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/22/2118

Re: Property at Flat 0/1, 44 St Ninian Terrace, Glasgow, G5 0RJ ("the Property")

Parties:

Mr Ganesh Ramanathan, 19 Spring Wynd, Glasgow, G5 0BF ("the Applicant")

Ms Doli Patel, Flat 0/1, 44 St Ninian Terrace, Glasgow, G5 0RJ ("the Respondent")

Tribunal Members:

Rory Cowan (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent was not in breach of her obligations under the Tenancy Deposit Schemes (Scotland) Regulations 2011 and therefore declined to make an order under Regulation 9.

- Background

1. By application dated 30 June 2022, the Applicant seek an order against the Respondent under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (as amended) (the Application). Following a Case Management Discussion (CMD) on 25 April 2023 heard by way of a conference call an evidential hearing was fixed for 29 June 2023 to be heard at the Glasgow Tribunals Centre. At the CMD it was noted that the following relevant facts were agreed between the parties:

    1) That the level of the deposit was £780;
    2) That the said deposit was not lodged with an approved tenancy deposit scheme and no prescribed information as issued.
    3) That the Property is a 2-bedroom ground floor flat with its own garden.

4) That the Applicant, his partner and 2 children occupied the Property during the period on or around October 2019 to 31 March 2022.
5) That during the period of the Applicant's occupation of the Property, the Respondent did not stay at the Property except for a short period in January and/or February 2022 whilst the Applicant and his family were out of the country on holiday.

The issues to be determined at the said evidential hearing were:

1) Was the Property during the period October 2019 and 31 March 2022 the only or main residence of the Respondent; and
2) Was the occupancy agreement entered into between the Applicant and the Respondent therefore one to which the duties under regulation 3 of the Regulations applied?

The Applicant contends that the Respondent had a duty under regulation 3 of the Regulations to pay the deposit he paid for his tenancy of the Property into an approved tenancy deposit scheme and issue prescribed information under Regulation 42 to him within 30 working days of the beginning of their tenancy and that the Respondent failed to do so.

2. Directions were issued for the parties to lodge their respective list of documents (and copy documents) along with any list of witnesses by close of business on 31 May 2023.

- The Hearing

3. Both the Applicant and Respondent appeared and represent themselves. The Tribunal is grateful to all parties for their considered and helpful submissions.

4. Prior to the hearing of evidence, the Tribunal outlined some ground rules for the conducting of the hearing. Both parties indicated that they did not intend to call any witnesses and would give evidence on their own behalf. In addition, there was a preliminary matter that required to be addressed. The first related to the late lodging of documents by the Applicant. The Applicant explained that he was not clear as to the terms of the direction, more particularly, the format that documents were to be lodged in. He explained that he had contacted tribunal administration prior to 31 May 2023 to get advice, but as a result of a change of an earlier proposed date for the evidential hearing, he had not been sure if the date for lodging documents had changed. The Respondent objected to the late lodging of documents and explained that she had complied with the Direction. The Tribunal considered matters and, although not entirely satisfied with the Applicant's explanation, decided to allow the documents to be lodged although late on the basis that there were all documents the Respondent had seen before and there was therefore no prejudice to the Respondent in so doing. Thereafter evidence was given by the Applicant himself followed by the Respondent. Evidence was concluded and both parties made submissions in support of their respective positions. The Tribunal thereafter adjourned the Hearing and retired to consider their decision.

- Findings in Fact and Law

a) The Respondent is the heritable proprietor of the subjects at Flat 0/1, 44 St Ninian Terrace, Glasgow G5 0RJ (the Property).
b) The Property is a 2-bedroomed ground floor flat with its own garden.
c) The Applicant entered into a “Lodger’s Agreement” with the Respondent which commenced on 18 October 2019 under which, the Applicant, his wife and their 2 children could reside within the Property and would have exclusive use of one of the bedrooms in same and would share common areas.
d) In accordance with that “Lodger’s Agreement”, the Applicant paid to the Respondent a security deposit in the sum of £780 on or around 17 October 2019.
e) That the security deposit was not paid into an approved tenancy deposit scheme by the Respondent, nor was the Applicant issued with any prescribed information in terms of Regulation 42 of the Regulations.
f) That the original “Lodgers Agreement” was extended by further written agreements in the same or similar terms.
g) The Applicant and his family vacated the Property on or around 31 March 2022.
h) The security deposit of £780 has not been returned to the Applicant by the Respondent due to damage to the Property.
i) During the period of the Applicant’s occupation of the Property, the Respondent did not stay at the Property except for a short period in January and/or February 2022 whilst the Applicant and his family were out of the country on holiday.
j) That the Respondent was registered for and paid the Council Tax for the Property during the period 18 October 2019 and 31 March 2022.
k) That utility bills for the Property were in the name of the Applicant during the period 18 October 2022 and 31 March 2022.
l) That the doors to the bedrooms in the Property had locks fitted.
m) That the Respondent’s address for the purpose of her bank account was the Property during the period 17 October 2019 to 31 March 2022.
n) That throughout the Applicant’s occupation of the Property, the Applicant had personal possessions stored within the Property.
o) That when the occupancy agreement was entered into and throughout the Applicant’s occupation of the Property, the Respondent had an intention to return to the Property and reside there when she was not living away from the Property for her work.
p) That by email dated 16 October 2019, the Respondent advised the Applicant that the deposit would not be protected.
q) That during the period 18 October 2019 to 31 March 2022, the Respondent required to travel for her work and stay in temporary accommodation for extended periods and that, as a result of this and the COVID-19 pandemic, she did not return to the Property to reside therein except for a short period in January and February 2022.
r) That on or around December 2019, the Respondent agreed with the Applicant that, whilst she was not at the Property, the Applicant could use the “small bedroom” as well but would require to remove if the Respondent required same.

s) That from on or around 2020 to date, the Respondent owns a share in another property in Shepreth, near Cambridge and stayed there between on or around late 2020 and April or May 2021.
t) That during the period 18 October 2019 and 31 March 2022, the Property was the Respondent's only or main residence.
u) That the agreement entered into between the Applicant and Respondent was not one to which the duties under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (as amended) applied.

- Reasons for Decision

5. The Applicant sought an order against the Respondent for an order under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (as amended) (the Regulations). He contended that the Respondent had a duty under regulation 3 of the Regulations to pay the deposit he paid for his tenancy of the Property into an approved tenancy deposit scheme and issue prescribed information under Regulation 42 to him within 30 working days of the beginning of their tenancy and that the Respondent failed to do so.

6. The duty under regulation 3 of the Regulations to pay any deposit into an approved scheme only applies to what is defined by the Regulations as a "relevant tenancy" (regulation 3(3) of the Regulations). That definition requires that the landlord be a "relevant person" and that the house in question be occupied by an "unconnected person". However, the definition specifically excludes any types of use of a house as defined by section 83(6) of the Antisocial Behaviour etc. (Scotland) Act 2004 (the 2004 Act) (which also contains the definitions of "relevant person" and "unconnected person").

7. Section 83(6) of the 2004 Act therefore operates to disregard certain uses of a house for the purpose of determining whether landlord registration is required or not. In particular, section 83(6)(e) excludes the use of a house where it is "*the only or main residence*" of the landlord.

8. As set out above, the Application called before the Tribunal for a Hearing on 29 June 2023. The issues identified at paragraph 3 above are short ones but are fundamental to an application of this type. That is, during the period of the Respondent's occupation of the Property, was it also the only or main residence of the Respondent. If it was then the duty under Regulation 3 of the Regulations would not apply. It was a matter of agreement that the Applicant paid to the Respondent a deposit in the sum of £780 and that this sum had not been paid into an approved tenancy deposit scheme.

Evidence – The Applicant

9. The Applicant explained that he and his family had initially taken occupation in the Property on or around October 2019. He explained that he had initially been given a document called "Licence Agreement For Lodger Scotland" which was dated 15 October 2019 to cover a period of 12 months commencing on 18 October 2019. This document was referred to a "Document 0/1" in the Applicant's bundle of documents. After that he received a further document headed "Lodger

Agreement" covering the same period of time. This document was referred to as "Document 0/2" in the Applicant's bundle. He explained that when he had been given these documents, he spoke to the Respondent by telephone call and discussed referencing information. He explained that he had also emailed the Respondent on 16 October 2019 to seek clarification of the type of agreement that he had been provided with as he had not expected to receive an agreement in the form he had (email dated 16 October 2019 is found at page 46 of the Applicant's bundle and referred to at point 10 on the summary document prepared by the Applicant). In that email he had asked specifically why a "licence agreement for Lodger" had been used. He pointed to the reply he had received to that question being that the Respondent did not offer what he was asking about as "that requires athird party handling involving agents" (sic). He explained that this this explanation had been "convincing" to him and he had understood it to mean that as he was dealing with a landlord direct this is what should be provided. He moved into the property on or around 26 October 2019 with his wife, a 4 year old child and a 4 month old baby. He indicated that he vacated the Property on or around 31 March 2023 after a number of written extensions in the same form as the original agreement had been entered into. He stated that, if he had thought he would be classed as a lodger rather than a tenant he would not have moved into the Property. He claimed that it was when he vacated the Property that he found out the deposit he had paid had not been lodged with an approved tenancy deposit scheme. He also claimed that he had not been aware of the "legal obligations" at the time and had therefore moved into the Property. He also explained that he has not received the deposit back from the Respondent. The Applicant also stated that during the period he lived in the Property the Respondent did not stay in the Property when they were also present but did confirm that on or around "the end of January 2022 and the beginning of February 2022" the Respondent had stayed at the Property whilst he and his family were on holiday in India. This was something that he had been aware of at the time.

10. The Respondent was thereafter given the opportunity to cross examine the Applicant. He acknowledged that there had been discussions about the fact the deposit was not being returned to him as a result of damage to the Property when he vacated the Property. His issue was that the Respondent had not accepted his position on the damage. He was asked if he understood the nature of the agreement that he had signed, to which he agreed he had. He also acknowledged under questioning that there had been a discussion about the Respondent seeking someone from her same cultural background rather than what he described as "localites". The reason being that the Respondent was a "single woman" and a vegetarian. He also stated that this had not been at the time the agreement had been entered into, but at a later stage. The Respondent challenged this by asking if the Applicant recalled a discussion at the time about her wanting someone from an Indian background as she intended to use what was described as the "small bedroom" and felt she would be "vulnerable" if the other bedroom was occupied by someone from a "different culture" citing the possibility of the consumption of alcohol and "boyfriends". His response was that he did not remember. She also asked the Applicant about personal items she claimed she had left in the wardrobe in the "small bedroom" and that had been there when she was in the Property in February 2022. The Applicant's response was that it had not been the Respondent who had handed him the keys initially,

and whilst there were some belongings of the Respondent within the Property, these were not in the “small bedroom”, but within what he called a “store cupboard” in the hallway. He described the items as being “toys, towels and some kitchen utensils”. He also claimed that he had “made complete use of the wardrobe in that small second bedroom” and that he had gained full use of the “small bedroom” in January or February of 2022 after asking the Respondent if they could use the “small bedroom” as well as the other bedroom. The Applicant was then asked about his claim that he had not understood the “legal obligations” of the “lodger agreement” he had signed. He was pointed to the email of 16 October 2019 and “point 2” of same where she had, in response to a question about whether the deposit would be “protected”, the Respondent had explained the deposit would not be protected because “this is a lodger agreement and not a tenancy agreement”. He indicated that he had sought “clarification” but accepted that he was aware of the tenancy deposit schemes (he had rented before), that the Respondent had explained that the deposit was not being protected and why. The Respondent then ended her questions.

11. The Tribunal thereafter asked some additional questions of the Applicant. He explained that there were 4 people in the Property and that they had needed to use both bedrooms. His 4-year-old had used the “small bedroom” and the younger child had stayed in the main bedroom with him and his wife in a “crib”. He also stated that the Respondent had left cutlery, kitchen utensils and children’s toys in the Property. When asked about other items he indicated that he could only describe what he could see and reach and that there “may have been more items higher up in the cupboard”. He also stated that in January 2022 into February 2022 the Respondent had only sought to move into the Property to allow a plumber to attend the Property to carry out some works. He also stated that rent was paid direct to the Respondent and that he contacted her direct regarding repairs although sometimes she would send “Brian” to the Property. When asked about utilities and rent he stated that council tax was in the Respondent’s name and included in the rent, but that “gas, electricity and internet” were in his name. He also stated that he would “have an issue” if the Respondent just turned up at the Property and “walked in” as this would have affected his “privacy”.

12. The Respondent was asked if there was anything arising after the Tribunal’s questioning, and she indicated that she had some follow up questions. The Applicant was asked if he accepted the Respondent had the right to enter the Property. The Applicant indicated that he accepted that the Respondent had a key, but he felt that if the Respondent “just walked in without notice, it would affect our privacy”. Under further questioning, the Applicant stated that he had understood the Lodger Agreement meant the Respondent “was entitled to occupy” the Property under what he described as a “common tenancy”, but that he would, be “looking for courtesy” if the Respondent had sought to access or occupy the Property and was not able to exclude her. He was also referred to clause 11 of document 0/2 in the Applicant’s bundle and agreed that the effect of same was that the “second bedroom was only for the landlord and not for me” and that the rent he paid was for the “private room” and the “common areas”. He further stated that when he and his family had initially occupied the Property, they had not used the “small bedroom” and had confirmed themselves to the main bedroom. He further stated that he had a discussion with the Respondent in “December 2019”

where it had been agreed that he could use the “small bedroom” as the Respondent had indicated that she was “not sure when she would be back”. He also stated that if the Respondent had said to him, she was intending to return to the Property he would “have cleared out the second bedroom” albeit by that stage, if that had happened, he would likely have decided the Property was “not for us” and given notice and left.

Evidence – the Respondent

13. The Respondent accepted that she had only spent a limited amount of time within the Property during the period the Applicant was resident there. She stated that it was approximately for a 3 week period when she “was not in a job”. That coincided with a period when the Applicant was away from the Property on holiday in India. She explained that her employment means that she travels extensively and spends periods of time working at various hospitals operating clinical trials of medicines and therapies, mostly for cancer. This involves travelling throughout the United Kingdom, Europe, North America and Asia Pacific to operate and administer trials of unlicensed drugs. She explained that such trials can involve 20 patients at any one time, but that not all will be in the same hospital meaning she will typically have to spend 2 to 3 months assessing patients at each hospital during the trials. She also stated that between October 2019 and March 2023 due to the COVID-19 Pandemic, there were increased restrictions on her movements, and she would have to find sleeping accommodation where she could which generally meant being housed with nursing staff in dormitories where she was at a hospital for shorter periods, but also short term “AirBnB” type accommodation if she was staying for longer periods. She explained that she is now staying in the Netherlands. She explained that during the period October 2019 to March 2022 she had been involved in medical trials in London (on 2 occasions) Birmingham, Leicester, Spain and Italy. She explained that since June 2022, she had been involved in trials in the Netherlands. It was initially for a 3 month period, but more patients were added to the trial and it has been extended. She now expects to be there for an extended period and indicated that she bought a property in the Amsterdam in June 2023. She confirmed that all utility bills during the period of the Applicant’s occupation of the Property were in his name, but that Council Tax was in her name. The Respondent then referred to documents DP -1, DP-2 and DP-3 in the Respondent’s bundle. These documents were a council tax demand dated 11 March 2021, bank statement dated 14 March 2023 and a jury service citation issued by Glasgow Sheriff Court dated 26 March 2023. It was noted that the address that the council tax demand had been issued to had been redacted albeit the demand related to the Property. The Respondent indicated that that date she had been sharing accommodation in Shepreth near Cambridge with a Brian Quinn. She explained that she and Mr Quinn owned a 30 percent share of that property but the remaining 70 percent was owned by “investors”. She explained that she still has her share in that particular property, but only stayed there for a period of “6 months” between “late 2020” and April or May 2021. She explained that during this period her bank account remained registered at the Property and the utilities for this other property were not in her name although she accepted, she had been written to at that address by Glasgow City Council. The Respondent then referred to her identification cards, but as copies of these had not been produced and lodged, the Tribunal did not consider that as evidence.

Her position was that it was agreed with the Applicant that she would occupy the "small bedroom" and that it had been intended she would do so "frequently" however due to "COVID" and her "travels" she was unable to do so. She explained that the Property was the "only residence" she could go to if she needed somewhere to stay and that was her "security". She also explained that locks were fitted to each room, and they could be secured if required. She also stated that she had left various items within the Property. She described visits to the Glasgow area between October 2019 and March 2022, but that she had not stayed in the Property, preferring to stay with a "friend" in Motherwell and also at a hotel. She explained that she had chosen not to stay at the Property during these visits because of the pandemic and the fact that she had been working in various hospitals and that, as a result, she "could be a risk to them" (the Applicant and his family). She described it as "not ideal" and that she "could have stayed in my own place". However, she took the view that that she was a "high risk carrier" and that, as there were children at the Property she chose not to stay in the Property. In terms of the belongings left at the Property, the Respondent indicated that she had left some "essentials" in the wardrobe in the "small room". She indicated that all the "personal clothing" she has fits into 2 suitcases and she has that with her in the Netherlands.

14. The Respondent stated that she views the Property as her home, even though she is currently staying abroad. She described it as being her "home for nearly 20 years" and somewhere that gave her a "sense of security" despite all the travelling for her work. In contrast, she indicated that she "knows no one in the Netherlands" and viewed the property there as "mere accommodation". Shepreth she described as "someone else's place, not mine, just accommodation". The Respondent then referred to document DP-8 in her bundle which was a copy of an email dated 8 October 2019. She drew attention to that to show that, despite the agreement to pay rent at £800 per month, the initial lease (DP-14) recorded rent due of £780 per month. Her explanation was that she reduced the rent payable as she could reduce the rent to "help out" the Applicant. She also referred to document DP-9 the emails of 5 January 2021 and suggested this showed an informality in approach that was "not like a tenancy agreement". She also referred to document DP-11 being emails of 16 and 16 November 2021 which related to issues of disrepair and the reason why the deposit had not been returned. She summarised by indicating that she had not been "deceitful" but had been "transparent" and had "shared views clearly and openly". She stated she was unsure as to the "motivations of this case" as they had agreed the nature of the occupation, and this was continued on a few occasions. The Property was somewhere she had intended to occupy and go to when she needed to, and she had intended that there would be a "benefit to each to share" the Property.

15. Under cross examination, the Respondent was asked if during her travels she had "shared with Indians". She explained that she had not, but that her "own property was different" and she needed to feel "safe" and have some one she could culturally relate to in terms of food and religion. The Applicant then started to ask questions about the issues of disrepair and whether the Respondent had listened to his explanation as to why he was not responsible for same. This line of questioning was stopped by the Tribunal on the basis it was not relevant to the question before it. It was accepted the deposit had not been returned and

accepted that it had not been lodged with an approved tenancy deposit scheme. It was therefore sufficient to note that the deposit had not been returned and that this had been as a result of a dispute as to damage to the Property. Determining whether or not the Respondent should have retained the deposit was not something that was relevant to the Application. In the event that it had been decided that the deposit should have been lodged with an approved deposit scheme, the fact that the Applicant had been deprived of adjudication of a deposit dispute would have been a factor that would have been taken into account when determining the level of the appropriate penalty, but in this Application, the Tribunal could not order repayment of the original deposit to the Applicant and because the tenancy was now at an end, the Tribunal could not order that it be paid into an approved scheme. In order to seek repayment of the deposit in these circumstances would require a separate civil claim by the Applicant. The Applicant thereafter referred to the email dated 1 April 2022 at page 34 of his bundle of documents which related to the issue of the damaged bathroom floor. The Applicant then asked about Council Tax and that it was not in his name and a discussion he claimed he had had with the Respondent about same. Her response was that she "did not recall" such a discussion.

16. Following the end of cross examination, the Respondent indicated that she had nothing she wished to clarify that had arisen during that questioning. The Applicant thereafter made his submissions. He stated that when he received the "lodgers Agreement" he had questioned it at the time but had accepted the explanation given to him by the Respondent. He stated that, if it had been explained to him that the Respondent would be staying at the Property with him, then he would have "looked elsewhere as he would "not have been comfortable sharing" with the Respondent with his young family. He said that the deposit had not been paid into an approved tenancy deposit scheme and claimed that the Respondent had said he would get it back. He said that the previous occupant left the Property the same day as they collected keys from a "Brian" and that it had not been "cleaned properly". He claimed that the Respondent had "no intention" to give him back the deposit and that she should have "provided a proper agreement to tenants". He indicated that he had "suffered a lot due to this case". He also stated that he felt that, because she had not stayed at the Property throughout his occupation of the Property, it could not have been the Respondent's only or main residence. He did indicate that, if the Respondent had listened to him about the damage to the bathroom floor he would "probably have not brought this action".

17. In response the Respondent indicated that she had never intended to offer any other type of agreement than she had and that she had "not gained financially" in doing so. That the Property was her only or main residence throughout the whole period of the Applicant's occupation and remains so. She described it as her "shelter" from the "unpredictability" of her work and her "security to return to".

18. The hearing was thereafter concluded, and the Tribunal retired to consider the evidence in order to make their decision.

19. There was no dispute or difference between the parties as to the applicable law. That is, the obligations under regulation 3 of the Regulations would not apply if the Property was the only or main residence of the Respondent during the period the

Applicant occupied the Property. The position adopted by the Applicant was that other than for a short period in January and/or February 2022, the Respondent had not, in fact, occupied the Property. In normal circumstances that may very well have been a highly compelling factor in determining that the Property was not the only or main residence of the Respondent. Indeed, the fact that the Applicant occupied the Property with his wife and two young children may support the Applicant's claim that he would have not let the Property had he known he could only occupy one bedroom. However, the Tribunal was satisfied with and accepted the Respondent's explanation about her work and her requirement to travel and reside abroad to carry out clinical trials in different hospitals and her description of staying in temporary accommodation such as nurses' dormitories and "AirBnb" properties. Further, the Tribunal accepted that her ability to return to the Property was impacted by the COVID-19 pandemic particularly as she was working in various hospitals and that restricting her movement and interaction with those outside the hospitals would have been sensible and advisable. Her evidence in that regard was given openly and honestly and appeared genuine. Further, that evidence was not challenged or disputed by the Applicant and not alternative main residence for the Respondent was suggested by him. The evidence given by the Applicant was less satisfactory and was, at times inconsistent. The Applicant accepted that he had read and understood the terms of the lodger agreement and questioned it at the time including whether the deposit was to be protected. He also acknowledged in evidence that he accepted that the Respondent was entitled to occupy the "small bedroom" within the Property (albeit he did say he may have privacy concerns if she arrived unannounced) and confirmed that after he commenced occupation of the Property, he had asked to use the "small bedroom" because it was not being used by the Respondent. Although he also acknowledged that, if the Respondents had sought to occupy same during this period, he would have cleared the room to allow her to occupy it. The Tribunal found this evidence hard to reconcile with his submission that, had he known he would have to share, he would not have entered into the agreement with the Respondent and "gone elsewhere". The two positions are not consistent, and the Tribunal took the view that the Applicant was aware of the Respondent's intention to use the "small bedroom" at least from time to time when her work allowed it. The Tribunal also noted that the Respondent remained liable for Council Tax which would be consistent with a lodger type agreement. That said, the utilities being in the name of the Respondent was less consistent with that. However, the Tribunal accepted the evidence of the Respondent that this was the way she tried to balance the costs between them. The Tribunal also took the view that it was significant that the Respondent had left various items within the Property. Whilst these may not have been extensive, it was also noted that the Respondent had very little by way of personal possessions and described traveling around with just 2 suitcases containing all her clothes. Whilst it is not material to the Tribunal's decision (because it was accepted by the Applicant there were items within the Property), the Tribunal also accepted that these items were left by the Respondent in the wardrobe in the "small bedroom" rather than in a storage cupboard in the hallway. The fact that the Respondent's bank account remained registered at the Property was also of significance and was highly consistent with the Property remaining her main residence. The rooms were lockable. The Tribunal was particularly impressed by the Respondent's evidence, and it was clear from that evidence that she has a longstanding (and continuing) emotional

connection with the Property and viewed that has her home. No other place she had stayed held that level of connection for her even now. Whilst she may have stayed elsewhere (mostly in temporary accommodation), the Tribunal was satisfied she always intended to return to the Property, but circumstances arising from her work in hospitals prevented her from living in the Property as she had intended and anticipated. Overall, the Tribunal was satisfied that, whilst she did not occupy the Property regularly during the occupation of same by the Applicant, she had an intention to occupy the property (*animus revertendi*) and that there were signs consistent with occupation such as possessions still within the property (*corpus possessionis*). The Tribunal therefore found that, on balance of probabilities the Property was the Respondent's main residence throughout the period of the Applicant's occupation of same.

20. Overall, the Tribunal was of the view that the Respondent was a credible and reliable witness and, where the evidence of the Applicant and the Respondent differed, they preferred the evidence of the Respondent. She gave her evidence in a straightforward manner, with no prevarication and answered questions asked of her directly. In contrast, the Applicant's evidence was at times inconsistent and, it appeared to the Tribunal that the Application was motivated at least in part by him being aggrieved over the dispute surrounding the damage caused to the Property and what he perceived was the Respondent's refusal to "listen to him" albeit, what really seems to be the issue is not that the Respondent did not listen to him, but that she did not accept his explanation regarding the damage to the Property.

- Decision

21. The Tribunal therefore decided to refuse the Application and therefore declined to issue a penalty in terms of Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (as amended).

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.

Legal Member/Chair **Date: 17 August 2023**