Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/26/0756

Re: Property at Flat 3, 3, New Mart Place, Edinburgh, EH14 1RW ("the Property")

Parties:

Mr Arun Kumar Ramamoorthy, Flat 2/3, 55 Kenley Road, Renfrew, PA4 8BN ("the Applicant")

A&S Medical Services Ltd, 41 Craw Road, Paisley, PA2 6AD ("the Respondent")

Tribunal Members:

Robert MacDonald (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) refuses the application.

Background

1. By application dated the 13th of February 2026 the Applicant sought an order for payment of £10800 in terms of Rule 103, in respect of the alleged failure by the Respondent to comply with Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Applicant complained that the Respondent had failed to lodge a payment of £1200 ("the disputed payment"), which the Applicant contended was a tenancy deposit in respect of the property, with an approved tenancy deposit scheme provider.

2. The application was accepted by the Tribunal on the 24 February 2026. A Case Management Discussion was assigned for 5 August 2026 at 11:30 am by teleconference. A copy of the application was served on the Respondent by sheriff officer by letterbox service on 1 July 2026. The Respondent was invited to lodge written submissions with the Tribunal by 21 July 2026.

3. On 30th of June 2026 the Applicant lodged an amendment to his application with the Tribunal, in terms of which he reduced the sum claimed by way of a penalty from £10800 to £3600.

4. On the 17th of July 2026 the Respondent lodged with the Tribunal a written response with associated documents which extended to 76 pages. That response was copied over to the Applicant. On the 29th of July 2020 the Applicant lodged a further written representation in response with associated documents which extended to 15 pages.

Case Management Discussion

5. The Case Management Discussion was held by teleconference at 11:30 am on 5 August 2026. The Applicant was present, and the Respondent was represented by its director and shareholder Dr Jagdeep Luthra.

The Applicants Submission

6. The Applicant confirmed to the Tribunal that his case was predicated on the contention that the disputed payment he had made to the Respondent at the commencement of the tenancy should have been treated by the Respondent as a tenancy deposit. He accepted that the agreement made provision for a separate tenancy deposit of £2400 which he had paid to the Respondent and which had been placed with a recognised tenancy deposit scheme provider. He accepted that at the end of the tenancy, following an adjudication procedure carried out by the tenancy deposit scheme provider, that deposit had been repaid to him in full. He accepted that in the agreement which he had lodged with this application there was a handwritten amendment which provided that no rent was payable for the rent for the last month of let. He produced to the Tribunal an email which Dr Luthra had sent to him dated prior to commencement of the tenancy which stated that he would pay an extra month rent in addition to a two month security deposit of £2400, which payment would be adjusted by him not paying any rent on the last month of his occupation of the property. His contention as set out in his written representations was that the disputed payment was in fact a “holding deposit” and therefore should have been placed with a recognised tenancy deposit scheme provider. He directed the Tribunal to a WhatsApp message sent to the Applicant on the 18th of October 2025 which stated

   Your four weeks notice will mean you need to pay rent till November 15.

   The Applicants position was that this was a written instruction by the Respondent to him to pay rent for what was the last month of the tenancy notwithstanding what appears to be a prior agreement that the disputed payment would be used to pay the last month rent.

   As the Respondent had not placed the disputed payment on with a recognised tenancy deposit scheme provider the Applicant said that the Respondent was in breach of the 2011 Regulations, and that because of that breach a penalty should be imposed.

He accepted that the disputed payment was repaid to him by the Respondent on the 29th of December but pointed to the not insignificant delay in repaying it in support of his assertion that the payment was in fact a disguised security deposit.

The Applicants fallback position in his submission was that if disputed payment was not a security deposit, then it was an illegal premium as prohibited by section 82 of the Rent (Scotland) Act 1984.

<u>The Respondents Submission</u>

7. The Respondent case was that the parties had signed a private residential tenancy agreement on the 26th of November 2022. Signature of the agreement followed on an email sent by the Dr Luthra to the Applicant and his joint tenant Divyaprabha Manogar on 30 October 2022 which stated

> *You will pay an extra one month rent which will be adjusted by you not paying any rent on the last month of your stay before you vacate the premises. Also a two month security deposit of £2400 will be due before handover and as usual this will be deposited in a certified tenant protection scheme of which you will receive due notification within 30 days…. If you are happy with this then a holding deposit of £1000 would be needed to take the flat off the market. This amount will be adjusted from the rent due.*

8. Paragraph 7 of the agreement itself dealt with the issue of rent. It provided that

> *The rent is £1200 a calendar month payable in advance. The first payment will be paid on 1 December 2022 and will be further the sum of £2400 in respect to the period 1st December 2022 to 31 January 2023, thereafter payments of £1200 must be received on the first of the month and then subsequently on or before the same date each calendar month thereafter. No rent is payable for the last month of let.*

9. Paragraph 10 of the agreement provided that at the start date of the tenancy or before a deposit £2400 would be paid by the tenant to the landlord. It provided that a tenancy deposit scheme would be used. The Applicant had paid the £2400 deposit. That had been placed with SafeDeposit Scotland who are a recognised tenancy deposit scheme provider at the start of the tenancy. At the end of the tenancy there had been a dispute about the Applicants liability for

some repair issues. There had therefore been a delay in the tenancy deposit being repaid to the Applicant while the tenancy scheme adjudicator adjudicated this claim. At the conclusion of the adjudication period the tenancy deposit was repaid to the Applicant in full.

10. Dr Luthra confirmed that he had sent a text message the Applicant on 14 November 2025. He said the message simply explained the rent was due for the last month of the tenancy but that the message was not a demand for payment. It was always the position that the last month tenancy would be paid from the disputed payment which had been paid prior to the commencement of the tenancy. Ultimately, the Applicant chose to transfer money to him and that sum was subsequently transferred back. The Respondent pointed out that the repayment of the overpayment of rent was made to the applicant notwithstanding the fact that there was at the time of repayment an outstanding adjudication in relation to the tenancy deposit, and that the sum claimed by the Respondent in that matter exceeded the £2400 tenancy deposit held by SafeDeposit Scotland.

Discussion

11. The Tribunal raised with the parties the fact that the submissions in respect to this matter dealt with a number of extraneous matters such as an EICR and arguments about repairs and entry to the property, none of which it appeared to the Tribunal were relevant to the core question before the Tribunal, namely whether the disputed payment was a tenancy deposit. Both parties acknowledged that these issues were not directly relevant to the application and were content for the purposes of determining the core issue in the application that Tribunal disregarded this information.

12. The Tribunal asked both parties whether they were content that the Tribunal make a decision following a Case Management Discussion without the need to hear evidence. The Tribunal considered that the evidence that was relevant in this case appeared to be largely agreed and the issue was one of fact and law, namely whether or not the disputed payment made by the Applicant should be treated as a tenancy deposit or an advance payment of rent. Both parties were content that the matter simply be dealt with by the Tribunal on the basis of the written documents lodged (insofar as they were relevant), the parties written submissions, and the submissions made at the Case Management Discussion.

13. The Tribunal advised the parties it would take some time to consider the documentation lodged in support of the application and the submissions made at the Case Management Discussion and would issue its decision in due course.

Findings in fact

14. On 26th November 2022 the Applicant, Divyaprabha Manogar and the Respondent entered into a private residential agreement in respect of Flat 3/3 New Mart Place Edinburgh which is owned by the Respondent.
15. Divyaprabha Manogar has no interest in this dispute.
16. The agreement was signed by the parties on 26th November 2022.
17. In terms of clause 5 of the agreement the private residential tenancy commenced on 1st December 2022.
18. In terms of clause 7 of the agreement rent was £1200 per calendar month payable in advance. The first payment was due on 1st December 2022 and was to be in the sum of £2400 in respect of the period 1st December 2022 to 31st January 2023. Rent of £1200 was thereafter payable monthly on the first day of each month. No rent was payable for the last month of the agreement.
19. In terms of clause 10 of the agreement a security deposit of £2400 was due to be paid by the Applicant prior to commencement of the tenancy.
20. The Applicant paid to the Respondent £1000 on 31st October 2026 as a "holding deposit", which sum was to be applied to his obligation to pay rent.
21. The Applicant paid £2400 on 26th November 2022 as a security deposit.
22. The Applicant paid £1400 on 26th November 2022 as an advance rent payment.
23. The holding deposit together with the advance rent payment made up the two months advance rent of £2400 required in terms of clause 7 of the agreement.
24. The security deposit paid by the Applicant was placed with a recognised tenancy deposit scheme provider by the Respondent.
25. On 1st January 2024 the rent increased to £1040 per calendar month
26. On 1st January 2025 the rent increased to £1090 per calendar month
27. On 18th October 2025 the Applicant gave the Respondent 28 days' notice of his intention to leave.
28. The private residential tenancy ended on the 15th November 2025.
29. The Applicant had a liability to pay rent until the end of the tenancy.
30. That liability was met by the Applicant paying the last month's rent in advance at the commencement of the tenancy.
31. The last month of the tenancy ran from 15th October 2025 to 15th November 2025.
32. Dr Luthra sent a text message to the Applicant on the 18th of October 2025 confirming that rent was due for the last month. The said text message did not amount to a demand for a payment.
33. The Applicant overpaid rent by paying the full rental payment of £1290 to the Respondent on 1st October 2025 and by paying a rental payment £645 on 1st November 2025.
34. The total overpayment of rent by the Applicant amounted £1200.
35. The Respondent repaid to the Applicant the sum of £1200 on 29 December 2025.

Findings in Law

36. The disputed payment was not a tenancy deposit in terms of section 120 of the Housing (Scotland) Act 2006 but was to meet the Applicant's obligation to the Respondent to pay rent.
37. The payment of the first and last month's rent in advance was not a tenancy deposit under section 120 of the Housing (Scotland) Act 2006.
38. The Respondent has not failed to comply with any obligation under regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Reasons for decision

39. Rule 17 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 allows the Tribunal to do anything at a Case Management Discussion which it may do at a hearing including making a decision. The Tribunal was satisfied that there was sufficient information available to it to make a decision following a Case Management Discussion. Both parties agreed that no further procedure was required.
40. A tenancy deposit is defined in section 120 of the Housing Scotland Act 2006 as follows

    1)A tenancy deposit is a sum of money held as security for—

    (a)the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or

    (b)the discharge of any of the occupant's liabilities which so arise.
41. The Tribunal having considered the submissions and the documents produced was satisfied that clause 7 of the lease and the email sent prior to the lease being entered into made it clear that the Respondent had an obligation to pay the first and last month's rent of the tenancy at the commencement of the lease. Clause 10 of the lease made it clear that there was a tenancy deposit payable and that payment was made separately by the Applicant to the Respondent on 26th November 2022. The Tribunal did not consider that the text message sent by the Respondent to the Applicant at the end of the tenancy on the 18th October 2025 amounted to a demand for payment. The Tribunal was satisfied that the payment was properly treated by the Respondent as payment for the last month's rent.
42. Both parties in their submissions referred the Tribunal to the case of *Cordiner v Al-Shaibany* 2025 (Sh Ct) 189. In that case the Sheriff held that an advance payment of rent was not a tenancy deposit within the meaning of section 120 of the Housing (Scotland) Act 2006. The approach the court took was to hold that the pursuer, in paying the first and last rental payments at the start of the

lease, had discharged her obligation to pay these in accordance with the lease. The Tribunal was satisfied that the disputed payment made by the Applicant at the start of the agreement was a payment which discharged his obligation to pay the last month's rent. The Tribunal considered that the fact that the Respondent repaid the overpayment of rent prior to the tenancy deposit scheme adjudicator reaching a decision on return of the security deposit supported the Respondent's contention that he was not holding the disputed payment as an additional security deposit.

43. The Tribunal considered the circumstances surrounding the payment of the months rent of £1290 at the start of October 2025 and the payment of £645 pounds at the start of November 2025. Although the Tribunal found that text message sent on 18th October 2025 was not a demand for payment the Tribunal accepted that the text message might have contributed to the decision by the Applicant to make such payment. It appeared to the Tribunal that the Applicant had made these payments in error and that was recognised by the Respondent when he repaid the £1200 to the Applicant.
44. As no breach of Regulation 3 has occurred the Tribunal does not require to consider an appropriate penalty.
45. The Tribunal did not consider there was any merit in the argument that the disputed payment might be a premium as prohibited in terms of section 82 of the Rent Scotland Act 1984. Section 90(1) of that Act provides

> *"premium" means any fine, sum or pecuniary consideration, other than rent, and includes any service or administration fee or charge.*

The Tribunal found as a matter of fact that the disputed payment made by the Applicant was a payment of rent and therefore could not be an illegal premium.

Decision

46. The First-tier Tribunal for Scotland (Housing and Property Chamber) refuses the application.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish

to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins

Legal Member/Chair **Date**