal granted an order against the Respondent for payment of the sum of **THREE HUNDRED AND NINETY FIVE POUNDS (£395.00) STERLING** to the Applicant

## **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.**

Virgil Crawford

**13 January 2020**

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**Legal Member/Chair**

\_\_\_\_\_  
**Date**