



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Regulations”) and The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)**

**Chamber Ref: FTS/HPC/PR/23/1709**

**Re: Property at 1F2 17 Blackwood Crescent, Edinburgh, EH9 1RA (“the Property”)**

**Parties:**

**Mr Mandeep Cheema, Mr Graham Jackson, 1F1 12 Montague Street, Edinburgh, EH8 9QX (“the Applicant”)**

**Mr Cuma Cirkin, Unknown, Unknown (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £4,800 should be made by the Respondent to the Applicant.**

## **Background**

1. The application submitted on 26 May 2023 sought a payment order against the Respondent in respect of the Respondent’s alleged failure to carry out his duties in respect of a tenancy deposit, in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011. Supporting documentation was submitted with said application, including extracts from the Private Residential Tenancy (“PRT”) between the parties in respect of the Property which had commenced on 26 September 2022. The application claimed that the tenancy deposit paid by the Applicants at the outset of the PRT was £1,600, of which only £800 was returned to them by the Respondent at the end of the tenancy on 26 February 2023. It was also claimed that the Respondent had failed to

place the deposit in an approved scheme for the duration of the tenancy. Email confirmation of this from the three approved schemes had been lodged with the application. The Applicants requested that the Tribunal make an order in their favour for the maximum amount possible in terms of the 2011 Regulations, namely three times the deposit, given the circumstances of the case.

2. Following initial procedure, on 1 June 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion ("CMD") took place by telephone conference call on 12 September 2023 at 2pm and was attended by both Applicants. The commencement of the CMD was delayed for at least 5 minutes to allow the Respondent to join late but he did not do so. No representations had been lodged by the Respondent in respect of this application of which he had been notified by way of Advertisement on the Tribunal website, given that previous attempted service by way of Sheriff Officer had been unsuccessful at his last known address and that his current whereabouts were unknown.
4. It was noted at the CMD that the Applicants had no knowledge of the Respondent's whereabouts, having not had any communication from him since around February/March 2023. They confirmed that they had paid a deposit of £1,600 to the Respondent at the outset of the tenancy, together with two months' rent, the rent being £1,600 per calendar month. In total, they confirmed that they therefore paid £4,800 at the outset, then £1,600 per month rent thereafter. It was noted by the Legal Member that the extract of the PRT lodged with the application showing the "Rent" clause (clause 8) makes no mention of a deposit being paid and also indicates that the £4,800 paid was for rental for the period 26 September 2022 to 26 May 2023. Although rental of £1,600 is specified, the clause is incomplete as it does not indicate if this is per week, per month, etc. The Applicants indicated that the detail inserted in clause 8 is incorrect and that they do not hold a copy of the whole PRT. They explained that they took photographs at the time of signing only of the pages that deviated from the Model PRT Tenancy. They did not take a photograph of the "Deposit" clause of the PRT but think that it must have been blank, otherwise they would have photographed it. They do, however, have documentation that they will be able to produce which shows communications with the Respondent where he specified the amount of the deposit and initial rental payment. Likewise, they will be able to produce documentation which shows communications with the Respondent at the end of the tenancy, concerning the partial refund to the Applicants of the deposit, amounting to £800. It was noted that the Respondent's explanation for retaining part of the deposit was to cover utility bills and that he subsequently tried to charge the Applicants for utility bills incurred by previous occupants of the Property. The Applicants confirmed that all payments to the Respondent, including the initial payment and subsequent rental payments, together with the refund of the sum of £800 to them at the end of the tenancy were all made by bank transfer and that they would accordingly be able to produce extracts from bank accounts, or similar, showing these entries.

5. The outcome of the CMD was that the application was continued to a further CMD to allow further documentary evidence to be produced, verifying that the amount of the deposit paid by the Applicants to the Respondent was £1,600. A Direction was also issued following the CMD specifying the further documentation required and the date by which it should be lodged.
6. A further CMD was scheduled to take place on 11 December 2023 but this was postponed at the request of the First Applicant, to which the Second Applicant had no objection.
7. A further CMD was then scheduled to take place on 11 March 2024. In advance of same, in response to the Direction issued following the first CMD, the First Applicant lodged some further written submissions by email on 26 February 2024, together with some further documentation and, subsequently, a clip of an audio recording of a conversation stated to be between himself and the Respondent.
8. The application and details of the CMD were again notified to the Respondent by way of Advertisement on the Tribunal website for the requisite period. No representations were received from the Respondent prior to the CMD.

### **Case Management Discussion**

9. The CMD took place by telephone conference call on 11 March 2024 at 10am, again attended only by both Applicants. The commencement of the CMD was delayed for over 5 minutes to allow the Respondent an opportunity to join late but he did not do so.
10. After introductions and introductory remarks by the Legal Member, the Applicants both participated and put forward oral submissions in respect of the application and answered questions from the Legal Member. Reference was made to the documents lodged originally in support of the application and more recently, in response to the Direction. The audio recording referred to above was also played twice through by the First Applicant. The First Applicant stated that this was a recording of a telephone conversation between himself and the Respondent which had taken place around the end of December 2022, following on from the text messages between the parties, also lodged with the Tribunal. He explained that the Respondent had seemed reluctant to say anything in writing regarding the deposit and this was the reason for the telephone call. It was noted by the Tribunal Member that the recording appeared to be a conversation between the First Applicant and another male. Although some of the dialogue was indistinct, the conversation was clearly about a tenancy deposit and whether or not it had been placed in a tenancy deposit scheme. The other male stated that he had the tenancy deposit and that he had not been able to put it in a scheme as he had not done so within 28 days of the tenancy starting.

11. The First Applicant referred to the bank entries produced which showed that the total sum of £9,600 was paid to the Respondent, as follows:- £4,800 on 26 September 2022; £1,600 on 26 October 2022; £1,600 on 28 November 2022; and £1,600 on 3 January 2023. In addition, there was an entry showing the sum of £800 received from the Respondent on 28 February 2023, which the First Applicant explained was a partial refund of the deposit following the end of the tenancy on 26 February 2023. The First Applicant explained that it was originally anticipated that the tenancy would run until 26 May 2023 but that they had served notice in advance to end it early on 26 February 2023. The tenancy had therefore lasted 5 months, with the total rent due over that period amounting to £8,000. This leaves a balance of £1,600 which was the deposit paid to the Respondent at the commencement of the tenancy as part of the sum of £4,800 paid on 26 September 2022.
12. As to the partial return of the deposit at the end of the tenancy, the Applicant explained that the Respondent had originally stated that he was keeping the whole deposit to cover electricity bills and the costs of deep cleaning. The Applicant had made payment of all energy costs due and denied that deep cleaning was necessary as they had returned the Property in the same condition as it had originally been let to them. It was because this dispute arose regarding the return of their deposit that the First Applicant had questioned the Respondent about the scheme in which the deposit was held, as the Applicant wanted the dispute resolved through the scheme's processes. Initially, the Respondent told them that the deposit was in one scheme, then another, and ultimately that it was held by the Respondent and not in a scheme at all. This was in accordance with the outcome of the enquiries made by the Applicant with the three tenancy deposit schemes. The Respondent subsequently returned the sum of £800 to them and said he would return the remaining £800 once he had checked with the utility company regarding the settlement of their energy costs. However, he did not thereafter refund the remaining £800 or get back in contact with the Applicants regarding this. The First Applicant said that he tried to call the Respondent a few more times but the Respondent did not answer. This is why the Applicant applied to the Tribunal. The Applicant has had no further contact with the Respondent since.
13. The Legal Member indicated that she was satisfied from the documentary evidence produced and the Applicants' oral submissions today, that there had been a breach of the 2011 Regulations by the Respondent and that a sanction should be imposed on the Respondent. It was noted that, in their application, the Applicant had requested the maximum sanction of three times the tenancy deposit. The Applicants were asked to put forward submissions in support of that request.
14. The Applicants explained that, from the outset, the Respondent had been reluctant to place their deposit in a scheme. They consider that he took advantage of them as he was aware that they were having difficulties finding accommodation and were staying at friends' houses initially when they started university. The Respondent had originally tried to charge them £1,800 per month rent, although he had previously let the Property out as a one-bedroom flat for £800 per month. They were desperate so eventually agreed on £1,600

per month, even although they knew this was higher than the market price at that time. They did insist, however, that he agreed to pay their deposit into a scheme as a condition of them signing up to the tenancy agreement. However, he did not then do so. Reference was made to the previous Tribunal decision (reference FTS/HPC/PR/21/2744) against the Respondent in respect of the same Property, which the Applicant had lodged in support of this application. It was noted that this decision was dated 9 February 2022, that the Respondent had engaged in those proceedings and had been legally represented in them, that the sanction imposed in that case was two and a half times the rental deposit and that the tenancy in that case had ended in September 2021. The Applicants stated that this decision against the Respondent was not long before they entered into their tenancy with him and that he clearly therefore knew about the 2011 Regulations and his obligations to pay a tenancy deposit into a scheme but had decided not to do so, despite his assurances to them at the outset of their tenancy. The Applicants also drew attention to the fact that the Respondent had sought to reassure them towards the end of their tenancy that their deposit was safe and would be returned to them. He also knew that they were having financial difficulties and were looking to move to a different property. However, he initially refused to give the Applicants a reference and sought to persuade them to move into one of his cheaper properties instead. By withholding their tenancy deposit from them and then only partially refunding it, he caused them financial difficulties as they needed to find a deposit for their new property in a very competitive rental market. They had to borrow money from family. The First Applicant stated that he had had to spend a lot of time chasing the Respondent regarding this matter and making enquiries with the utility company and the deposit schemes, which was frustrating. The Applicants confirmed that the Respondent had told them that he had several other properties that he let out and, indeed, had shown or offered to show the Second Applicant some of his other properties which he had indicated were cheaper, in an attempt to persuade the Applicant to move from this Property into another of his properties.

15. The Legal Member, having considered the matter, confirmed that she would impose the maximum sanction of three times the tenancy deposit and that a payment order in the sum of £4,800 against the Respondent would be issued. There was brief discussion about the procedure which would follow, the issuing of paperwork following the CMD and the appeal period. The Applicants were thanked for their attendance and the CMD brought to a close.

## **Findings in Fact**

1. The Respondent is the owner and landlord of the Property.
2. The Applicant was the tenant of the Property by virtue of a Private Residential Tenancy commencing on 26 September 2022, which ended on or around 26 February 2023.

3. The Applicant paid a tenancy deposit of £1,600 to the Respondent at the outset of the tenancy on the understanding that the Respondent would pay this into a tenancy deposit scheme.
4. The Respondent did not pay the deposit of £1,600 into a tenancy deposit scheme at any time during the tenancy, or thereafter.
5. The Respondent provided misleading and contradictory information to the Applicant concerning the whereabouts of the tenancy deposit.
6. A dispute arose towards the end of the tenancy regarding return of the deposit.
7. The Respondent returned half of the deposit, being the sum of £800, to the Applicant on or around 28 February 2023, but has retained the sum of £800.
8. The Respondent did not engage in the Tribunal process, nor attend either of the CMDs.

## **Reasons for Decision**

1. The application was in order and had been submitted timeously to the Tribunal in terms of Regulation 9(2) of the 2011 Regulations [as amended to bring these matters within the jurisdiction of the Tribunal], the relevant sections of which are as follows:-

*“9.—(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.*

*(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.*

*10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

*(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and*

*(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—*

*(i) pay the tenancy deposit to an approved scheme; or*

*(ii) provide the tenant with the information required under regulation 42.”*

Regulation 3 [duties] referred to above, is as follows:-

*“3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—*

*(a) pay the deposit to the scheme administrator of an approved scheme; and*

*(b) provide the tenant with the information required under regulation 42.*

*(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*

*(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*

*(a) in respect of which the landlord is a relevant person; and*

*(b) by virtue of which a house is occupied by an unconnected person,*

*unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

*(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.”*

Regulation 42 [landlord’s duty to provide information to tenant] referred to above, is as follows:-

**“42.—***(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).*

*(2) The information is—*

*(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;*

*(b) the date on which the tenancy deposit was paid to the scheme administrator;*

*(c) the address of the property to which the tenancy deposit relates;*

*(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;*

*(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and*

*(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.*

*(3) The information in paragraph (2) must be provided—*

*(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or*

*(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.”*

The Legal Member was satisfied from the documentation before her and the oral representations made at the CMD by the Applicants that the Respondent was under the duties outlined in Regulation 3 above and had failed to ensure that the deposit paid by the Applicant was paid into an approved tenancy deposit scheme and that the Applicant was provided with the requisite information in respect of same, contrary to Regulations 3 and 42 of the 2011 Regulations. The Legal Member considered the content of the audio clip produced by the Applicant at the CMD and noted that it did appear to support the Applicant's position but did not consider it to be of much evidential value in itself, as it could not be verified, and accordingly made her findings-in-fact on the basis of the documentary evidence produced and the oral submissions of the Applicant at the CMD. The Respondent had not engaged in the Tribunal process and there was no opposing information before the Tribunal to the information presented by the Applicants. The Legal Member was satisfied that the application had been properly and timeously advertised on the Tribunal website, that the Respondent could therefore be taken to have been notified of same and had not attended either CMD. The Legal Member was accordingly satisfied that the application did not require to be continued to an Evidential Hearing and that, in terms of Regulation 10 above that a sanction must be imposed on the Respondent in respect of this breach of the 2011 Regulations.

2. In determining the appropriate amount of the sanction to be imposed on the Respondent for payment to the Applicant, the Legal Member considered carefully the documentation before her, the background circumstances and the information given orally at the CMD by the Applicants. The Legal Member considered that the amount of the sanction should reflect the gravity of the breach. The Applicant had sought the maximum available sanction. As the deposit here was £1,600, in terms of Regulation 10(a) above, the maximum possible sanction is £4,800. There is no minimum sanction stipulated in the 2011 Regulations.
3. The Legal Member considered that, although the length of the tenancy (5 months) was relatively short, the deposit had not been placed in a scheme by the Respondent, and was therefore unprotected, for the whole duration of the tenancy. A dispute had arisen towards the end of the tenancy regarding return of the deposit. The Respondent had initially stated that he was retaining the whole deposit but ultimately returned half of the deposit just after the tenancy ended. By not placing the deposit in a scheme, the Respondent had denied the Applicant access to the free dispute resolution procedure available to parties through the schemes in respect of disputes such as this one arising at the end of tenancies. The Legal Member accepted that there had been prejudice to the Applicant caused by the Respondent's breach of the 2011 Regulations. The Applicants were experiencing financial and other difficulties in securing alternative accommodation in a very competitive rental market, being students at the time, and these difficulties were compounded by the Respondent refusing to return their whole deposit. They required to pay a deposit up-front in connection with securing alternative accommodation. They also suffered inconvenience due to having been given erroneous and conflicting information by the Respondent regarding the whereabouts of the deposit and in seeking to resolve the dispute which had arisen regarding the return of the deposit. However, the factors which the Legal Member considered had the most



weighting in her assessment of the appropriate level of sanction to be imposed here were that the Respondent lets out other properties (or indeed did at the time of the previous Tribunal decision against him and at the time of this tenancy) and had had a recent Tribunal decision made against him in respect of a similar breach of the 2011 Regulations just a few months before he had entered into this tenancy with the Applicant. The previous decision concerned the same Property, the Respondent had been involved in those proceedings, d had been legally represented in them and a significant sanction had been imposed against him. The Legal Member concluded that the Respondent was therefore well aware of his obligations in respect of this tenancy deposit and yet had chosen not to place the deposit in a scheme. Moreover, the Respondent had misled the Applicant at the outset of the tenancy by stating that the deposit would be placed in a scheme and, towards the end of the tenancy, had initially sought to mislead the Applicant again, by stating that the deposit was held in one scheme and then another, before stating that he in fact held the deposit himself. In these circumstances, the Legal Member determined that it was appropriate for the maximum sanction to be imposed here of three times the deposit, being the sum of £4,800 to be paid by the Respondent 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.**

# N. Weir

**Legal Member/Chair**

**11 March 2024**  
**Date**