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 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011/176 and under Section 16 of the Housing (Scotland) Act 2014, and under Section 71 of the Private Housing (Tenancies) (Scotland) 2016 Act

Chamber Ref: FTS/HPC/CV/23/4663 and FTS/HPC/PR/24/0085

Re: Property at 4 Balbirnie Craft Centre, Markinch, Fife, KY7 6NR ("the Property")

Parties:

Brent Proctor, Yara Proctor, formerly residing at 16 Elmbank, Menstrie, Clackmannanshire, FK11 7AP and now residing at Rua Salvatina Feliciana dos Santos 155, Itacorubi, Florianopolis, Santa Catarina, Apt 408, Blocko A, 88034-600, Brazil ("the Applicants")

David McArthur, Sharron McArthur, 7 Mountfrost Gardens, Glenrothes, KY7 6JL ("the Respondents")

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondents)

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

1. These were two conjoined applications by the Applicants. The earlier (CV/23/4663) was in terms of rule 111 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended ("the Rules"). This sought an order for payment of the balance of a deposit retained by the Respondents, said to be £500. The second (PR/24/0085) was for an order for payment in terms of rule 103 of the Rules where the landlord has not complied with the obligations regarding payment of a deposit into an approved scheme or provision of prescribed information under regulation 9 (court orders) of the *Tenancy Deposit Schemes (Scotland) Regulations 2011/176*.

2. The tenancy in question was a Private Residential Tenancy ("PRT") of the Property by the Respondents to the Applicants dated 1 August 2023 and commencing on that date. (From written submissions and oral submissions by the Applicants at the case management discussion ("CMD"), it was clear that parties agreed the Applicants had been permitted access around a fortnight earlier to the start date and that no rent was charged for that period until 1 August 2023.)

3. Both applications were dated 21 December 2023. The CV application was lodged with the Tribunal on 22 December 2023 and the PR application was lodged shortly thereafter. The applications relied upon similar evidence: that a deposit of £1,500 was due in terms of the Tenancy, paid to the Respondents, never paid into an approved scheme, and on termination of the Tenancy on 28 October 2023 the parties engaged in correspondence on deductions. The parties could not agree on a figure, and the Respondents returned only £1,000 to the Applicants on 13 November 2023 leaving the parties in dispute. The CV application sought the balance of the deposit and the PR application sought £6,000, said to be four times the deposit (an incompetently high sum as the maximum award would be three times the deposit: £4,500).

4. Prior to the case management discussion ("CMD") the Respondents lodged voluminous submissions, in the form of a chronology, as well as photographs and annotated WhatsApp messages. In response to this, the Respondents lodged further submissions, copy messages and photographs. These written submissions brought out a number of disputes between the parties which are reviewed further below.

The Case Management Discussion

5. On 13 September 2024 at 10:00, at a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote conference call, there was appearance by the Applicants (though only the first named Applicant spoke, representing them both). It was noted during the CMD that the Applicants were calling in from Brazil and they confirmed that they were no longer at the address in Menstrie on the applications. A request to amend their addresses to their new address in Brazil was granted and is included in the instance of this Decision.

6. There was no appearance for the Respondents. It was clear that they had received intimation of the applications (albeit in connection with an earlier scheduling of a CMD which was discharged on their motion) due to the submissions and evidence lodged by them by email on 7 May 2024. Those documents were all lodged by email and I noted that email intimation of the CMD of 13 September 2024 had been provided to the Respondents to the same email address. Having held back commencement of the CMD until 10:10, I was satisfied to proceed in the absence of the Respondents. In any case, they did not call in (nor did anyone on their behalf) by the conclusion of the CMD.

7. The Applicants confirmed that they insisted on the applications and I sought to clarify their position on a number of matters raised in the two sets of submissions.

8. In regard to the CV case and the £500 retained, I identified that there was a dispute as to whether it was fully vouched. It appeared clear, however, that it was retained by the Respondents in regard to three issues:
   a. The cost of replacement of linens and towels taken by the Applicants;
   b. Carpet cleaning, which the Respondents said was needed due to a smell of dog urine at the Property; and
   c. Repainting further to damage to paint work on walls and a doorframe.

   From the discussions during the CMD, the Applicants agreed these were the points in dispute.

9. In regard to the PR case and the failure to lodge the deposit, the application papers and the Respondents' submissions explained the Respondents' position as follows:
   a. They had not been intending to let on a PRT and had sought a licence for short-term letting. Their licence was not through at the point that they were approached by a third party to let the Property to the Applicants, who had recently come to the area (where the first named Applicant had grown up) from Brazil.
   b. They had allowed the Applicants access to the Property two weeks early, without payment of any rent.
   c. The Tenancy Agreement was in a standard PRT form and referred at clause 10 to using MyDeposit Scotland to hold the deposit.
   d. The £1,500 deposit was paid around 16 June 2023.
   e. The Respondents had attempted to lodge the deposit with a tenancy deposit provider but had been unable to complete the lodging due to lacking a landlords' registration number (which they never obtained).
   f. The Respondents obtained their licence for short-term letting on 13 September 2023 which they believed would then allow them to lodge the deposit.
   g. Around the same time, the Applicants intimated that they were thinking of leaving the Property, due to personal issues settling into the area that led them to wish to live elsewhere.
   h. The Respondents felt it was thus unnecessary to lodge the deposit only to require to seek its uplift in early course so did not attempt to lodge the deposit again. They blamed that decision on inexperience as landlords.
   i. Shortly after the Applicants left (on or around 28 October 2023) correspondence began by WhatsApp on the condition of the Property, including (on 3 November 2023) whether "the place has a very, very strong doggy smell".
   j. On 13 November 2023, the Respondents first proposed to retain £750 of the deposit which the Applicants objected to. Later in the day the Respondents proposed to return £1,000 and paid that amount that day.
   k. The Applicants did not accept this either and correspondence continued, with a proposal by the Respondents on 16 November 2023 that: "You return the linen and I return you the additanal £200" (*sic*). Correspondence on the figures, and the lack of vouching, continued until

at least 21 November 2023 when the offer to return a further £200 if the Applicants were to "[b]ring the stuff back" was repeated.

The Applicants confirmed at the CMD that they did not dispute the factual statements in the Respondents' explanation but disputed whether they were reasonable to act as they did and in particular fail to lodge the deposit.

10. In considering two opposed applications, with detailed submissions from the Respondents but no appearance from the Respondents, I required to consider the appropriate further procedure. I was conscious that a continuation for further evidence may cause only delay if the Respondents were to fail to engage further, yet not withdraw their opposition. I sought submissions from the Applicants on further procedure, and in particular what further evidence they may wish to provide (and whether they felt it was necessary for me to consider that further evidence). To this end, I sought to clarify the extent to which there were factual disputes between the parties, and the extent to which those disputes may be resolved by further evidence.

11. In regard to the repair of the replacement of linens, the Applicants referred to WhatsApp messages (lodged in different versions by both parties) where the Respondents told the Applicants to take the bed linens and other fabric furnishings, with the Respondents saying that they were going to replace them. Thereafter, in the negotiations on return of the deposit, the Respondents included the cost of the replacement as part of the proposed retention of £750 (being £450 of that figure but without any invoices provided as vouching). As the correspondence proceeded, the Respondents said that £200 would be returned if the linens were returned. The Applicants explained that they declined to do this, because they saw it as a proposal on a final settlement and they were not happy with such a final settlement. (In the WhatsApp correspondence neither party states that this was a full and final proposal, or challenged the offer as being unreasonable on that basis.) The Applicants said that the linens remained in Scotland at the first named Applicant's sister and could still be returned. I confirmed with the Applicants:
    a. That they accepted that an Inventory provided at the commencement of the Tenancy (and not disputed) included the bed linens and towels as part of the landlord's items at the Property.
    b. That they accepted that they had not returned these despite a proposal that they do so in return for a further refund of £200 of deposit.
    c. That they accepted that the replacement cost of the linens and towels retained was at least £200.

12. In regard to the carpet cleaning, this point was the most in dispute. The Applicants stated that they had twice cleaned the carpets themselves, and that any smell in the Property after they left was due to damp and mould. They provided photographic evidence said to show mould behind a picture (with WhatsApp messages referring to same), and historic issues with water ingress during the Tenancy (which the Respondents did make attempts to resolve). The Applicants said they had further photographs and videos which would show the mould and condensation in greater detail. In regard to the Respondents' position that the smell was dog urine, the Applicants were insistent that, though the puppy may have urinated in the Property while being trained, none of this

occurred near the carpets or sofa which were cleaned. That said, the Applicants also accepted the following points:

a. The Tenancy Agreement did not refer to allowing pets.
b. Though the Applicants said that they told the Respondents that they were intending to bring their two dogs from Brazil to the Property (and that the Respondents did not object), when they chose instead to get a new puppy they did not seek permission for puppy to live at the Property.
c. That a puppy, before being fully house trained, may urinate inside a Property and that their puppy did have such incidents (per a text of 3 November 2023: "a couple of accidents in the living room and hall"), though they said none were near the soft furnishings and carpets that the Respondents had complained about.
d. That they did sent a text (on 3 November 2023) to the Respondents conceding that the puppy may have brought urine in on its fur, into other areas of the Property and so "made contact with sofas etc". At the CMD, the first named Applicant stressed that he actually thought this was unlikely to have occurred and he was just trying to be polite in his text.

The Applicants accepted that the Respondents had lodged an invoice for carpet cleaning of £200. In regard to the carpets, however, the Applicants referred to there being a carpet that the Respondents had separately said, in a text of 3 November 2023, was going to be replaced anyway. The Applicants thus disputed that the carpets and furniture needed cleaned due to dog urine, and that in any case they disputed that the extent of the work was necessary as one carpet was to be replaced.

13. In regard to the painting, the Respondents had lodged sets of photographs showing the bottom of a white painted door frame (said to lead to a balcony) as marked and scratched, of a wall with chips out of the paint (which looked like things had been affixed, such as with sticky tack, and then removed chipping the paint), and another wall with a mark on it. The Applicants accepted that the Inventory described the Property as "freshly decorated and painted prior to entry" though did not concede that it truly was. In regard to the marks on the walls, they did not concede that they were caused by them, but did not dispute that the marks were there at the end of the Tenancy as shown in the photographs. In regard to the door frame, they did not concede that the marks were scratch marks from the puppy (insisting that he had no desire to scratch there) or otherwise caused by their occupation, but again did not dispute that the door frame was marked at the end of the Tenancy as shown in the photographs. (The Applicants said that the door was often open, as they encouraged the puppy to go onto the balcony to urinate there as part of its training, so the puppy had no reason to scratch at the door frame.) The Applicants further conceded that it was reasonable for the Respondents to seek some painting costs for the Property and that such costs would be at least £100 to include materials and labour.

14. In regard to the matters arising in the PR application, the Applicants did not know whether the Respondents let any other properties but believed that the Property had been tenanted to someone before them and they referred to WhatsApp messages (such as 11 November 2023) where the Respondents referred to new tenants coming in afterwards. The Applicants submitted that the

wording of the text messages suggested that this new tenant was more likely to be a PRT tenant than under the short-term letting licence but had no evidence on this. In regard to the applicability of the 2011 Regulations, the Applicants said that the Property was their only home during the Tenancy and that the Respondents were aware of this. The Applicants sought a maximum award based on two submissions:

a. That they took issue with the manner in which the Respondents replied to the request for return of the deposit. It was not clear to me that the Applicants were complaining of anything other than the Respondents' responses seeking to propose a retention of £750 and thereafter seeking to negotiate a lower retention.
b. That they were concerned that the Respondents had delayed in returning the deposit, and initially proposed only returning £750, because they believed the Respondents had used the money for a holiday that they took shortly before the end of the Tenancy. No evidence for this was provided.

Neither of these points were within the application or written submissions, so were not addressed by the Respondents' written submissions.

15. I sought the Applicants' submissions on further procedure. They sought a decision made at the CMD in both applications without a further continuation if I was minded to do so.

16. Prior to making my determination, I undertook my own investigations on public databases, and had not been able to locate a current registration of the Respondents as a landlord for the Property. Further, I could see that in the Land Register for Fife, apart from their home address, there was one other Property registered in the second named Respondent's name at present. That further property did not have a landlords' registration but appeared to be a commercial property.

17. No motion was made for expenses or interest.

Findings in Fact

18. The Respondents, as landlord, let the Property to the Applicants under a Private Residential Tenancy dated 1 August 2023 commencing on that day ("the Tenancy").

19. The Respondents provided the Applicants with possession of the Property from on or about 17 July 2023. No rent was charged for that period through to 1 August 2023.

20. The Tenancy Agreement contained reference at clause 10 to the *Tenancy Deposit Schemes (Scotland) Regulations 2011* and that the Respondent (as landlord) would lodge any deposit with MyDeposit Scotland.

21. The Tenancy was brought to an end by mutual agreement on 28 October 2023.

22. In terms of clause 10 of the Tenancy, the Applicants were obligated to pay a deposit of £1,500 at the commencement of the Tenancy.

23. The Applicants paid a deposit of £1,500 to the Respondents on or about 16 June 2023.

24. The Respondents failed to place the deposit into an approved Tenancy Deposit Scheme.

25. The Respondents provided no note of the prescribed information on the tenancy deposit to the Applicants.

26. The failure to lodge the deposit or provide the prescribed information under the *Tenancy Deposit Schemes (Scotland) Regulations 2011/176* was in breach of the said Regulations in regard to the lodging and the provision of prescribed information.

27. After the termination of the Tenancy, the parties corresponded on return of the deposit. After correspondence and negotiation, without agreement having been reached between the parties, the Respondents returned £1,000 of the deposit to the Applicants on 13 November 2023.

28. The Respondents provided only one invoice as evidence of the sums retained, being an invoice dated 13 November 2023 from Kingdom Carpet Cleaning for £200 for cleaning of carpets and cushions.

29. The Respondents, further to the Applicants' proposal that they do so, retained linen and towels from the Property at the termination of the Tenancy.

30. Such linen and towels were provided by the Respondents at the commencement of the Tenancy and included in the Inventory between the parties at the commencement of the Tenancy.

31. Subsequent to the removal of the linens and towels, the Applicants intimated that they sought to deduct £450 from the deposit in regard to the cost of replacing such items.

32. The Respondents had not understood that the Applicants would seek to deduct costs in regard to the retention of the linens and towels.

33. The Respondents proposed on 16 November 2023 and again on 21 November 2023 that the linens and towels be returned to them in return for a further sum of £200 being returned from the deposit. The proposals made no comment as requiring any broader compromise between the parties on the remaining issues. The Applicants did not accept this proposal.

34. The Applicants have retained the linen and towels and continue to retain them as at the date of the CMD.

35. The value of the linens and towels retained is at least £200.

36. After taking entry to the Property, the Applicants acquired a puppy which lived with them at the Property and which they attempted to housetrain while there.

37. During the period of housetraining, the puppy urinated within the Property on a number of occasions. Further, as part of his housetraining, the Applicants permitted the puppy to walk through the open balcony doors and urinate on a balcony at the Property.

38. Prior to acquiring the puppy, the Applicants had not sought the consent of the Respondents to have the puppy at the Property. The Tenancy Agreement does not include consent for pets.

39. The Inventory between the parties at the commencement of the Tenancy agreed that the Property was freshly painted.

40. At the conclusion of the Tenancy, the bottom of the doorframe of the door leading to the balcony was badly scratched and marked. This required repainted.

41. At the conclusion of the Tenancy, two walls had markings on them. These required repainting.

42. The cost of materials and labour for the repainting was at least £100.

43. The Applicants have not been afforded access to the adjudication scheme under Tenancy Deposit Scheme.

44. The Respondents are not registered as a landlord for the Property on the appropriate register.

45. From 13 September 2023, the Respondents were registered to operate a Secondary Letting Short-term Let for a maximum of 6 people at the Property in terms of the *Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022/32*.

46. During the course of the Tenancy, the Property suffered from minor ingresses of water, and evidence of condensation and mould were visible in areas of the Property.

Reasons for Decision

47. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. In light of the submissions by the parties, I was satisfied both that the necessary level of evidence had been provided through the application, further papers, and orally at the CMD, and that it was

appropriate to make a decision under regulation 10 of the 2011 Regulations and under the 2016 Act at the CMD.

48. In coming to this determination, I considered what factual matters were in dispute and whether further evidence should be heard before a decision made. I could identify only three points on which further evidence may have been of assistance: whether the areas cleaned by Kingdom Carpet Cleaning were areas where the puppy had urinated; whether the invoice included cleaning a carpet that the Respondents did not intend to retain; and whether the smell (said to be the reason carpet cleaning was sought) was as a result of dog urine, or damp and mould. It was, however, clear that parties did not have expert evidence to provide and that many months had passed since the smell was detected. I was thus not satisfied that further evidence would do other than restate the parties' opposing views and theories which were already clearly stated. Further, as I shall record, I was not satisfied that the cost of carpet cleaning was unreasonable even if the smell was not actually dog urine and had in fact been damp and mould. In the circumstances, I was satisfied to make a decision at the CMD in both applications on the basis of the submissions provided to date.

49. It was not disputed that the Respondents held a deposit shortly after the commencement of the Tenancy, did not lodge it, did not provide any prescribed information, retained the deposit themselves, and returned only £1,000 of it after negotiations on deductions. It was not disputed that the 2011 Regulations applied and there has thus been a clear breach of both the lodging and information requirements of the 2011 Regulations. In considering the appropriate award under the 2011 Regulations I thought it best first to consider the disposal in the CV application.

50. I refuse the CV application in full and hold the total of £500 retention to be a reasonable one considering the damages which the Respondents relied upon. I shall now consider each of the heads of claim in detail.

51. In regard to the cost of replacing the linens and towels, I found the Respondents' rationale for telling the Applicants to retain the linens and towels, but then seek to charge them for replacements, to be difficult to understand. The suggestion in their submissions was that they thought it would assist the Applicants in moving into their new property. For this to make sense, it must be allied with the Respondents believing that – because the linens, etc. were on the Inventory – the Applicants would expect to pay for the replacement of the linens and towels by way of deduction from the deposit. I do not think this is a reasonable expectation (if indeed I am understanding the Respondents' position correctly). I think a reasonable expectation of a tenant being told to keep linens and towels would be that the landlord is gifting them to them. Whatever the parties' initial intentions, motivations, and understandings, however, it was quickly made clear that the items were not a free gift and that the Respondents would return a further £200 of the deposit if the linens and towels were returned to them. The Applicants did not take up this offer and they conceded that the value of the items they took was at least £200. I had no difficulty accepting that a retention of the deposit for £200 was reasonable,

even if the issue first arose due to an unreasonable belief from the Respondents as to how things should be handled. (This features in my consideration of the 2011 Regulations below.) For completeness, I did consider the Applicants' statement at the CMD that they were still ready to return the linens, etc. but I do not think it appropriate for any consideration to be given to this. It is not reasonable for the Tribunal to hold off from determination of an application so as to permit litigants in Brazil an opportunity to try and arrange with family in Fife to try and contact a former landlord to try and return linens 10 months after their return was requested. The Applicants had an opportunity to resolve this matter and did not. By 22 November 2023, when the second offer had passed without acceptance, the Respondents were entitled to retain £200 of the deposit.

52. In regard to the cleaning costs, I am satisfied that on the balance of probabilities the Respondents were concerned that there was dog urine in carpets and soft furnishings. The puppy had been in the Property unauthorised and the Applicants conceded there had been accidents. Even though the Applicants said it was in different areas, they also said by text that perhaps urine had been brought in on its fur (even if the Applicants now say that they never thought that such transfer had actually happened). A landlord, accepting back a property where an unauthorised and un-housetrained puppy had lived, and its owners conceded that it had urinated in various places, is entitled in my view to have all the carpets and soft furnishings professionally cleaned. The Applicants said they had cleaned the carpets themselves but that was not a professional cleaning. The landlord owed it to the next occupier to ensure there was a thorough and reliable job done of cleaning the carpets and soft furnishings just in case. I think the costs were reasonable whether or not there was a smell, and thus it is irrelevant what the cause of the smell was. As for whether one carpet too many was cleaned (because it was to be disposed of), I cannot determine whether that carpet was cleaned and charged for but, even if it was, this is a *de minimis* issue. £200 for carpet and cushion cleaning in the circumstances was not an unreasonable retention from the deposit.

53. In regard to the painting, it was conceded by the Applicants that some repainting was reasonable and they did not dispute that the cost would have been at least £100. Such a sum was not an unreasonable retention from the deposit.

54. For completeness, I do not determine that the losses were only £500. This was clearly a figure that arose from negotiation and its breakdown was not clear. The Applicants' complaint as to a lack of invoices being provided during the negotiation was well made, but equally the Respondents' swift proposal of a £500 deduction followed by payment of the balance was a reasonable way to conduct a negotiation. All of it was, however, in the context that the negotiation was taking place without the deposit being properly protected and without the Applicants having the option to proceed to a swift adjudication.

55. In coming to a decision on the PR application and the claim under the 2011 Regulations, I reviewed decisions from the Upper Tribunal for Scotland. In *Rollett v Mackie, [2019] UT 45*, Sheriff Ross notes that "the decision under

regulation 10 is highly fact-specific to each case" and that "[e]ach case has to be examined on its own facts, upon which a discretionary decision requires to be made by the FtT. Assessment of what amounts to a 'serious' breach will vary from case to case – it is the factual matrix, not the description, which is relevant." (paragraph 9)

56. In regard to that "factual matrix", Sheriff Ross reviews with approval the reasoning of the Tribunal at first instance in that case (at paragraph 10). Generalised for my purposes, the Tribunal made consideration of:
    a. the purpose of the 2011 Regulations;
    b. the fact that the tenant had been deprived of the protection of the 2011 Regulations;
    c. whether the landlord admitted the failure and the landlord's awareness of the requirements of the Regulations;
    d. the reasons given for the failure to comply with the 2011 Regulations;
    e. whether or not those reasons effected the landlord's personal responsibility and ability to ensure compliance;
    f. whether the failure was intentional or not; and
    g. whether the breach was serious.

    Applying that reasoning, the Tribunal held – and the Upper Tribunal upheld – an award of two times the deposit. In analysing the "factual matrix" in that case, Sheriff Ross noted:

> *In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer* [of the letting agent in *Rollett*] *also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.*
>
> *Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present.* (Paragraphs 13 and 14)

57. The Upper Tribunal considered a case where the Tribunal regarded a low level of culpability in *Wood v Johnston, [2019] UT 39*. The Tribunal at first instance had awarded £50 (though it is not possible from the UT's opinion to determine what this was as a multiplier of the original deposit). Sheriff Bickett noted that parties to the appeal were agreed that "the award is a penalty for breach of Regulations, not compensation for a damage inflicted" (paragraph 6) and, like Sheriff Ross in *Rollett*, analysed the nature of the breach, though in briefer terms. In *Wood*, it was noted that the Tribunal at first instance had made the

award in consideration that "the respondent owned the property rented, and had no other property, and was an amateur landlord, unaware of the Regulations. The deposit had been repaid in full on the date of the end of the tenancy." Sheriff Bickett refused permission to appeal and thus left the Tribunal's decision standing.

58. Before applying the reasoning in these decisions to this application, it is appropriate to review the Respondents' response to the breach of the 2011 Regulations. They say that they tried to lodge the deposit but failed due to a lack of registration as a landlord. The failure to register remains. Their licence for short-term letting is not the same thing. That licence is under the *Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022/32* and paragraph 3 of that order clearly sets out that such short-term letting should be where "the guest does not use the accommodation as their only or principal home" (paragraph 3(a)) and that it excludes PRTs (paragraphs 3(f) and Schedule 2(m)). Further, the requirement for registration as a landlord under section 83 of the *Antisocial Behaviour etc. (Scotland) Act 2004* covers a very wide range of tenancies, but excludes holiday letters and short-term lettings. Having sought a very specific licence that did not cover them for a PRT, and having been alerted to the fact that the deposit – which they knew they should lodge – could not be lodged without registration as landlords, the Respondents still did not register as landlords.

59. Further, come September 2023, and clearly being aware of the tenancy deposit scheme system and believing that they could now lodge the deposit, the Respondents chose not to lodge the deposit because they say they wished to have the deposit available to handle themselves at the impending end of the Tenancy. Avoiding landlords holding the deposit at the end of a tenancy is one of the mischiefs that the 2011 Regulations were created to avoid. The 2011 Regulations ensure that a deposit is protected but also that the tenant has a clear process to seek recovery of the deposit and the availability of a swift and independent adjudication process for disputes. The Respondents' actions undermined this, seeking to make matters easier for them and no one else.

60. Applying Sheriff Ross's reasoning to the current case, as I say, one of the principal the purposes of the 2011 Regulations is to ensure that a tenant has a clear adjudication process for disputes at the end of the tenancy. In the case before me, this issue remained with the Applicants facing deduction made with little vouching and on baffling grounds (of them being told to take linens and then being charged for them). There was a clear failure to lodge the funds, despite a knowledge of the 2011 Regulations being in place.

61. In regard to the level of a breach, it is moderate. £1,000 was returned with little fuss. £500 was retained (though a further £200 was offered back if only the linens and towels were retained). It was clearly an intentional failure, though the Respondents say it was due to inexperience that led to poor decision making. In considering the factors reviewed in Sheriff Bickett's decision, the Respondents are clearly intending to make money from others occupying the Property, and to have had occupiers before and after. Even if inexperienced, they are not "amateurs". If they were ignorant of the requirement to register as

a landlord, or were confused about what the short-term letting licence permitted them to do, it was no one's fault but themselves. They may have convinced themselves that they were doing the right thing and making good decisions but nothing external would have suggested that to them. Indeed, the failed attempt to register the deposit should have flagged that they were in error in failing to register as a landlord. To consider the aggravating factors listed by Sheriff Ross, there was a reckless failure to observe responsibilities and an actual loss to the tenant, though I do not think there is anything to suggest a fraudulent intention. (I did not consider the Applicants' submission that the funds were used for holiday money as I saw no basis for it.) No doubt the Respondents believe their intentions were good at all times, but this does not excuse a failure to adhere to the basic compliance in a business that they have chosen to enter. It can only mitigate. In respect of mitigation, the Respondents do not appear to have any other rented properties and I can accept a level of inexperience. The speed in which they sought to negotiate the return of the deposit, and engage with the Applicants, is a significant mitigation, as well as their swift payment of £1,000 and willingness to continue to negotiate thereafter.

62. The fundamental failings in the Respondents' conduct, balanced by the mitigating speed of activity and engagement with the Applicants' complaints, and the Respondents' relative lack of experience leads me to hold that this is a breach towards the lower end of the scale. I am awarding £1,500 under regulation 10 of the 2011 Regulations, being the equivalent of the deposit and hold this as an appropriate award in consideration of the law and all the facts.

Decision

63. I am satisfied to grant an order against the Respondents for payment of the sum of £1,500 to the Applicants.

64. In light of the apparent failure of the Respondents to register as a landlord, I direct the Tribunal's clerks to pass a copy of this Decision and the order to Fife Council for them to proceed as appropriate.

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.

J Conn

13 September 2024

Legal Member/Chair **Date**