



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland**

**(Housing and Property Chamber) in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017**

**("the Rules")**

**Chamber Ref: FTS/HPC/PR/19/0878**

**Re: Property at 3/2 11 Royston Terrace, Edinburgh, EH3 SQU ("the Property")**

**Parties:**

**Miss Kelly Jaclyn Reichel, 12/6 Bathfield, Edinburgh, EH6 4ED ("the Applicant") per her agent, Mr Gordon Maloney of Living Rent, 96/97, Marchmont Road, Edinburgh, EH9 1 HR**

**Mr Alexander Forsyth, having an address at 3/2 11 Royston Terrace, Edinburgh, EH3 SQU ("the Respondent")**

**Tribunal Members:**

**Karen Moore (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an Order for Payment be granted in the sum of £7,500.00.**

**Background**

1. By application received dated 14 March 2019 ("the Application"), the Applicant made an application to the Tribunal for a possession order in terms of Rule 103 of the Rules. A copy of the agreement between the parties and a note of the end date were lodged as part of the Application.

2. On 30 April 2019, a legal member of the Tribunal with delegated powers of the Chamber President accepted the Application and a Case Management Discussion ("CMD") was fixed for 18 June 2019 at George House, 126, George Street, Edinburgh EH2 4HH at which CMD it was noted that the dispute between the Parties is the status of the occupancy agreement between the Parties and so the jurisdiction of the Tribunal and so a Hearing was then fixed for 7 August at 14.00 at the said George House.

3. Both Parties submitted written representations which were copied to each other.

### **Hearing**

4. The Hearing took place on 7 August at 14.00 at the said George House. The Applicant was not present and was represented by Mr. Maloney. The Respondent was present.

### **Preliminary Matters**

5. The Tribunal dealt with the preliminary matter of the status of the Respondent as landlord and then dealt the status of the agreement between the Parties.
6. With regard to the status of the Respondent as landlord, the Tribunal heard from the Respondent that, although the Property is owned by his aunt and uncle who live abroad, he has full control of it and he agreed with Mr. Maloney that all dealings including rent were dealt with by him. Accordingly, the Tribunal took the view that the Respondent had sufficient capacity to act as landlord.
7. With regard to the status of the agreement between the Parties, the Tribunal heard from both the Respondent and Mr. Maloney. The Tribunal read to the Parties the relevant parts of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") and had regard to the productions lodged on behalf of the Applicant. The Respondent accepted that the Property had been advertised as suitable for students and accepted that the definition of "holiday let" in the 2006 Act did not apply to the Applicant's circumstances. The Tribunal held a short adjournment to consider this evidence and satisfied itself that the agreement between the Parties was a private residential tenancy .
8. Accordingly, the Tribunal took the view that it had jurisdiction and that the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") applied and having noted that the Parties accepted that the tenancy deposit had been paid but had not been in lodged in an approved scheme, it followed that the Respondent as landlord did not comply with Regulation 3 of the 2011 Regulations and that, in terms of Regulation 10 of the 2011 Regulations, the Tribunal must grant an order.
9. The Tribunal then invited the Parties to address to on the amount of the order it should grant.
10. Mr. Maloney submitted that the Tribunal should impose the maximum sanction and referred the Tribunal to practices of certain landlords who use holiday lets to avoid private rented tenancy regulation.



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.

**K.M**

\_\_\_\_\_  
**Legal Member/Chair**

*7 August 2019*

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