



**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**

**Chamber Ref: FTS/HPC/PR/24/2125**

**Re: Property at 1/2 39 Regent Moray Street, Glasgow, G3 8AL (“the Property”)**

**Parties:**

**Ummugulsum Demir, 3/4 29 College Street, Glasgow, G1 1QH (“the Applicant”)**

**Adil Mahmood, formerly c/o 12 South Bridge, Unit 243, Edinburgh, EH1 1DD and whose current whereabouts are unknown; and  
Rabee Harb, formerly 22 Sorn Place, Galston, KA4 8JA and whose current whereabouts are unknown (“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. This is an application by the Applicant for an order for payment 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 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011/176* in terms of Rule 103 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). (The Applicant had raised a separate application for repayment of the £250 deposit under Rule 111 but this was not before me and will be considered separately in due course.)
2. The tenancy in question was a Private Residential Tenancy (“PRT”) of a room at the Property but in non-standard form. The application papers showed that the Applicant was provided by the first named Respondent (by email on 2 January 2024):
  - a. An information sheet headed “Avoid Black Mould” with cleaning instructions;

- b. A sheet with further cleaning instructions, containing two sections: “General Cleaning Rules” and “Cleaning Checklist”;
- c. A sheet headed “General House Rules” which comprised of three sections: “House Rules”, “Kitchen Rules” and “Bathroom Rules”;
- d. A sheet containing two sections: “Utility Rules” and “Inspection Rules”; and
- e. A page with “Tenant Payment Information” detailing payments to the first named Respondent (designed as the “Property Manager”) and confirming rent was due of £500 per month and the start date of 5 January 2024. The Tenancy purported to be “for three months but can be extended thereafter by mutual agreement”.

Notwithstanding this form of documentation and its terms, given the findings-in-fact I have made, the Tenancy would be a PRT.

3. The application was dated 8 May 2024 and lodged with the Tribunal on that date. The application was originally raised against the first named Respondent only but prior to approval of the application the Applicant sought that the second named Respondent be added as co-Respondent for the reasons reviewed within this decision.
4. The application relied upon evidence that a deposit of £250 was paid to the first named Respondent but never paid into an approved scheme and with no prescribed information provided. Further the Tenancy concluded on 30 April 2024 with no funds returned to the Applicant. The application did not express the specific order sought, but relied on both the failure to provide any of the necessary information or protect the deposit.

### **The Case Management Discussion**

5. On 4 September 2024 at 10:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote conference call, there was appearance by the Applicant.
6. There was no appearance for either of the Respondents. Service upon them by the Tribunal’s Sheriff Officer were unsuccessful. I noted the following:
  - a. In respect of the first named Respondent, no address featured in any of the Tenancy documentation. He was not registered as the landlord for the Property, nor was there anything to identify any property management business he represented other than his name, that he was “Property Manager”, and that his bank account was said to be in the name of the “Adil Mahmood Foundation”. The Applicant originally designed him at the address of the letting agent who is the contact address for the registered landlord (discussed further below) but thereafter changed this to the Edinburgh address in the instance, as this address was used in an earlier PR case (again discussed further below). When the Sheriff Officer attempted to serve at the Edinburgh address it was found to be a “Mailboxes etc” branch and the first named Respondent was said last to have rented a box around three years before, with no forwarding address held.
  - b. In respect of the second named Respondent, he was the registered landlord for the Property on the Scottish Landlords Register. The register entry did

not contain a home address, but gave an agent's name and address in Glasgow. The Title Sheet for the property also showed the second named Respondent to be the heritable proprietor of the Property. His address on the Title Sheet as proprietor (as at the date of registration in 2012) was the address in the instance in Galston. When the Sheriff Officer attempted to serve at the Galston address the occupier said that they had purchased the property four years earlier and had never heard of the second named Respondent.

Further to the failures in Sheriff Officer intimation, Service by Advertisement had been carried out and I was satisfied that this had been completed properly. The Tenancy documentation did contain an email address for the first named Respondent and the clerks had sent notification to him of the service by advertisement on 6 August 2024. Further, I requested the clerks to send a copy of the intimation papers by post to the contact address in Glasgow for Guardian Letting & Sales Ltd, being the second named Respondent's contact address on the Scottish Landlords Register. This was sent on 16 August 2024. Having held back commencement of the CMD until 11:35, I was satisfied to proceed in the absence of the Respondents. In any case, neither called in (nor did anyone on their behalf) by the conclusion of the CMD.

7. The Applicant confirmed that she insisted on the application and sought an award under the *2011 Regulations* at the highest level. The application papers provided evidence of the payment of £250 around 2 January 2024. Further the papers provided evidence that none of the three Tenancy Deposit Scheme providers had a trace of the deposit being lodged.
8. In response to questions, the Applicant gave the following further details:
  - a. She rented a room at the Property;
  - b. The room had a locked door, but there were shared bathroom and kitchen facilities;
  - c. Neither of the Respondents lived at the Property;
  - d. She dealt only with the first named Respondent. He introduced himself to her, and other tenants, as "the landlord";
  - e. In April 2024, the first named Respondent said to her and the tenants that he had "sold" the Property and that they all had to leave. Less than 28 days' notice was provided of this (which was one of the matters on which she then took advice);
  - f. She was not aware of the second named Respondent's ownership of the Property or his registration as landlord of the Property until after she sought advice in April 2024 from Positive Action in Housing and from Shelter Scotland;
  - g. Positive Action in Housing had written to the second named Respondent regarding return of the deposit. The Applicant understood that the second named Respondent had replied claiming that the tenant was the first named Respondent (but no documentary evidence on this response or any alleged lease between the Respondents was lodged);
  - h. Nonetheless, she did move out by 30 April 2024, borrowing money so as to fund this; and
  - i. During the period of her Tenancy, the first named Respondent and his father frequently let themselves into the Property. She found it "scary" and

described it as “constant harassment”. She described them “screaming at us”, and occasions when the heating and the internet were turned off by them. She said that a number of the other tenants were young, female, foreign students who she said would have been in a much weaker position than herself.

9. In advance of the CMD, I had undertaken my own investigations on Registers of Scotland and could see two other properties in the name of “Rabee Harb” in the Land Register for Glasgow county though the proprietor address provided was different for each of those properties and from that for the Property. Of the two other properties, both had registered landlords on the Scottish Landlord Register but one was registered to the second named Respondent (with no agent given and the contact address being the Galston address) and the other registered in the name of a different landlord (though the date of entry for the second named Respondent’s acquisition of that property was in late August 2024 so any change of registration may still be pending). I could identify no properties registered under the name “Rabee Harb” in the neighbouring Renfrew, Ayr, Dumbarton, or Lanark counties.
10. I sought the Applicant’s submissions on why an order was sought against both the Respondents. She did not have any and accepted that the Tribunal needed to determine which of them was the “landlord” in terms of the *2011 Regulations*. As for whether the Tribunal should determine it to be the first named Respondent (who both held himself out as “property manager” in writing, but as “landlord” orally) or the second named Respondent (who owned the Property and registered himself as landlord), the Applicant left the Tribunal to consider the question.
11. No motion was made for expenses. The Applicant asked for interest to be added at a rate for the Tribunal to determine.

### **Findings in Fact**

12. The second named Respondent is owner of the Property.
13. The second named Respondent has registered himself as landlord of the Property.
14. The first named Respondent facilitated the Applicant viewing a room at the Property on 2 January 2024, and provided her with an email attaching five documents comprising the total of the Tenancy Agreement documentation.
15. The Tenancy Agreement was in an incorrect format, principally being a collection of information sheets and cleaning instructions, and stating that the duration of the Tenancy was three months subject to extension.
16. In the Tenancy Agreement documentation:
  - a. On the page headed “Tenant Payment Information”, the first named Respondent was designed as “Property Manager”.

- b. On the page containing the section "Inspection Rules", the first named Respondent distinguished himself from the landlord of the Property stating:
  - i. "There is an inspection at the house 2-3 times a year by my landlord and his agent."
  - ii. "The Landlord will want to check that the flat is being kept clean and tidy especially the kitchen and bathroom."
17. The first named Respondent, in capacity as "Property Manager" let a room at the Property to the Applicant under a Private Residential Tenancy from 5 January 2024 ("the Tenancy").
18. The room had its own lock, and shared kitchen and bathroom facilities with other rooms in the Property.
19. Neither of the Respondents resided at the Property during the Tenancy.
20. The Tenancy was brought to an end by the Applicant moving out by 30 April 2024, being a date requested by the first named Respondent when the first named Respondent attempted to terminate the Tenancy without proper notice.
21. In terms of the Tenancy, the Applicant was obligated to pay a deposit of £250 at the commencement of the Tenancy.
22. The Applicant paid a deposit of £250 to the first named Respondent's specified bank account on or about 2 January 2024.
23. The Respondents failed to place the deposit into an approved Tenancy Deposit Scheme.
24. The Respondents provided no note of the prescribed information on the tenancy deposit to the Applicant.
25. 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.
26. The second named Respondent is the landlord of at least three rental properties.

### **Reasons for Decision**

27. 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 Applicant, I was satisfied both that the necessary level of evidence had been provided through the application and orally at the CMD, and that it was appropriate to make a decision under regulation 10 of the *2011 Regulations* at the CMD.
28. I received only *ex parte* evidence and vouching from the Applicant, but it was undisputed by the Respondents. I was satisfied by the Applicant's submissions

that the first named Respondent held a deposit around the commencement of the Tenancy and that no one lodged the deposit or provided any prescribed information. I was further satisfied that the deposit had never been returned and attempts to make contact with the Respondents (direct or through advisers) had resulted in no repayment of the deposit or even a material response. There appears to be a clear breach of both the lodging and information requirements of the *2011 Regulations*. The principal question is: by whom?

29. I saw a number of ways to analyse the factual matrix:
  - a. The second named Respondent has let the Property to the first named Respondent under some form of lease, and the first named Respondent is sub-letting rooms at the Property on his own sub-tenancies (which would be PRTs as the first named Respondent does not reside at the Property and all other conditions for being a PRT are satisfied).
  - b. The second named Respondent has let the Property to the first named Respondent, assuming the first named Respondent to be in occupation (and thus the tenancy would be a PRT) but leaving the first named Respondent to arrange any flatmates as he wished. In reality, however, the first named Respondent did not then choose to reside at the Property and made his own arrangements to let out all the rooms.
  - c. The second named Respondent is the landlord and the first named Respondent acts as his agent in letting rooms at the Property.
30. The *2011 Regulations* define “landlord” in reference to the *Housing (Scotland) Act 2006*, which defines “landlord” as “any person who lets a house under a tenancy, and includes the landlord's successors in title” (at section 194). Reviewing the above three possibilities:
  - a. The first named Respondent is the landlord, as he is letting out the Property in terms of his rights to do so under his own lease;
  - b. The second named Respondent is the landlord, but there is a question as to whether he has “received a tenancy deposit” from the Applicant “in connection with a relevant tenancy” (per Regulation 3(1) of the *2011 Regulations*); and
  - c. The second named Respondent is the landlord, acting through an agent.
31. Before coming to my own decision, I reviewed a previous decision against the same Respondents regarding the same Property under reference PR/21/3119 dated 5 April 2022. This related to an earlier tenant at the Property but it contained details of a similar commencement of occupancy and similar sounding Tenancy Agreement documentation. In that 2021 application, however, the Applicant had expressly sought an order against the first named Respondent only. In the absence of any contradicting submissions (as against neither Respondent appeared) the Tribunal was satisfied to accept that the first named Respondent was the “landlord” for the purposes of that application. In this application the Applicant has left the determination to the Tribunal and a full analysis is thus required.
32. There is a paucity of clear written documentation but what there is has the first named Respondent referring to himself as a “Property Manager” and making clear that there is someone else who is “my landlord”. Further, the second

named Respondent owns the Property (and thus is at least the head landlord) and has registered as landlord (which brings with it a number of significant compliance requirements which can only be achieved by active management of the Property). Absent clear evidence that the first named Respondent is a tenant with a right to sub-let, the second named Respondent is clearly the owner and seeking to act as a landlord for the Property. It is inappropriate for me to invent excuses for the second named Respondent. At best the second named Respondent has not sought to preserve his position and has been significantly uncurious as to the management of his Property, and has acted in a way that the first named Respondent has held himself out as the second named Respondent's agent.

33. In all the circumstances, I hold it as appropriate to determine that the second named Respondent is the landlord and the sums paid to the first named Respondent are sums "received [as] a tenancy deposit" by him, thus making the second named Respondent responsible the compliance with the *2011 Regulations* in regard to the Applicant's deposit.
34. In coming to a decision on the appropriate level of order, 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)
35. 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)*

36. 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.
37. Applying Sheriff Ross's reasoning to the current case, the purposes of the 2011 Regulations are to ensure that a tenant's deposit is insulated from the risk of insolvency of the landlord or letting agent, and to provide a clear adjudication process for disputes at the end. In the case before me, these issues all remained with the Applicant requiring to chase for repayment and receiving no response. There was a clear and egregious failure to lodge the funds, plus the failure to provide the prescribed information.
38. I have held that, as far as I have interpreted the publicly available information, the second named Respondent has been a landlord of at least three properties, two for some years. He does not appear to be an "amateur" and is registered as a landlord for two properties. There were flagrant failures of management in this case: allowing very poor management by the "Property Manager" including providing inaccurate documentation, the failure to attend to lodging of funds and provision of information, and failure to provide fair notice of termination. To consider the aggravating factors that Sheriff Ross lists, there was a reckless failure (if not a deliberate failure) to observe responsibilities and an actual loss to the tenant has been caused. I cannot rule out any fraudulent intention. Though the previous application against the Respondents resulted in an order against the first named Respondent, it is clear that poor management of deposits at the Property have been ongoing for some years. There are no mitigating factors obvious and none argued (as the second named Respondent has not entered an appearance). The significant number of criticisms that can be made against the second named Respondent's lack of proper handling of matters as a landlord lead me to hold that this is a serious breach. I am awarding £750 under regulation



10 of the 2011 Regulations, being the full 3 times the deposit and hold this as an appropriate award in consideration of the law and all the facts.

39. I shall apply interest on the sum under Rule 41A at 8% per annum from the date of Decision as an appropriate rate.

### **Decision**

40. I am satisfied to grant an order against the second named Respondent for payment of the sum of £750 to the Applicant with interest at 8% per annum running from today's date.
41. In light of the apparent failure of the second named Respondent to manage the Property properly as a landlord, and the concerning allegations as to the behaviour of the first named Respondent as "Property Manager", I direct the Tribunal's clerks to pass a copy of this Decision and the order to each of:
- a. Glasgow City Council for them to proceed as appropriate regarding the second named Respondent further to his landlord registrations (including that he appears to have the out of date address in Galston listed against a different landlord registration); and
  - b. The Letting Agent Regulation Team of the Scottish Government for them to investigate whether any steps are appropriate regarding the first named Respondent either: under any registration he holds, or any registered agent for whom he works, or in regard to whether he is acting as a letting agent while unregistered.

### **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.**

# Joel Conn

4 September 2024

Legal Member/Chair

Date