



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/PR/20/1646**

**Re: Property at 47D Bedford Avenue, Aberdeen, AB24 3YL (“the Property”)**

**Parties:**

**Mr Andrew Morrow, Mr Parandeep Sandhu, Mr Emilio Schweighart Gate, 14 Gladhouse Place, Edinburgh, EH10 6TF; 6 Southbae Gardens, Jordanhill, Glasgow, G13 1UB; 75 Totterdown Street, Tooting, London, SW17 8TB (“the Applicants”)**

**Mr John Anderson, 48 Ballyricked Road, Larne, County Antrim, BT40 3EQ (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a request by the Applicants to withdraw the application should be accepted, on the basis that the parties would now refer the matter to Safe Deposits Scotland for adjudication.**

**Background**

By application, received by the Tribunal on 4 August 2020, the Applicants sought an Order for Payment in respect of the Respondent’s failure to lodge a tenancy deposit in an approved tenancy deposit scheme. The Applicants stated that the tenancy had ended on 15 March 2020.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 16 August 2019 at a monthly rent of £1,020 and providing for a deposit of £1,020, and a Receipt, dated 16 August 2019, from the Respondent’s letting agents for the first month’s rent and the deposit. The Receipt stated “Landlord Transferring to Letting Protection Scotland”. The Applicants also provided copies of an email from the Respondent saying that the deposit was held by the Respondent in Northern Ireland pending receipt of the end

of tenancy inspection report, and emails from The Letting Protection Scheme Scotland (24 July 2020), MyDeposits Scotland (22 July 2020) and Safe Deposits Scotland (20 July 2020), all three companies confirming that the deposit was not lodged with them. The Applicants provided a subsequent email from Safe Deposits Scotland confirming that the deposit had been protected with them from 7 August 2020.

The Tribunal advised the Applicants that an application under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 for an Order that the Respondent did not comply with the requirement to lodge the deposit in an approved tenancy deposit scheme must be made no later than three months after the tenancy has ended and on 10 September 2020, the Applicants amended the application to one under Rule 111 of the 2017 Regulations, namely an application for civil proceedings, seeking repayment in full of the deposit sum of £1,020.

On 24 September 2020, the Tribunal advised the parties of the date and time of a Case Management Discussion and the Respondent was invited to make written representations by 15 October 2020.

The Respondent made written representations by email on 15 October 2020. He said that, until 2019, he and his wife had managed the Property without agents and had always refunded deposits immediately and in full, with one exception where, with the agreement of the tenant, a deduction had been made. As individual student tenants graduated or moved on, the tenants left behind had been able to suggest replacements but, with regard to the letting to the Applicants, it so happened that all tenants were leaving at the same time, and the Respondent had decided to use a letting agency. The requirement to lodge the deposit in an approved scheme had slipped the Respondent's mind, but he had always ring-fenced tenants' deposits and, when the Applicants had told him that he would be liable for three times the rental by way of a fine, he had contacted Safe Deposits Scotland, who had recommended that as a gesture of good faith and to assure the Applicants that the money was secured, it would be wise to lodge the deposit retrospectively. He had done that immediately. The Respondent expressed concerns about difficulties caused by the Applicants having changed the electricity supplier and having failed to return one set of keys, which would require the Respondent to change the locks. The Respondent also provided the Tribunal with a copy of an Inventory Check and Report on the Household Furniture and Furnishings, prepared by Thomas Yule, Valuer, Aberdeen on 28 July 2020. It had not been possible, due to the COVID-19 restrictions, to obtain that Report sooner. The Report highlighted various issues, including the requirement for cleaning, a broken window and a worn mattress.

### **Case Management Discussion**

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 29 October 2020. The Applicants and the Respondent participated in the conference call.

The Legal Member of the Tribunal explained to the Parties that, in his view, the Tribunal was not the appropriate forum at which matters between the Parties should be determined, because the Applicants were seeking repayment in full of a deposit that was now held by Safe Deposits Scotland. The Respondent was seeking to retain at least part of the deposit, although no vouching of expenses incurred had been provided. It would not be appropriate for the Tribunal to make findings on the

competing claims of the Parties as to how the deposit should be dealt with, as the deposit was in the hands of the administrators of an independent tenancy deposit scheme, and any Order the Tribunal made would not be binding on Safe Deposits Scotland. The Tribunal's view was that the Parties should ask Safe Deposits Scotland to adjudicate on the repayment of the deposit and provide that body with such evidence, documentation and vouching that it might require or that the Parties considered to be relevant. If the Parties agreed that this was the appropriate approach, the Applicants might consider withdrawing the application to the Tribunal, rather than have it continued or dismissed under the doctrine of *forum non conveniens*.

The Applicants consulted together and then told the Tribunal that, whilst they did not agree that any deductions from the deposit should be made, they wished to withdraw the application, on the basis that the Parties would now ask Safe Deposits Scotland to adjudicate on the matter. The Respondent accepted that this was the appropriate way in which to proceed.

### **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.**

George Clark

29/10/2020

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**Legal Member/Chair**

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**Date**