

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/19/2360**

**Re: Property at 7 Cairn Grove, Crossford, Fife, KY12 8YD (“the Property”)**

**Parties:**

**Miss Angeline Pater, Ingleside Cottage, Pattiesmuir, Dunfermline, KY11 3ES (“the Applicant”)**

**Mr David Magill, c/o Fife Letting Service, 28 Chalmers Street, Dunfermline, Fife, KY12 8DF (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent did not comply with the duties contained within Regulation 3 of the 2011 Regulations and ordered the Respondent to pay the Applicant the amount of £1500.**

**Background**

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 on 29<sup>th</sup> July 2019 which was dated 28<sup>th</sup> July 2019.
2. The Applicant advised in the application that the tenancy had commenced on 18<sup>th</sup> June 2019. The tenancy is a short assured tenancy. The Respondent did not place the deposit in any scheme until 10<sup>th</sup> April 2019. The Applicant included a copy of confirmation from Deposit Scotland stating the date it was lodged.

3. The deposit paid was £750, paid on 23<sup>rd</sup> December 2019.
4. The Applicant provided copy her short assured tenancy agreement.
5. On 23<sup>rd</sup> August 2019, all parties were written to with the date for the Case Management Discussion ("CMD") of 2<sup>nd</sup> October 2019 at 2pm at the Vine Conference Centre, Dunfermline. The letter also requested all written representations be submitted by 3<sup>rd</sup> August 2019. The venue was subsequently change and all parties were informed.
6. On 27<sup>th</sup> August 2019, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by leaving the letter in the hands of Donna Skelton and employee of Fife Letting Service. Ms Skelton confirmed that Fife Letting Services receive mail for the Respondent and it is his address for correspondence. This was evidenced by Certificate of Citation dated 27<sup>th</sup> August 2019.
7. On 10<sup>th</sup> September 2019, the Respondent submitted a response. It stated that his letting agent (LA Lettings) had failed to forward any monies concerning the property. This had happened to others and caused the police and Trading Standards to investigate the company. He had been unaware of a deposit and had put his own money into Deposit Scotland.
8. On 12<sup>th</sup> September 2019, the Applicant responded to the Respondent's points disputing matters.
9. On 1<sup>st</sup> October 2019, the Respondent submitted further paperwork concerning the state of the house. In his email correspondence he confirmed that he would not be in attendance at the hearing.

### **The Case Management Discussion**

10. A Case Management Discussion ("CMD") was held on 2<sup>nd</sup> October 2019 at 2pm at Fife Voluntary Action, 16 East St Fergus Place, Kirkcaldy. The Applicant was in attendance. The Respondent did not attend the Tribunal. As he had emailed to that effect the Tribunal was content to proceed in his absence. The Applicant gave evidence that she had moved into the Property on 23<sup>rd</sup> December 2013. The lease was managed by LA Lettings. The Applicant had her brother as guarantor. At the signing of the lease she paid one month's rent payment (£750) plus one month's rent for a deposit (£750) paying a totally of £1500. As a result of the payment she was given the keys to the Property. In or around June 2014 the Respondent had contacted the Applicant querying the non payment of rent. The Applicant explained that she had paid monthly and was not in arrears. It transpired that LA Lettings had not been forwarding on the monies to the Respondent. On 2<sup>nd</sup> July 2014, Fife Letting Service took over from LA Lettings and a new lease was signed. After this Fife Letting Service conducted an audit and contacted the Applicant

regarding the deposit. The Applicant confirmed to Fife Letting Service that it had been paid to LA Lettings. The Applicant then was informed that the deposit had been paid into Deposit Scotland on 10<sup>th</sup> April 2019. The Applicant had destroyed her original lease when she got her new one.

**11. Accordingly the Tribunal finds in fact:**

- a. The Applicant paid a deposit of £750 on 23<sup>rd</sup> December 2013 in respect of a tenancy in the Property owned by the Respondent.
- b. The start date of the tenancy was 23<sup>rd</sup> December 2013 and was being managed by LA Lettings. On 2<sup>nd</sup> July 2014 a new lease was signed for the same property to reflect that there was a new letting again in the form of Fife Letting Agent.
- c. The Applicant did not receive notice from the Respondent of details of the rent deposit scheme into which the deposit has been paid until it was paid into Deposit Scotland on 10<sup>th</sup> April 2019.
- d. No evidence has been provided by the Landlord that he has met his duties in terms of Regulation 3.

**Reasons for decision:**

12. The Tribunal found that the evidence of the Applicant to be credible. The Tribunal accepted that the Applicant was required to pay a deposit when signing her lease to gain entry to the Property. The Tribunal accepted that LA Lettings may not have paid over the deposit or subsequent rent monies. However, the duty to ensure that the deposit is lodged within in one month of receipt lies with landlord. The Applicant should have ensured that LA Lettings lodged the deposit with the appropriate deposit scheme within the first month of receiving it. The fact that this continued until 10<sup>th</sup> April 2019 leaves the Tribunal concerned that the Respondent continued not to adhere to his legal requirements under the regulations for many subsequent years. The Tribunal found that the appropriate level of penalty was twice the deposit level. The Tribunal did not consider that an award of three times the deposit was appropriate as the Respondent had lodged the deposit with Deposit Scotland. Matters were raised concerning the state of the Property by the Respondent but this is not an issue for the Tribunal. The question of damage or the state of the Property is irrelevant to the issue of non-payment of the deposit into an approved scheme in terms of the 2011 Regulations.

**Decision**

13. For the forgoing reasons, the Tribunal finds that the Respondent has breached his obligations under Regulation 2 of the 2011 Regulations. It therefore orders the Respondent to make payment to the Applicant of the sum of £1500 in terms of Regulation 10(a) of the 2011 Regulations.

## 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.

Gabrielle Miller

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Legal Member/Chair

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Date

2nd Oct 19