

Housing and Property Chamber
First-tier Tribunal for Scotland



**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 (Regulations)**

Chamber Ref: FTS/HPC/PR/19/3607

Re: Property at 3F2 58 Comiston Road, Edinburgh, EH10 5QQ ("the Property")

Parties:

Miss Rachel Barnicoat, Miss Bethany Ripley, Miss Ela Russell, Miss Bethany Shaw, 3F2 58 Comiston Road, Edinburgh, EH10 5QQ; 3F2 58 Comiston Road, Edinburgh, EH10 5QQ; 3F2 58 Comiston Road, Edinburgh, EH10 5QQ; 3F2 58 Comiston Road, Edinburgh, EH10 5QQ ("the Applicant")

Mr Stuart Currie, Villa 5, 48c 6 Villa Compound, Al Makahawi Villas, Garhoud, Dubai 183357, United Arab Emirates ("the Respondent")

Tribunal Members:

Alan Strain (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent pay the sum of £2,000 to the Applicants.

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)* in respect of an alleged failure to protect a tenancy deposit.

The Tribunal had regard to the following documents:

- 1. Application received 7 November 2019;**
- 2. Short Assured Tenancy Agreement (SAT) commencing 10 September 2016;**
- 3. Confirmation of deposit payment of £1,600;**

4. Safe Deposit Scotland (SDS) Certificate confirming deposit protected dated 1 October 2019.

The case had called for a Case Management Discussion (CMD) at which the Respondent had not appeared or been represented. A Hearing had been fixed due to the Respondent's non-appearance and for the Tribunal to determine what sanction if any should be imposed.

Hearing

The Hearing proceeded by conference call. The Applicants participated in person and represented themselves. The Respondent did not participate and was not represented. He had been served with notification by recorded delivery post on 18 February 2020.

The Tribunal were satisfied that he had notification that a Decision could be made in his absence.

The Tribunal determined the following facts:

1. The Parties entered in to the SAT commencing 10 September 2016;
2. The Applicants paid a deposit of £1600 in March 2016 which was not protected with SDS until 1 October 2019;
3. The SAT was continuing;
1. The Respondent had been served with notification of the CMD and Hearing but had not participated or made any representation to the Tribunal.

The Tribunal had no information from the Respondent to assist them.

Decision and Reasons

The Tribunal found that the tenancy deposit had not been protected in breach of the Regulations. Having made that finding it then fell to the Tribunal to determine what award should be made in respect of the breach. In so doing the Tribunal referred to and adopted the approach of the court in ***Russell-Smith and others v Uchegbu [2016] SC EDIN 64***. The Tribunal considered what was a fair, proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend upon its own facts and in the end of the day the exercise by the Tribunal of its discretion is a balancing exercise.

The Tribunal weighed all the factors and found it be of significance that the tenancy deposit was unprotected for 3 years of the tenancy; the Respondent had not participated or made any representations to the Tribunal in respect of his failure to protect the deposit. The deposit had eventually been protected so there was no prejudice to the Applicants.

In the circumstances the Tribunal considered the breach to be at the lower end of the scale and awarded the sum of £2,000.

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.

Mr Alan Strain

17 March 2020

Legal Member/Chair

Date