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 Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Regulations") and The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/23/1138

Re: Property at 43 Bonhard Road, Scone, Perth, PH2 6QB ("the Property")

Parties:

Mrs Margaret Unite, 50 Baden Powell Close, Great Baddow, Chelmsford, CM2 7GA ("the Applicant")

Miss Kirsty Livingstone, Flat 29, Les Casquets, Amherst, Guernsey, GY1 2DH ("the Respondent")

Tribunal Members:

Nicola Weir (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment in the sum of £150 should be made by the Respondent to the Applicant.

Background

1. By application received on 20 April 2023, the Applicant applied to the Tribunal for an order for payment against the Respondent in respect of failure to carry out her duties as landlord in relation to a tenancy deposit. The failures alleged were a failure to lodge the whole deposit within an approved scheme within the required time limit and also a failure to provide the requisite information to the Applicant in terms of the 2011 Regulations. Supporting documentation was lodged in respect of the application, including a copy of the tenancy agreement and various notifications from Safe Deposits Scotland, one of the approved statutory schemes.

2. Following initial procedure, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.

3. On 18 September, a copy of the Application and supporting documentation was served on the Respondent via the Royal Mail 'Track & Trace' service, together with intimation of the date, time and arrangements for a Case Management Discussion ("CMD") to take place by telephone conference call on 24 October 2023 at 2pm. Any written representations by the Respondent were to be lodged with the Tribunal by 5 October 2023. None were lodged, although the Respondent did contact the Tribunal Administration on receipt of the papers and was referred for advice. On 19 October 2023, Ms Alexander Wooley of Bannatyne, Kirkwood, France & Co, Solicitors, emailed the Tribunal Administration to advise that she would be representing the Respondent at the CMD. The Applicant was advised of this prior to the CMD.

Case Management Discussion

4. The CMD took place by telephone conference call on 24 October 2023 at 2pm. The Applicant and Ms Wooley for the Respondent ("the Respondent's representative") were in attendance.

5. After introductions and introductory remarks by the Legal Member, the Respondent's representative was asked to state the Respondent's position in respect of the application. She initially stated that it was not accepted that there was a breach of the 2011 Regulations, although it was accepted that the whole deposit of £1,990 had not been deposited in the tenancy deposit scheme at the outset of the tenancy. Only the sum of £1,900 had initially been lodged and the balance of £90 was lodged when this was realised (after the tenancy had ended). In explanation, the Respondent's representative explained that this had been due to human error on the part of the Respondent's letting agents, Clyde Property, and that both the Respondent and her letting agents had been acting in good faith. In response to questioning from the Legal Member of the Tribunal, the Respondent's representative conceded that there had been a 'technical' breach of the 2011 Regulations but requested that the stated explanation on behalf of the Respondent be taken into account in mitigation and that the Tribunal set any penalty to be imposed at the lower end of the scale, given the circumstances.

6. Following further discussion, the Legal Member noted that the main facts were agreed, namely that the tenancy had commenced on 25 October 2022; the Applicant had paid the sum of £1,990 to the Respondent's letting agents in respect of the tenancy deposit; the letting agents had paid the sum of £1,900 to Safe Deposits Scotland around 7 November 2022; the tenancy ended around 29 January 2023 as a consequence of the Applicant serving notice; the Applicant enquired about the return of the tenancy deposit, at which point it was realised that the amount paid into the scheme originally had been £90 short; the £90 shortfall was paid into the scheme on 17 February 2023; the Applicant received the whole deposit of £1,990 back from the scheme on 7 March 2023.

7. The Respondent's position, as stated by her representative, was that as soon as her letting agents realised their error, the £90 was immediately paid into the scheme. There had been no intention to breach the 2011 Regulations. They had been acting in good faith. There had been human error at the outset of the tenancy, based on a typographical error, in the sum to be paid into the scheme. They had rectified the situation in the appropriate way when the matter was brought to their attention. The Respondent herself was not involved as she had entrusted her letting agents to handle these matters on her behalf. The Applicant had received her full deposit back and, according to the Respondent's representative, had therefore suffered no prejudice.

8. The Applicant's perspective was slightly different. She explained that she had been given the wrong information from the outset, as she had been told that the whole deposit had been paid into the scheme. Reference was made to some of the supporting documentation submitted with the application which appeared to have been issued to her by the letting agents, stating that the sum of £1,990 had been paid to Safe Deposits Scotland on 5 December 2022 (a different date to that contained in the notification from Safe Deposits Scotland themselves). The Applicant stated that she felt the Respondent's letting agents did not deal with the situation well and delayed matters unnecessarily. She stated that she had to constantly chase the matter and had to involve both the tenancy deposit scheme and a manager at the letting agents, initially, to get the shortfall of £90 paid into the scheme and subsequently, to get the whole deposit back. She advised that she vacated the Property on 29 January 2023 and asked for the deposit back. After waiting for almost 2 weeks, she made direct contact with the scheme and was told about the shortfall. She then informed the letting agents but said that she required to get the scheme to contact the letting agents directly before they would accept what she was saying. Once the letting agents accepted that there had been an error, she was told that the £90 would be paid into the scheme the following day. However, this did not happen and it took more than a week for this to be done. The Applicant was then told by the letting agents that the Respondent was wishing to retain £300 from the deposit to cover cleaning costs, with which the Applicant did not agree. She said she then required to involve a manager at the letting agents and, following discussions with the Respondent, the manager informed her that she would be getting the full deposit back, which she received the following day. In response to questions from the Legal Member regarding the Applicant's position in respect of an appropriate penalty, the Applicant said she was happy to receive whatever the Tribunal feels is fair in the circumstances. Although the shortfall was a small amount, the deposit itself was a lot of money. She had to wait until 7 March 2023 to get it back, after the tenancy ended on 29 January 2023. The misinformation she was given and the various delays meant she had to make many telephone calls, etc which caused her both inconvenience and concern. The Applicant considered that the Respondent herself has to take responsibility as she is the person responsible in terms of the 2011 Regulations, not her letting agents, and, although they say they handled the deposit side of things for her, the Respondent was obviously aware of the situation at the end of the tenancy and had instructed the letting agents to seek to retain £300 from the deposit for cleaning, for which the Applicant was not responsible.

9. The Respondent's representative was asked to respond. She stated that she did not have specific instructions on the timescales of the communications between the Applicant and letting agents and does not consider that the comments regarding the cleaning costs invoice are relevant, as no sums were deducted from the deposit. She made the point that the Respondent had complied with the 30 days' time limit for placing the deposit in a scheme at the outset of the tenancy in respect of all but a very small proportion (4.5%) of the deposit, so the vast proportion was protected throughout the tenancy. The Respondent had employed professional letting agents in this regard and there was no intention of not protecting a small part of the deposit. The balance was paid into the scheme, if not immediately, then as soon as reasonably practicable. There was no prejudice to the Applicant as the whole deposit was paid into the scheme and then returned to her within a few weeks of the tenancy ending. This was all done within the usual timescales for the schemes which allow a period of time for the landlord to respond to the tenant's request for return of the deposit. As to the Respondent's experience as a landlord, her representative stated that she understands that she has been a landlord for less than 10 years. She does not know how many properties the Respondent lets out or if this is the only one, nor whether her letting agents manage any other properties on her behalf.

10. The Legal Member indicated that she was satisfied that there was a clear, albeit technical, breach of the 2011 Regulations, which was admitted by the Respondent, and that, in terms of those Regulations, a payment order would accordingly be made in favour of the Applicant today. She indicated that it would be very much on the lesser end of the scale, given the circumstances of the breach but that she would fully consider the matter and issue a written decision shortly, specifying the amount of the payment order and explaining the reasons for same.

Findings in Fact

1. The Respondent was the landlord of the Property.

2. The Applicant was the tenant of the Property by virtue of a Private Residential Tenancy commencing on 25 October 2022, which ended on or around 29 January 2023.

3. The Applicant paid a tenancy deposit of £1,990 at the outset of the tenancy, in accordance with the terms of the tenancy agreement.

4. The Respondent's letting agents, in error, paid only £1,900 into the tenancy deposit scheme on or around 7 November 2022.

5. The Respondent's letting agents issued erroneous information to the Applicant regarding the tenancy deposit at the outset of the tenancy.

6. The balance of the tenancy deposit of £90 was paid into the scheme on 17 February 2023, after the tenancy had ended.

7. The Applicant received the full tenancy deposit of £1,990 back via the scheme on 7 March 2023.

8. The Respondent admits that they were in breach of the 2011 Regulations.

Reasons for Decision

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The information is—

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

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

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

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

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

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

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

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

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

The Legal Member was satisfied from the documentation before her and the oral representations made at the CMD that the Respondent was under the duties outlined in Regulation 3 above and had failed to ensure that the whole deposit paid by the Applicant was paid into an approved tenancy deposit scheme and that the Applicant was provided with the requisite information in respect of same, contrary to Regulations 3 and 42 of the 2011 Regulations. This was admitted on behalf of the Respondent as were the pertinent facts. The Legal Member was therefore satisfied that the application did not require to be

continued to an Evidential Hearing and that, in terms of Regulation 10 above that a sanction must be imposed on the Respondent in respect of this breach of the 2011 Regulations.

2. In determining the appropriate amount of the sanction to be imposed on the Respondent for payment to the Applicant, the Legal Member considered carefully the background circumstances and the information received from both parties on the matter. The Legal Member considered that the amount of the sanction should reflect the gravity of the breach. The Respondent requested leniency. The Applicant had not stated in her application the amount of the penalty that she considered should be imposed and indicated at the CMD that she was content to leave this in the hands of the Tribunal to assess a fair penalty in view of the circumstances. As the deposit here was £1,990, in terms of Regulation 10(a) above, the maximum possible sanction is £5,970. There is no minimum sanction stipulated in the 2011 Regulations.

3. The Legal Member considered the length of the tenancy (almost 15 months) and the fact that for the whole period of the tenancy, only a very small part of the tenancy deposit of £90 had been unprotected. Most of the deposit had been placed in the scheme well within the 30 day time limit stipulated in the 2011 Regulations. The Legal Member accepted the explanation provided on behalf of the Respondent, that there had been a genuine error made by her letting agent on her behalf and that this had simply been due to a typographical type error, given the figures involved (£1,900 deposited as opposed to £1,990). The fact that the balance of £90 had been deposited into the scheme relatively quickly after the error was discovered was also an important factor here, as it meant that the whole deposit was then under the control of the scheme and was ultimately returned to the Applicant relatively quickly following the end of the tenancy. Had the potential dispute over the proposed deduction of cleaning costs gone ahead, the parties would both have had the benefit of the free dispute resolution process provided by the scheme. The Legal Member accepted that there had not been any substantial prejudice to the Applicant caused by the breach of the 2011 Regulations but did have sympathy with her position that she had been inconvenienced and caused some anxiety at the end of the tenancy when the breach first came to light and until the issue was ultimately resolved. The Applicant was understandably annoyed that she had also been given erroneous information regarding the tenancy deposit at the outset of the tenancy, albeit that this information appeared again to have been simply the result of an administrative error on the part of the letting agents. Weighing all of these factors, the Legal Member determined that £150 was the appropriate amount of the sanction to be paid by the Respondent to the Applicant.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must

seek permission to appeal within 30 days of the date the decision was sent to them.

N Weir

_____	**24 October 2023**
Legal Member/Chair	_____
	Date