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 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/24/3765

Re: Property at 18 MILLBANK ROAD, STRANRAER, DG9 0EJ ("the Property")

Parties:

MR CHRISTOPHER KELLY, INVERKAR SEABANK ROAD, STRANRAER, DG90EF ("the Applicant")

MRS JUNE FERGUSON, 4 DALE CRESCENT, STRANRAER, DG90HQ ("the Respondent")

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") determined that the Respondent failed to comply with her duties under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Tribunal therefore makes an order requiring the Respondent to pay to the Applicant the sum of £900.

Background

1. An application was received from the Applicant on 16 August 2024 seeking a payment order under Rule 103 of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 rules"). The Applicant sought an order for payment in respect of the Respondent's alleged failure to lodge the tenancy deposit paid by the Applicant with an approved tenancy deposit scheme within 30 working days of the beginning of his tenancy, as required by Regulation 3 of the 2011 Regulations. The order sought was for £1350, being three times the deposit of £450.

2. Attached to the application form were:

i) Copy private residential tenancy agreement between the parties, which commenced on 1 March 2021.
ii) Copy emails addressed to the Applicant from each of the three approved tenancy deposit schemes, confirming that they did not hold his tenancy deposit in respect of the property.
iii) Copy bank statement excerpt showing payment of the deposit by the Applicant to the Respondent on 1 March 2021.
iv) Copies of various WhatsApp/text messages between the parties regarding the return of the tenancy deposit to the Applicant.

3. Further to a request from the tribunal administration, the Applicant provided further WhatsApp messages between the parties dated between 29 June and 26 July 2024 regarding the end date of his tenancy.

4. The application was accepted on 9 September 2024. Notice of the case management discussion (CMD) scheduled for 25 March 2025, together with the application papers and guidance notes, were served on the Respondent by sheriff officers on behalf of the Tribunal on 19 February 2025. The Respondent was invited to make written representations in relation to the application by 8 March 2025.

5. Written representations were received from the Respondent on 5 March 2025.

The case management discussion

6. A CMD was held by remote teleconference call on 25 March 2025. The Applicant was present on the teleconference call and represented himself. The Respondent was present on the teleconference call and was represented by her daughter, Mrs Gayle Colvin.

Preliminary issue

7. The legal member noted that due to an administrative error, the written representations received from the Respondent on 5 March 2025 had only been received by the tribunal the afternoon before the CMD. The Applicant confirmed that he had also received these the previous day, but confirmed that he had had sufficient time to read them in advance of the CMD.

The Applicant's submissions

8. The Applicant confirmed that he sought an order for £1350, being three times the amount of tenancy deposit. He had lived in the property since around 2019, having moved in with the existing tenant. That tenancy was in the sole name of that previous tenant, who had then moved out. The Applicant had entered into a private residential tenancy with the Respondent in his sole name on 1 March 2021. He had paid the Respondent a tenancy deposit of £450 on that

date.

9. The Applicant pointed out that the tenancy agreement stated that his deposit would be held with Letting Protection Service Scotland. He had therefore assumed that his deposit had been lodged with that scheme. It was only after his tenancy had ended that he checked with the various schemes as to whether they had his deposit. He had checked this because the Respondent had suggested that she may wish to retain part of his deposit in respect of various matters, and he wished to dispute this. All three schemes had confirmed that they did not hold his tenancy deposit.

10. The Applicant confirmed that his tenancy had ended on 31 July 2024. The Respondent had returned the full deposit of £450 to him on 7 August 2024.

11. The Applicant said that he had brought the application because he had acted in good faith and assumed his deposit had been protected, as stated in the tenancy agreement. He had been unhappy about the Respondent's proposed retention of part of the deposit, and wished to dispute this. He was unable to do so as his deposit had not been paid into an approved scheme. He also wished to ensure that any future tenants in the property were protected.

The Respondent's submissions

12. Mrs Colvin told the tribunal that the Respondent admitted that she had not lodged the Applicant's deposit with an approved tenancy deposit scheme. She said that there had been no malicious intent on the part of the Respondent, but that this had been an oversight.

13. She said that the Applicant had not raised any questions about why the Respondent had failed to provide him with the information required under regulation 42 of the 2011 Regulations. He had only queried the matter when the parties had exchanged messages regarding a possible retention of part of his deposit by the Respondent in respect of various matters, particularly the standard of the internal decoration of the property which he had carried out. In the end, the Respondent did not wish any conflict with the Applicant, and had repaid his deposit in full.

14. Mrs Colvin said that the Respondent was a trustworthy and reliable landlord, and that the Applicant had been an extremely good tenant. There had been no issues between the parties during the course of the tenancy, until towards the end when there was a discussion about the possible deduction of money from the Applicant's deposit. She said that the Applicant had not contacted the Respondent after his deposit was returned and that the tribunal application had come out of the blue. The Applicant had not written to the Respondent to advise her that he intended to make the application before doing so.

15. Mrs Colvin confirmed that the Respondent did not own any other rental properties. When asked by the legal member about any prior tenancies, she confirmed that prior to the Applicant becoming a sole tenant, there had been another tenant in the property. She could not confirm when that tenancy had commenced but thought it may have been prior to the private residential tenancy regime coming into being. There had been one tenant in the property prior to that, which had been a short assured tenancy. She confirmed that neither of the previous tenants' deposits had been paid into an approved scheme. A new tenant had moved in after the Applicant had moved out, and their deposit had been paid into an approved scheme.

Findings in fact

16. The Tribunal made the following findings in fact:

- The Respondent is the owner and registered landlord of the property.
- The parties entered into a private residential tenancy agreement, which commenced on 1 March 2021.
- The tenancy agreement stated at clause 11 that a tenancy deposit of £450 was to be paid by the Applicant on or before the start date of the tenancy. It also stated that the scheme administrator was Letting Protection Service Scotland.
- The tenancy was a 'relevant tenancy' in terms of the 2011 regulations.
- The Applicant paid a tenancy deposit of £450 to the Respondent on 1 March 2021.
- The Respondent did not pay the Applicant's tenancy deposit into an approved tenancy deposit scheme.
- The Respondent did not provide the required information to the Applicant in terms of regulation 42 of the 2011 Regulations
- The Applicant's tenancy ended on 31 July 2024. He handed the keys back to the Respondent on 24 July 2024.
- The Respondent repaid to the Applicant the entire deposit of £450 on 7 August 2024.
- The Respondent does not own any other rental properties.
- The Respondent failed to lodge the tenancy deposits paid by at least two previous tenants at the property with an approved tenancy deposit scheme.

The relevant law

17. Rule 3(1) of the 2011 regulations provides that *"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.*

18. A tenancy deposit is defined in the 2011 regulations as having the meaning conferred by section 120 (1) of the Housing (Scotland) Act 2006 ('the 2006 Act). That section states:

"A tenancy deposit is a sum of money held as security for –
(a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or
(b) the discharge of any of the occupant's liabilities which so arise."

Reasons for decision

19. In light of all the evidence before it, and having regard to the overriding objective, the Tribunal considered that it was able to make sufficient findings to determine the case without the need for a hearing, and that to do so would not be contrary to the interests of the parties.

20. The Respondent admitted that she had failed to comply with the duty under Regulation 3(1) of the 2011 Regulations to pay the Applicant's deposit into an approved tenancy deposit scheme within 30 working days of the start of the tenancy. The legal member explained to the parties that the tribunal was therefore obliged to make an order requiring the Respondent to make payment to the Applicant, in terms of rule 10 of the 2011 regulations. The tribunal must then consider the sum which the Respondent should be ordered to pay to the Applicant, which could be any amount up to three times the amount of the tenancy deposit.

21. Following the CMD, the tribunal considered what the appropriate sanction would be in the circumstances, based on all of the evidence before it. In considering the appropriate level of payment order to be made in the circumstances, the tribunal considered the need to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach (Sheriff Welsh *in Jenson v Fappiano* 2015 GWD 4-89).

22. The tribunal noted the view expressed by Sheriff Ross in *Rollet v Mackie* ([2019] UT 45) that the level of penalty should reflect the level of culpability involved.

23. The tribunal noted firstly that the Respondent had admitted that she had failed to protect the Applicant's deposit. As Sheriff Ross noted, at para 13 of his decision: *"The admission of failure tends to lessen fault: a denial would increase culpability".*

24. The tribunal did not consider that most of the aggravating factors which might result in an award at the most serious end of the scale as noted by

Sheriff Ross appeared to be present in this case. The tribunal accepted that there had been no malicious or fraudulent intention by the Respondent in failing to do so. The financial sum of £450 was relatively low, and there had been no actual financial loss to the Applicant as his deposit was returned by the Respondent in full within a week of the end of his tenancy.

25. It was clear, however, that while the Respondent admitted the failure to comply with the regulations, she was unaware of her duty to do so. While this was presented as an oversight, it was the Respondent's responsibility as a landlord to be aware of the duties and to comply with these. She should have been aware of the requirement to lodge the deposit in an approved scheme, as this was clearly referred to in the tenancy agreement.. It appeared from Mrs Ogilvy's submissions that the Respondent was under the impression that the duties under the Regulations were in some way related to the introduction of private residential tenancies, when in fact they have existed since 2012.

26. The Respondent also admitted having failed to protect the deposits of two previous tenants of the property That is an aggravating factor and is a serious matter. The tribunal observes, however, that the Respondent appears to have learnt from the experience of the present application, and has now lodged the deposit paid by her current tenant with an approved scheme.

27. The Applicant was entitled to rely on the clause in the tenancy agreement which stated that his deposit would be lodged with an approved tenancy deposit scheme. It was not his responsibility to chase this up or to query with the Respondent why he had not received the required information under Regulation 42. The Applicant's deposit was unprotected throughout his tenancy for almost three and a half years. While ultimately his deposit was returned to him in full shortly after the end of his tenancy, there had been a dispute over a possible deduction from the deposit. He was denied the opportunity to challenge any proposed deduction through the dispute resolution service provided by an approved scheme.

28. Taking all of the above considerations into account, the Tribunal determined that an order for £900, representing twice the tenancy deposit paid, would be appropriate in this case.

Decision

29. The Tribunal determines that the Respondent has failed to comply with the duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to pay a tenancy deposit to the scheme administrator of an approved scheme within the prescribed timescale. The Tribunal

therefore makes an order requiring the Respondent to pay to the Applicant the sum of £900.

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.

Sarah O'Neill

25 March 2025

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Legal Member/Chair **Date**