



**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/23/2555**

**Re: Property at 16 SHAWS STREET, EDINBURGH, EH7 4PH (“the Property”)**

**Parties:**

**MR STUART LECKIE, 16 SHAWS STREET, EDINBURGH, EH7 4PH (“the Applicant”)**

**MR NEIL PATERSON, 66 SILVERKNOWES VIEW, EDINBURGH, EH4 5PS (“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 £350 should be made by the Respondent to the Applicant.**

**Background**

1. By application received on 29 July 2023, the Applicant applied to the Tribunal for an order for payment against the Respondent in respect of failure to carry out his duties as landlord in relation to a tenancy deposit. The failures alleged were a failure to lodge the deposit with an approved scheme within the required time limit and also a failure to provide the requisite information to the Applicant. Supporting documentation was lodged in respect of the application, including a copy of the tenancy agreement and a notification from Letting Protection Service Scotland, one of the approved statutory schemes.

2. On 14 August 2023, 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 31 August 2023, a copy of the Application and supporting documentation was served on the Respondent by Sheriff Officer, together with intimation of the date, time and arrangements for a Case Management Discussion (“CMD”) to take place by telephone conference call on 10 October 2023 at 2pm. Any written representations by the Respondent were to be lodged with the Tribunal were to be lodged with the Tribunal by 30 September 2023. None were lodged.

### **Case Management Discussion**

4. The CMD took place by telephone conference call on 10 October 2023. The Respondent was in attendance but the Applicant was not. The commencement of the CMD was delayed for 5 minutes to see if the Applicant would join late but he did not do so. The Tribunal Clerk also attempted to contact the Applicant by telephone without success. Having checked that the Applicant had been notified of the details of the CMD (which he had by way of communication dated 30 August 2023), the Legal Member decided to proceed with the CMD in the absence of the Applicant, having regard to Regulation 29 of the Procedure Regulations. The line was left open to allow further opportunity for the Applicant to join but he did not do so.
5. After introductions and introductory remarks by the Legal Member, the Respondent was asked to state his position in respect of the application. He confirmed that he accepts that he has breached the 2011 Regulations in respect of the tenancy deposit as he had failed to pay the deposit of £700 paid to him by the Applicant at the commencement of the tenancy within the 30 days required in terms of the 2011 Regulations. The Respondent’s explanation was that he had simply forgotten to lodge the deposit at the time and had only realised his oversight later on. The tenancy deposit came into his head following a conversation with a friend and he immediately checked, realised his mistake and placed the deposit in the Letting Protection Service Scheme which was the scheme he had used previously and which the Tribunal noted is the scheme referred to in the tenancy agreement. The Respondent confirmed that he agrees with the dates and details contained in the application, namely that he placed the deposit in the scheme on 19 October 2022, just over 10 months after the commencement of the tenancy on 14 December 2021 and the deposit having been paid to him by the Applicant. The Respondent confirmed that the tenancy is still ongoing and that the deposit remains in the scheme. The Legal Member enquired about the status of the eviction proceedings, based on rent arrears, which the Applicant had referred to in his application. The Respondent confirmed that they are ongoing and that the last Tribunal hearing in respect of that matter was continued to allow further payments towards the rent arrears to be made by the Respondent. The Legal Member also enquired about communication between the parties concerning the tenancy deposit scheme issue. The Respondent confirmed that he had not directly informed the Applicant regarding his failure to place the tenancy deposit in the scheme at the

requisite time, nor that he had lodged it on 19 October 2023. However, he explained that he had been asked by the scheme to provide the Applicant's email address and therefore assumed that notification would be sent to the Applicant by the scheme regarding the lodging of the deposit there.

6. The Respondent stated that he fully accepted that he had breached the 2011 Regulations and apologised for that but wished to stress that this had been entirely an inadvertent oversight on his part and that, as soon as he realised, he took steps to rectify the situation. He advised that there was no fraudulent intention. He also stated that he is not a professional landlord and that this was his sole rental property. In response to questions from the Legal Member, the Respondent confirmed that he had been renting out this property for around 15 years and had several tenants prior to the Applicant. He confirmed that, prior to this tenancy, he has always complied with the tenancy deposit requirements and regulations and has never had any other orders made against him in respect of tenancy deposits. The Legal Member explained the Tribunal's duties and powers in terms of a breach of the 2011 Regulations and that the maximum penalty which could be imposed was an amount of three times the tenancy deposit, in this case £2,100. It was noted that the Applicant had not stated in his application the amount of compensation he considered he should be due. The Respondent urged the Tribunal to deal with the matter leniently, given his explanation and the representations he had made at the CMD.
7. The Legal Member indicated that she was satisfied that there was a clear 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 was likely to be towards 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 is the landlord of the Property.
2. The Applicant is the tenant of the Property by virtue of a Private Residential Tenancy commencing on 14 December 2023 which is ongoing.
3. The Applicant paid a tenancy deposit of £700 to the Respondent at the outset of the tenancy, in accordance with the terms of the tenancy agreement.
4. The Respondent failed to pay the deposit into a tenancy deposit scheme until 19 October 2022, in breach of his obligations in terms of the 2011 Regulations.
5. The Respondent also failed to comply with his duties to provide the Applicant with the requisite information in respect of the tenancy deposit in terms of the 2011 Regulations.

6. The Respondent admits the breach.

### **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 from the Respondent at the CMD that the Respondent was under the duties outlined in Regulation 3 above and had failed to place the deposit of £700 paid by the Applicant into an approved tenancy deposit scheme and provide the Applicant with requisite information in respect of same, contrary to Regulations 3 and 42 of the 2011 Regulations. The Respondent admitted this and confirmed the information contained in the Applicant's application was correct. 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 Respondent had put forward his submissions in a straightforward and candid manner at the CMD. The Respondent had also admitted the breach in his first response to the Tribunal. 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 his application the amount of the penalty that he considered should be imposed and, as he did not attend the CMD, seemed content to leave this in the hands of the Tribunal, as per the terms of his application. As the deposit here was £700, in terms of Regulation 10(a) above, the maximum possible sanction is £2,100. There is no minimum sanction stipulated in the 2011 Regulations.

3. The Legal Member considered the length of the tenancy (around 22 months to date) and the fact that for the first approximately 10 months of the tenancy, the deposit had been unprotected. If the tenancy had ended during that period and a dispute had arisen in respect of return of the tenancy deposit, the Applicant would therefore not have had the benefit of the dispute resolution process available through the tenancy schemes. The Legal Member also noted that the Respondent, on realising his oversight in respect of the tenancy deposit, did not directly inform the Applicant of this, nor provide him with details regarding the lodging of the deposit. He had also given the scheme incorrect details regarding the commencement date of the tenancy and the date the deposit had been paid to him, stating both these dates as simply the date he was lodging the deposit in the scheme. On the other hand, the Legal Member was prepared to accept the Respondent's position that he had simply forgotten to lodge the deposit in the scheme at the outset of the tenancy and that his breaches were due to oversight on his part, as opposed to any deliberate intention to mislead or defraud. The Legal Member accepted the Respondent's position that he had paid the deposit into the scheme as soon as he realised his error. He had also explained that he had provided contact details of the Applicant to the scheme and fully expected that the scheme would therefore notify the Applicant. He was apologetic about his breach of the 2011 Regulations. When considered along with the facts that this was the Respondent's only property that he let out, that he did not appear to have letting agent involvement and that he stated that he had previously always complied with the tenancy deposit requirements, having let out this property over a relatively long period to several different tenants, the Legal Member considered this breach of the 2011 Regulations to be towards the lesser end of the scale. Weighing all of the above factors, the Legal Member determined that £350 (half of the amount of the tenancy deposit) 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**

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Legal Member/Chair

10 October 2023  
Date