Housing and Property Chamber
First-tier Tribunal for Scotland

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

Chamber Ref: FTS/HPC/PR/20/1185

Re: Property at 70 Appin Road, Flat G/1, Glasgow, G31 3PE ("the Property")

Parties:

Ms Ayesha Amin, c/o Amina MWRC, Citywall House, 32 Eastwood Avenue, Glasgow, G41 3NS ("the Applicant")

Homebird Property, Mr Fergus Watt, Mrs Doreen Watt, 9 Doune Crescent, Bishopbriggs, Glasgow, G64 3JG ("the Respondents'")

Tribunal Members:

Melanie Barbour (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

Background

1. An application was made to 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 2017 Rules") seeking an order for payment due to the landlord's failure to timeously lodge the tenancy deposit with an approved scheme.

2. The application contained, a copy of the Tenancy Agreement showing commencement date, and copies of correspondence between the parties.

3. The Respondents submitted written representations prior to the case management discussion, together with papers containing,

   (a) Correspondence between the parties.

(b) Correspondence with a neighbour
(c) SSE Warning Notice
(d) Photographs of the property
(e) Text to a tradesman regarding the boiler
(f) Energy performance certificate
(g) Handwritten statement regarding rent and other payments between the parties prepared at the end of the tenancy
(h) Gas safety record
(i) One page of the tenancy agreement for clauses 9 and 10.

4. A case management discussion had taken place on 12 August 2020, reference is made to the written note of that CMD.

5. The tribunal noted that the issues of dispute identified at that the CMD were:-

(a) whether or not the money paid at the commencement of the tenancy was a deposit or whether it was payment for the final months' rent.
(b) if it was a payment for the final month's rent, is this a payment which is protected by the Tenancy Deposit Scotland Regulations; and
(c) if the money was a deposit, and if the Tenancy Deposit Regulations have been breached what factors should be taken into account in determining what penalty should be imposed?

6. The Applicant did not attend today's hearing and was represented by Mr Frankgate. The Respondents, Mr Fergus Watt, and Mrs Doreen Watt both appeared and presented the case on behalf of themselves and Homebird Property.

Hearing

7. The Applicant's representative confirmed that the Applicant was seeking a payment order against the Respondents for their failure to lodge her deposit into an approved scheme.

8. He advised that the Applicant had been advised by the Respondents that she had to pay £850 at the start of the tenancy, to cover rent for the first and last month; she had paid this money; however the Respondents had not allowed her to use the money as payment for the final month's rent at the end of the tenancy. He advised that the Applicant had contacted the Respondents by email on around 21 or 22 January 2020 to advise that she was moving out and asked that the final month's rent be used as rent. Given that she had been told previously that the two months' rent taken at the beginning of the tenancy was for first and last month's rent, then she should have been entitled to have this money used as final month's rent.

9. He submitted that if the Respondents had put the money into a tenancy deposit scheme then they would have been entitled to access it had the Applicant not paid the final month's rent. It would have made the same difference. He submitted that if you are not allowed to use the money as the final month's rent; and if you do not get it back until after you have left the property, (which was what happened in this

case) then in his opinion this was a tenancy deposit. He considered that this was the definition of a deposit and it therefore should have been protected.

10. He advised that he was not contesting anything else regarding the tenancy, he accepted that there had been a lot of toing and froing between the parties, he did not consider that those issues were relevant to the case before the tribunal today.

11. The Applicant had given notice to leave to the Respondents on around 20/21 January 2020 that she was leaving at the end of March 2020, however she had not been 100% sure what the leaving date would have been at that time. The Respondents' had agreed to pay her £300 compensation in relation to the mistake in saying that the property had double glazing, however they had indicated that she would have to leave before the end of the March to obtain the compensation.

12. He advised that the Applicant gave notice on the 3rd of February that she was leaving the property on 19/20 February 2020, he advised that the Respondents had told the Applicant that two weeks' notice was sufficient, and she had provided two weeks' notice. He advised that the Applicant had kept in correspondence with the Respondents regarding the leaving date.

13. The Applicant's representative was asked by the Respondents why the Applicant had given them different dates as to when she would be leaving. The Applicant's representative advised that there had been a hold up with her getting her new flat, she had however been clear with the Respondents since December that she would be leaving the property. He advised that it had not been easy for the Applicant to hunt for other flats as she held down three jobs, however she had done so after Christmas.

14. The Applicant's representative was asked what the Applicant had understood was meant in the tenancy agreement, clause 10 where it stated that the deposit was £0. He submitted that this was just use of language to seek to get around the regulations. He confirmed that the Applicant had been told at the start of the tenancy that the first payment made was to cover the first and last month's rent.

15. He confirmed that the Applicant's rent had been due from the 19th to 18th of each month. When she had paid the rent on 20 January, this was in relation to the rent due 19 January to 18 February.

16. The Applicant's representative noted that clause 23 of the tenancy agreement provided that 28 days written notice was required, however he advised that the Respondents' have advised that 14 days' notice was sufficient.

17. The Applicant's representative advised that he was not aware if the last month's rent had been in a separate account.

18. The Respondents advised that there had been a mistake in the original advert, stating that the property had been double glazed. Mr Watt had been dealing with the matter, as Mrs Watt had been in Manchester during this time caring for her

brother who was terminally ill. She advised that as soon as she realised the error, she had contacted the Applicant to apologise, she referred to her text message apologising which had been submitted by the Applicant, it was sent in around December 2019.

19. Mrs Watt advised that she had agreed to pay the Applicant £300 for the inconvenience if she decided to leave the property. She agreed that the Applicant did not want to stay in the property as she did not want single glazing. Mrs Watt advised that she had tried to make amends over this, however the Applicant was constantly in touch over everything. She accepted that there had been mistakes with the property, but the Respondents had tried to resolve them.

20. She advised that she genuinely did not know when the Applicant was leaving. She advised that the Applicant had said she may leave in December, then she may stay, then she may leave in the New Year. Mrs Watt said she did not know when she was leaving, and she did not know if the Applicant would leave on 20 February 2020.

21. The Respondents advised that they always take the first and last month's rent. In the present case the problem had been that the Applicant had kept changing the goal posts, and the Respondents had no idea when she was leaving. She stated that they always allow their tenants to live out the final month using this rent, however on this occasion she had lost faith with this tenant.

22. She referred to the issues that had been raised by the Applicant, including alleging that a gas safety warning notice had been issued, although it only asked that the hole to access ECU handle was made bigger. She advised that her and her husband had been renting out properties for 14 years and they had never once received any complaints about utility bills from a tenant, until the Applicant made complaints. The previous tenant in the property had been in it for several years and had not raised any concerns. They referred to the EPC which they had lodged and referred to the energy costs difference of £68 a year. They advised that since they had obtained that certificate, they had installed a new boiler in the property. The Applicant had complained that the flat was dirty when she took entry. The Respondents' denied this, however, as a gesture of goodwill had reduced the rent payment in the December by £50. They said that the Applicant was not consistent in her complaints, stating first that she needed one day to clean the house and on another occasions 2 days. The Applicant had stated that the property was draughty, and said the neighbour agreed, they had checked with the neighbour the neighbour had denied this to them. There had also been a complaint about the fridge not working when she moved in. The Applicant had also complained that the boiler had not worked when she took entry and Mr Watt had arranged to attend to this straightaway. The Applicant had sent various messages about the boiler, and the cost of heating the property.

23. The Respondents' advised that they felt that the Applicant had taken total advantage of the mistake over the double glazing referred to in the advert, they had made a mistake, they had not told a lie.

24. They advised that the Applicant's representative had brought another case to the tribunal for failure to lodge a tenancy deposit, and the Applicant had supported him on that occasion. They advised that Mr Frankgate had resided in the property with the Applicant. They thought that the Applicant resided with Mr Frankgate and had not been prepared to use that address in making this application.

25. They considered that all the complaints were part of the Applicant building a case towards making a claim for compensation under the tenancy deposit scheme. They advised that it was exactly three months that she had had the tenancy for, and this claim would pay for that rent.

26. They advised that they have 14 properties that they rent out. They advised that they had been renting out properties for 20 years and they had never kept a penny of the final month's rent, in 80% of the tenancies they had no problems and never needed to keep anything; they had never kept anything from the Applicant and they believed that she had got more than she deserved.

27. In terms of deposits, Mr Watt advised that they used to take deposits years ago, but stopped doing so, and never take deposits under any circumstances now. They advised that they think it helps tenants, as they do not have to find deposit money and if they need money for a deposit in the final month then they will more easily be able to get it.

28. They were referred to the clause 7 of the tenancy agreement which states that a payment of £850 will be made, and that rent is £450. There is no reference to the payment including the final month's rent. They advised that they have changed their tenancy agreements to reflect that this payment is first and last month's rent.

29. The Respondents advised that there had been a lot of phone calls from the Applicant as to when she was leaving the property. She had called to say she was leaving in December, then leaving in January and she had not done so. She had said that she would stay until Christmas. Then until the new year. On questioning they accepted that the text from the Applicant on 8 December was not her giving notice that she was leaving the property. They advised that they had further texts from the Applicant that she was leaving the property in January 2020 however they had not lodged them.

30. Mrs Watt advised that they did not ask the Applicant to put notice of her termination in writing. Mrs Watt advised that they did not want the Applicant to stay as the Applicant was not happy and did not want to stay.

31. Reference was made to the email of 14 January sent at 7pm referring to £300 compensation, they advised at that point they had not had a break from complaints from the Applicant, they had hoped that the offer of compensation would assist the Applicant in being able to leave. Compensation was open until the end of March 2020, however they advised they would have paid her after that date if she had left later.

32. They were asked about the email of 20 January when the Applicant stated that she was moving out, the Respondents noted that she had given notice that she intended to leave the end of March however advised that they had lost faith in her doing so.

33. The Respondents were referred to their email of 21 January at 11.45 which stated that the Applicant would get her *money back the day you move out, after we check the flat.* Mrs Watt advised that she did not know why she had stated this, other than she was stressed about the Applicant and her brother had recently passed away.

34. Reference was also made to the request for two weeks' notice when the tenancy agreement states that 28 days written notice is required, Mrs Watt asked why she would insist that the notice was in writing. She did not appear to think that this was needed.

35. The Respondents were referred to their email of 21 January sent at 3.37 which stated that "*I have repeatedly said that you will receive £725 on the day of departure, regardless of whether we are there or not, although I have every intention of attending. No landlord gives rent back before a tenant leaves a flat. If you do not trust my integrity there is nothing else, I can say."* Mrs Watt advised that this statement was an error.

36. Mrs Watt reiterated that she did not know if the Applicant was going to leave on 20 February 2020.

37. The Respondents were asked why they had not paid the final month's rent into a tenancy deposit scheme, and they advised that they had no need to as they had never had this situation before.

38. The Respondents advised that they had had no issues with the Applicant making her rent payments.

39. They advised that they did not keep the final months' rent in a separate bank account.

40. The reference to "refund" in the email of 21 January 2020 at 3.41 related to council tax. They had submitted photographs of the property to show its condition, these had been taken prior to the applicant taking entry and they submitted that they showed it was not dirty. They had had the property double glazed since the applicant had moved out.

41. The respondents advised that they were aware of the Tenancy Deposit regulations, however as they did not take deposits, they did not pay much attention to them. They advised that this was not a business that they were running, it was an investment as a pension for Mrs Watt. They advised that they were not a member of any landlord's association.

42. They confirmed that they took a holding fee and advised that they did not consider that it was illegal to do so. It had been deducted from the first rental payment.

43. The Applicant's representative confirmed that £725 had been repaid to the Applicant at the end of the tenancy.

Findings in Fact and Law

44. The tribunal made the following findings in fact and law:-

(a) The start date of the tenancy was 19/11/2019.

(b) The end date of the tenancy was 20/2/2020.

(c) The first payment of rent was £850.

(d) Clause 7 "Rent" of the tenancy agreement has a handwritten amendment which states "December 2019".

(e) That the rent was due for the monthly period 19th to 18th of each month.

(f) The sum of £725 was paid to the Applicant at the end of the tenancy on 20 February 2020; this sum was made up of £425 for the last month's rent; and £300 as compensation for the advert.

(g) That the applicant had paid rent on 20 January 2020 to cover the rental period 19 January – 18 February 2020.

(h) That on 20 January 2020 the applicant had given her notice that she would leave the property at the end of March 2020.

(i) That on 20 January 2020 the Applicant had asked what would happen to the final months' rent money, and would it be used for her rent in the month of March.

(j) That on 20 January 2020 the Respondents told the Applicant to keep paying her rent and when the Applicant left the tenancy the Respondents would reimburse her what they owe and honour the removal costs up to £300.

(k) That on 21 January 2020 the Respondents emailed the Applicant and advised that she would get her money back the day she moved out after they had checked the flat.

(l) That on 21 January 2020 the Respondents advised the Applicant that they only required 2 weeks' notice from her that she was terminating the tenancy.

(m) That on 21 January 2020 the Respondents advised the Applicant that she would receive £725 when she left the property, and that no landlord gives rent back before a tenant leaves a flat.

(n) That on 3 February 2020 the Applicant gave notice that she was leaving the property in the week of 19 February 2020.

(o) That the Applicant had requested that the final months' rent be used as final month's rent.

(p) That the payment of £850 paid at the commencement of the tenancy was a tenancy deposit.

(q) That the tenancy deposit was not paid into a tenancy deposit scheme during the tenancy.

(r) That the tenancy deposit was repaid at the end of the tenancy.

(s) That the tenancy deposit had not been lodged with an approved scheme within 30 working days of the tenancy beginning.

Reasons for Decision

45. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations:-

46. Regulation 3 provides that (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; …
…

47. Regulation 9 provides that a tenant who has paid a tenancy deposit may apply to the first tier tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

48. Regulation 10 provides that if satisfied that the landlord did not comply with any duty in regulation 3 then the first tier tribunal — must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and may, as it 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.

49. In relation to this case there was a preliminary matter to determine first and that was whether the money paid at the commencement of the tenancy was a deposit or the final month's rent.

50. Regulation 1 of the 2011 regulations defines "tenancy deposit" as having the meaning conferred by section 120 of the Housing (Scotland) Act 2006.

51. Section 120 of the 2006 Act provides that,

> *(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.*

52. This question was considered in the case of *Cordiner v Al-Shaibany* 2015 (Sh Ct) 189, in that case the sheriff held that the advance payment of rent was not a tenancy deposit within the meaning of section 120; the payment was of rent and was not held as security for the performance of the pursuers' obligations, the pursuer in paying the first and last rental payment at the start of the lease, had discharged her obligation to pay them in accordance with that lease; and it could not be described as money held as a security for the performance of an obligation if that obligation had already been discharged, there was no evidence that rental payments were being held for any other purpose.

53. In the present case, there is no dispute between the parties that at the commencement of the tenancy the Respondents had told the Applicant that the payment was for the first and last months' rent.

54. However, what was disputed was when the Applicant gave notice to leave the property, the money she had paid at the beginning of the tenancy was not put to the final month's rent. The Respondent's position was that this was because they did not know when she is leaving, and they had lost faith in her that she would go. The tribunal considered that this explanation was not credible, there was limited evidence submitted by the Respondents other than their verbal submission on this issue. There had however been lodged by the Applicant copy emails providing evidence of written notice to leave in around 20 January 2020, indicating that she would leave at the end of March and two days later confirming she would leave at the end of February. Therefore, we preferred the Applicant's documentary evidence on this issue

55. We considered it problematic that the Respondents wanted to rely on the money as "final month's rent" but suggested in evidence they did not allow the Applicant to use it for that purpose, because they did not trust her to leave. What basis would the Respondents decide to accept that they had received notice to leave from a tenant and allow them to use money for final months' rent?

56. The tenancy at clause 23 stated that the tenant is required to give 28 days' notice in writing. As the Applicant provided this on 20 January 2020 the Respondents should have agreed that no rent would be payable during the month of March. When the Applicant then gave notice that she was leaving no later than the end of February, the Respondents could have agreed that no rent would be due on 18 February until the end of that month. There was no evidence of any such discussion, on the contrary the Respondents advised the Applicant to keep paying rent and they would pay it back to her at the end of the tenancy.

57. It appeared to the tribunal that the first formal notice that the Applicant gave that she was leaving the property was in 20 January 2020 when she advised that she would be definitely moving out at the end of March and she asked about how the money was to be used as the final months' rent or was it held as a deposit. The respondents emailed her back that day and advised her "*that there was no deposit paid, it was two months' rent… if you continue to pay your monthly rent as agreed. When it comes to you leaving, we will reimburse you what we owe you*."

58. The respondents later advised in an email of 21 January 2020 that "*you will get your money back owed to you the day you move out, after we check the flat. There is absolutely no need to worry about anything, we do not have any issues with you at all. I would be obliged if you could give us two weeks' notice or as soon as you know your plans please."*

59. The tribunal considered that both of these messages demonstrated that the respondents were not holding the money as the final months rent, as they had been given notice to leave from the applicant, and would not agree to the money being used as the final month's rent. There is no evidence to show that the applicant had given them earlier written notice to leave.

60. Further, the comments about paying the money back after the flat has been checked also implied this was a deposit. The respondents during the hearing could provide no explanation for why they made this statement

61. The respondents wrote again to the applicant in an email of 21 January 2020 about the repayment of the rent money and advised "*no landlord gives rent back before a tenant leaves a flat."* Again, this statement is at odds with the position of the respondents that they were holding the final months' rent; and again, implies it is a deposit.

62. The applicant subsequently confirmed on the 3 February that she was moving out on 19 February giving two weeks' notice.

63. It is also unclear how the Applicant could ever have used the money as her "final month's rent money", given that the respondents had indicated that she only required to give 14 days' notice to leave.

64. In the *Cordiner case* the sheriff held that advance payment of rent was not a tenancy deposit within the meaning of section 120 as the payment was of rent and was not held as security for the performance of the pursuers' obligations, the pursuer in paying the first and last rental payment at the start of the lease, had discharged her obligation to pay them in accordance with that lease. However, the tribunal did not consider that this was how the money had been held in this case, the money had not discharged the Applicant's obligation to continue paying rent until the end of the tenancy.

65. The 2011 Regulations were put in place to address a mischief with landlords not protecting tenants deposits, and the tribunal considers that if money is taken in addition to a rental payment at the start of the tenancy, and landlords state it is not a deposit then they need to clearly use it for the purpose agreed. We do not consider that the respondents did so in this case. The respondents did not satisfy the tribunal that this money was anything other than a tenancy deposit.

66. The respondents indicated that they had no idea when she was leaving; the tribunal preferred the written evidence before it of the email exchange and it appeared clear to us that notice to leave had been given that the Applicant to leave at the end of March at the latest. There was however no evidence to support that the Respondent's position that they would have put the money to the last month's rent.

67. The position of the respondents is that they did not trust the applicant to leave the property when she said she would and therefore they did not agree to the final months' rent being used for that purpose but repaid it on the day that she left. We do not think that this is a reasonable approach for them to take. On what basis were they entitled to decide that a tenant was not leaving a property if the tenant had given notice to leave? In many ways it is perhaps for these type of risks inherent in renting out a property, that the respondents would have benefited from placing the deposit in a scheme themselves, as they would have been entitled to recover the deposit money for unpaid rent and not have left themselves exposed to a claim such as this.

68. The respondents appeared to have exhausted patience dealing with the applicant, and perhaps this breakdown in the relationship led to their refusal to allow her to use the money as a final months rent, we do not consider however that even if this is the case that this would provide a reasonable basis for their actions.

69. We note that the respondents considered that the applicant had been building a case against them, we consider that the issues raised by the applicant with them are not relevant to this matter to any material extent, and we would note that any concern about the applicant's "case building" would not have arisen if the deposit had been placed in an approved scheme; or if they had been able to show that they had used the money as the Applicant's final month's rent..

70. The tribunal considered therefore that the money was a tenancy deposit and not the final months' rent.

71. Having found that the money was a tenancy deposit, and it should therefore have been lodged in an approved scheme within 30 working days of the commencement of the tenancy, the terms of Regulation 10 are engaged. The tribunal must order that the respondents' pay the applicants an amount not exceeding three times the amount of her tenancy deposit. The amount to be paid requires to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.

72. In these cases, we consider that a sum of £1,062.50 in respect of each application would be appropriate, which is 2.5 times the amount of the deposit.

73. We have found that there has been a breach of the regulations, and we consider in this case that it is a fairly serious breach; any penalty should therefore be at the higher end of the scale.

74. In considering what penalty to impose, we have had regard to the submissions of both parties and to their written submissions.

75. We consider that it is a serious matter to fail to lodge a tenancy deposit in accordance with the regulations.

76. We also considered it was of concern that the respondents who are experienced landlords, denied this was a deposit but were unable to show how it had been used or could have been used as the final months' rent; and they also failed to explain why they made written statements that suggested it was a deposit and would not be repaid until the end of the tenancy. The respondents were wholly in control of the tenancy deposit, and there was no evidence before the tribunal, other than the verbal submission of the respondents that it was anything other than a deposit. We did not find that the respondents' position was credible on this issue.

77. They stated that they had previously taken deposits but stopped doing so. They had rented out flats for over 20 years and had 14 properties. While they advised that they were not professional landlords, given the number of properties they had and the duration they had been renting them out for, we consider that they should have clearly understood their obligation in ensuring that tenants' deposits are protected; or if taking final months' rent then ensuring the money was used for that matter.

78. While insisting that they held the applicant's money as the final months' rent, they would not allow her to use it as such. She raised this issue with them on more than occasion and appeared to have been concerned about the security of this money.

79. They indicated that they always took final months' rent, and they had never had any problems with any previous tenants, the tribunal did not find that this was a credible statement; but even if this was the first time that they had had a breakdown in the relationship with a tenant, the outcome of their treatment of the applicant's money was such that they had refused to allow it be used as the final month's rent, and therefore had exercised a degree of control over it that they were not entitled

to. The applicant's money was therefore unsecured and, in the landlord's, sole control.

80. The respondents suggested in verbal evidence that they were assisting tenants by not taking a deposit as they would not have to find the money for the deposit, but the tribunal considered that this rather missed the point as they had to find an extra month's rent at entry, which would be as onerous as finding a deposit. Further in an email submitted by the applicant they appear to suggest that the applicant would be delighted that no deposit was taken as she would not have had to wait months for a deposit to be returned from an approved scheme the tribunal considered this statement was misleading and also missed the point of the protection offered by an approved scheme.

81. In addition, the respondents were not prepared to accept that placing the money in a deposit scheme would have provided them with a right to recover it in the event of non-payment of rent.

82. The respondents advised that they were aware of the tenancy deposit regulations, but they did not have regard to them, as they did not take deposits. The tribunal considered their attitude towards the deposit regulations to be quite reckless.

83. The tribunal did not consider that the evidence from the respondents about the difficulties that had been raised by the applicant about the property, was relevant to the issue of the tenancy deposit application, other than to explain the breakdown in the relationship between the parties.

84. We consider it relevant that the Respondents were long established and experienced landlords; they should have been well aware of the 2011 regulations, and therefore should have ensured that the money was put to the last month's rent or placed in a deposit scheme. While we understand that this tenant may have taken up a lot of their time, we do not consider that this provides any justification for not placing her deposit in a scheme. In many ways placing the deposit in a scheme may have reduced some of the tensions between the parties.

85. The time period when the deposit should have been secured was around 8 weeks. While this is not a very substantial period of time during which the deposit was unsecured, it is clear that the money would have remained unsecured if the applicant had remained in the property.

86. In mitigation, the Respondents' did not delay the return of the deposit at the end of the tenancy.

87. For all of those reasons, the tribunal consider that the matter is sufficiently serious that a penalty at the higher end of the scale should be imposed. We considered that there had been a blatant or reckless disregard for the regulations, and it was one which would have continued until the tenancy came to an end.

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.

Melanie Barbour

Melanie Barbour	30 September 2020
Legal Member/Chair	**Date**