



**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/19/4000

Re: Property at 3 Campbell Drive, Larbert, FK5 4PP ("the Property")

Parties:

Mr Brian Grogans, Mrs Kaye Grogans, 59 Glenview Drive, Falkirk, FK1 5JT ("the Applicant")

Mrs Marion Fairley, Fairholm, Shiels Farm, Larbert, FK5 4EG ("the Respondent")

Tribunal Members:

Alan Strain (Legal Member)

Decision

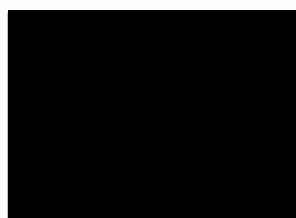
The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent pay the sum of £550 to the Applicants.

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of the Tribunal Procedure Rules in respect of an alleged failure to protect a tenancy deposit.

The Tribunal had regard to the following documents:

1. Application received 17 December 2019;
2. Short Assured Tenancy (SAT) commencing 15 September 2014;
3. AT5;
4. Written Representations from Respondent dated 24 January 2020;
5. Written Representations from Applicants dated 29 January 2020 and 3 February 2020.



Case Management Discussion (CMD)

The Applicants appeared and represented themselves. The Respondent appeared along with a supporter and represented herself.

It was accepted between the Parties that the deposit of £550 had been paid at the commencement of the tenancy and had not been protected. It had been placed with Safe Deposit Scotland after the termination of the tenancy on 28 January 2020.

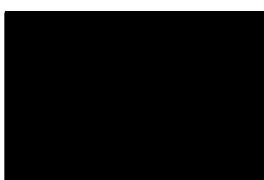
The Respondent explained that her late husband had been the registered landlord for the Property and had not protected the deposit. She only found this out after enquiry of Safe Deposit Scotland and took steps when this was drawn to her attention. This was at the end of the tenancy in December 2019.

After having heard from the Parties the Tribunal was able to make the following findings in fact:

1. The Parties entered into the SAT commencing 15 September 2014;
2. The Applicants paid the Respondent a deposit of £550 at the commencement of the SAT;
3. The Deposit was not protected until after the termination of the tenancy on 28 January 2020;
4. The Respondent's late husband had been the registered landlord for the Property;
5. The Respondent thought her late husband had taken care of securing the deposit;
6. After enquiry of Safe Deposit Scotland in December 2019 the Respondent ascertained that the deposit had not been protected and took steps to protect it;
7. The Respondent is an experienced landlord with 10 years' experience and 2 properties which she lets;
8. The Respondent is aware of the requirement to protect tenancy deposits and has done so before.

The Tribunal considered that it had sufficient information upon which to make a decision and that the procedure was fair. The Tribunal had regard to the case of **Russell-Smith and Others v Uchegbu [2016] SC EDIN 64**. The Tribunal adopted the approach taken by the court in the case. 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 on its own facts and in the end of the day the exercise by the Tribunal of its judicial discretion is a balancing exercise.

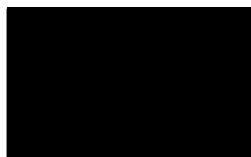
The Tribunal weighed all the relevant factors and found it to have been of significance that the deposit had been unprotected for the duration of the tenancy; the deposit was now protected after the termination of the tenancy; the Respondent's late husband had been the registered landlord and took care of deposits; the Respondent was an experienced landlord and aware of the requirement to protect tenancy deposits.



In all the circumstances the Tribunal found the breach to have been at the lower end of the scale and awarded the sum of £550.

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.



Legal Member/Chair

17 February 2020

Date