



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 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/23/2823**

**Re: Property at 21B Kerrsview Terrace, Dundee, DD4 9BJ (“the Property”)**

**Parties:**

**Mrs Eniye Ojigho, Mr Bernard Ojigho, 85 Watson Street, Dundee, DD4 6HF (“the Applicant”)**

**Mr Faisal Naseem, Mr Mohammed Saleem, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £1,500 should be made by the Respondent to the Applicant.**

**Background**

1. By application received on 21 August 2023, the Applicant applied to the Tribunal for an order for payment against the Respondent in respect of failure to carry out their duties as landlord in relation to a tenancy deposit. The failures alleged were a failure to lodge the 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, proof of payments by the Applicant to the Respondent and notifications from the three approved statutory schemes. A second application under Rule 111 seeking a payment order in respect of the

balance of the tenancy deposit due to the Applicant was also lodged, together with this application and is being dealt with under reference FTS/HPC/CV/23/2824.

2. Following initial procedure, on 21 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. An initial Case management Discussion (“CMD”) was fixed to take place on 30 October 2023 but was subsequently cancelled due to Sheriff Officers not being able to effect personal service on the Respondent at the address provided on the application. The Respondent’s address was amended to the “unknown” and a further CMD was fixed for 17 November 2023. Details of the application and the CMD were thereafter advertised on the Tribunal website for the requisite period in advance of the CMD and email notification of same was also sent to the Respondent’s letting agent whom the Sheriff Officers had also spoken to when initially attempting to effect service. No representations were lodged for, or on behalf, of the Respondent prior to the CMD.

### **Case Management Discussion**

4. The CMD took place by telephone conference call on 17 November 2023 at 10am, attended only by Mr Keith Wilson of Help Tenants Dundee, the Applicant’s representative. There was no appearance for the Respondent, although the commencement of the CMD was delayed for 5 minutes to allow an opportunity for them to join late.
5. After introductions and introductory remarks by the Legal Member, the Applicant’s representative was asked to state the Applicant’s position in respect of the application. Mr Wilson confirmed that the Applicant was seeking a compensation payment in respect of the Respondent’s failure to lodge the deposit in a tenancy deposit scheme and that he considered they should be awarded the maximum level of compensation permitted, namely three times the amount of the deposit. Reference was made to the terms of the application and the supporting documentation. The Legal Member referred to the fact that the Applicant’s representative had made reference in the application and also during his oral submissions at the CMD to failings of the Respondent’s letting agent, AA Property, Dundee, in addition to failings of the Respondent. The Legal Member confirmed that this type of application in respect of the alleged breach of the tenancy deposit regulations can only be made against the landlord Respondent, even if it was the letting agent who had dealt with the Applicant and the tenancy deposit on behalf of the Respondent.
6. Mr Wilson explained the background to the matter. The tenancy commenced on 8 March 2023 and the rent was £1,000 per calendar month. The tenancy deposit was also £1,000 and the deposit and first months’ rent were paid by the Applicant to the Respondent by way of two payments of £1,500 and £500

on 2 and 8 March 2023. Due to problems arising very quickly with the tenancy, particularly regarding the condition of the Property and unexpectedly high heating costs, the Applicant served 28 days' notice in writing on 25 April 2023 to terminate the tenancy on or around 24 May 2023, following which a dispute arose regarding return of the deposit. The Applicant accepted that they were due to pay some further rent in lieu of the notice period but considered that they were still due a partial refund of their deposit. The Respondent refused to return any of the deposit and retained the whole deposit. On thereafter checking with the three tenancy deposit schemes, the Applicant was advised that their tenancy deposit was not lodged with any of them.

7. In respect of the amount of compensation sought, Mr Wilson confirmed that he thought the facts of the case justified the maximum possible sanction. He explained the difficulties the Respondent's failings had caused the Applicant. He explained that the Applicant required to secure another tenancy to move to with their three young children and that they had to put down another deposit. They had to get the assistance of their friends and family to enable them to do so. If they had received part of their deposit back from the Respondent, it would have been much easier for them. As it was, the Respondent took a very hardline approach and requested that a further sum of money was paid before they would get their deposit back. If the deposit had been paid into a scheme, the Applicant would have been able to resolve the dispute through that. As to the actions of the Respondent and their letting agent, Mr Wilson stated that, apart from their failure to place the deposit in the scheme and the way they treated the Applicant at the end of the tenancy, he thinks that the way they operate generally is questionable. He referred to the fact that there were discrepancies with their address and a lack of contact details, with all communication having to be through the letting agent and by way of the letting agent's email address. The information obtained from Dundee City Council appeared to indicate discrepancies in connection with the Landlord Registration and Council Tax, although it is thought that the Property is owned by the Respondent, who are the named landlords in terms of the tenancy agreement.
8. The Legal Member indicated that she was satisfied that there had been a breach of the 2011 Regulations, and that, in terms of those Regulations, a payment order would accordingly be made in favour of the Applicant. The Legal Member stated that she would take full account of the facts of the case in assessing the penalty to be imposed and would issue a written decision shortly, specifying the amount of the payment order and explaining the reasons for same. The Procedure to follow was explained and Mr Wilson was thanked for his attendance.

## **Findings in Fact**

1. The Respondent is the owner and landlord of the Property.

2. The Applicant was the tenant of the Property by virtue of a Private Residential Tenancy commencing on 8 March 2023, which ended on or around 24 May 2023.
3. The Applicant paid a tenancy deposit of £1,000 at the outset of the tenancy, in accordance with the terms of the tenancy agreement.
4. The Respondent did not pay the deposit of £1,000 into a deposit scheme.
5. The Respondent had provided erroneous information to the Applicant regarding the tenancy deposit at the outset of the tenancy, in that the tenancy agreement between the parties stipulates that the deposit would be paid into the My Deposits Scotland scheme.
6. The Respondent has retained the whole deposit, following the tenancy ending.
7. The Respondent did not engage in the Tribunal process, nor attend the CMD.

### **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 on behalf of the Applicant that the Respondent was under the duties outlined in Regulation 3 above and had failed to ensure that the 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. The Respondent had not engaged in the Tribunal process and there was no opposing information before the Tribunal to the information presented on behalf of the Applicant. The Legal Member was satisfied that the application had been properly and timeously advertised on the Tribunal website, that the Respondent could therefore be taken to have been notified of same and had not attended the CMD. The Legal Member was accordingly 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 documentation before her, the background circumstances and the information given orally at the CMD on behalf of the Applicant. The Legal Member considered that the amount of the sanction should reflect the gravity of the breach. The Applicant had sought the maximum available sanction. As the deposit here was £1,000, in terms of Regulation 10(a) above, the maximum possible sanction is £3,000. There is no minimum sanction stipulated in the 2011 Regulations.
3. The Legal Member considered the length of the tenancy (around two and a half months) and the fact that, although the deposit had not been placed in a scheme within 30 working days of the commencement of the tenancy, or thereafter, this was not a situation where the tenancy was unprotected for a lengthy period of time. Nor was the Legal Member aware of the Respondent having been subject to any penalties imposed by the Tribunal in respect of any previous breaches of the tenancy deposit regulations. However, the Legal Member considered that this was not a case which should attract only a minimal nominal penalty. The Respondent had retained the whole deposit at the end of the tenancy and refused to refund the Applicant part of the deposit which the Applicant considered they were due. By not placing the deposit in a scheme, the Respondent had denied the Applicant access to the free dispute resolution procedure available to parties through the schemes in respect of disputes (such as this one) arising at the end of tenancies. The Legal Member accepted that there had been prejudice to the Applicant caused by the

Respondent's breach of the 2011 Regulations. They experienced financial difficulties in securing alternative accommodation due to the whole of the deposit being retained by the Respondent. They also suffered inconvenience due to having been given erroneous information in the tenancy agreement regarding the whereabouts of the deposit and in seeking to obtain clarification regarding the deposit from the Respondent at the end of the tenancy, when the dispute arose. Weighing all of these factors, the Legal Member determined that £1,500 (one and a half times the 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.**



**Legal Member/Chair**

**17 November 2023**

**Date**