

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 Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 and under The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The Regulations”)

Chamber Ref: FTS/HPC/PR/22/2854 and FTS/HPC/CV/22/2856

Re: Property at 24/2 Caledonian Road, Edinburgh, EH11 2DF (“the Property”)

Parties:

Mr Abhay Chaudhary, Ms Niomi Shah, 96/1 Nicolson Street, Edinburgh, EH8 9EW (“the Applicant”)

Miss Michelle Zhu, Flat 3, 15 Guthrie Street, Edinburgh, EH1 1JJ (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

[1] In Application with reference FTS/HPC/PR/22/2854, The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) makes an award in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ordering that the Respondent pay the Applicants the sum of £4,500.00 being an amount equal to three times the value of the relevant tenancy deposit. In Application with reference FTS/HPC/CV/22/2856, the Tribunal makes a Payment Order in favour of the Applicants against the Respondent in the sum of £1,500.00.

[2] In Application with reference FTS/HPC/CV/22/2856, the Applicants seek a Payment Order in the sum of £1,500.00 for the return of a deposit they claim to have paid to the

Respondent under a tenancy agreement between the parties. In Application with reference FTS/HPC/PR/22/2854, the Applicants seek an award under the Regulations for the non-registration of the deposit in an approved scheme.

The Hearing

[3] The Applications were heard over two days of evidence by video conference on 22 April 2024 and 1 April 2025. There had been many delays in organising the second day of evidence due to the Respondent travelling to China for several months. A Hearing day was also adjourned on 28 August 2024 because Ms Shah unexpectedly became unavailable. An earlier Hearing date on 3 July 2024 was adjourned because Mr Chaudhary was abroad and no arrangements had been made for his evidence to be competently taken from abroad.

[4] Parties had submitted extensive documentation throughout the process in the form of written representations and documentary evidence. Ultimately, the Applicants confirmed that only Ms Shah would be giving evidence on their behalf. Each party had the opportunity to cross-examine the other and at the end of hearing evidence, each party had the opportunity to make closing submissions.

[5] The Tribunal comments on the evidence heard as follows.

Ms Niomi Shah

[6] Ms Shah's evidence was straightforward and simple to understand. She explained that she and Mr Abhay Chaudhary moved into the Property at the same time on 19 September 2021. They were in a relationship at the time. Ms Shah explained that Mr Chaudhary paid a deposit of £1,500.00. Ms Shah explained that they each signed two separate tenancy agreements electronically whilst they were out of the UK. The rent was £1,380.00 a month. Ms Shah was studying for a Science degree at Edinburgh University. Ms Shah ultimately left the Property on 1 June 2022.

[7] When she left the Property, Ms Shah gave evidence that the Respondent had told her that she would be keeping the entire deposit and giving them nothing back because of cleaning issues apparently identified by the Respondent at the Property. Ms Shah explained that there was no formal check-in or check-out report and described a situation in which the Respondent was the sole arbiter in respect of what should happen to the deposit.

[8] Ms Shah described this as distressing and confirmed that these issues gave them cause to look into the Regulations and they then discovered that the deposit was unregistered. Ms Shah described how this was the first time she had ever rented a flat

that was not University Halls of Residence. She said she didn't know about how deposits worked. The Tribunal asked her to comment on the Respondent's position that the tenancy agreement bearing to be in the name of Mr Chaudhary was a forgery. Ms Shah denied this completely.

[9] She described how it was Mr Chaudhary who had transferred the deposit and while it was Ms Shah who initially met the Respondent at the start of the tenancy, the Respondent did meet Mr Chaudhary later on at the Property. Ms Shah took the view that the Respondent used the Applicants' vulnerability as foreign students to confuse them and ultimately to take advantage of them.

[10] The Tribunal had no reason to doubt Ms Shah's credibility or reliability. She came across as honest and the Tribunal had no reason to doubt the truthfulness of her evidence. Her evidence was corroborated by the documentary evidence before the Tribunal in the form of text messages. It also made sense.

[11] Having heard from Ms Shah, the Tribunal then heard from the Respondent.

Miss Michelle Zhu

[12] Ms Zhu participated initially with a Mandarin interpreter who interpreted everything she said from Mandarin into English and vice versa. At the Hearing on 22 April 2024, Ms Zhu co-operated with the Interpreter. Ms Zhu did speak English but the Tribunal had formed the view all parties would benefit from having an interpreter in place for the Respondent. The Case Management Notes record that it was agreed by all parties including the Respondent herself at a preliminary stage that the Tribunal would arrange for an interpreter for the Respondent.

[13] However in the run up to the second day of evidence on 1 April 2025, Ms Zhu contacted the Tribunal and asked a member of the Tribunal administration to cancel the interpreter's booking. This request had been taken at face-value and actioned. When this was discovered by the Tribunal Members on 1 April 2025, this caused the Tribunal some concern as the first day of evidence had been heard with the benefit of an interpreter and the Tribunal wanted to ensure consistency and fairness to all.

[14] The Tribunal delayed the start of the Hearing for a new Mandarin Interpreter to be arranged at short notice. An interpreter was duly then sourced and an interpreter joined the video call. It became clear though, that the Respondent did not intend to co-operate with the interpreter. The Tribunal took care to ensure that the Respondent understood why an interpreter was there but Ms Zhu was intent on speaking to the Tribunal in English. The Tribunal instructed the Respondent to speak with the benefit of the interpreter but the Respondent refused to do so and indicated clearly that she was

refusing to do so. The Tribunal asked the Respondent directly whether she was refusing the Tribunal's request to co-operate with the interpreter and the Respondent confirmed that she was.

[15] The Tribunal thereafter allowed the Respondent to address the Tribunal in English as it seemed little more could be done. The interpreter remained in position for if the Respondent or the Tribunal asked for specific help on any specific passage of evidence.

[16] The Respondent's relevant evidence was in relatively short compass. She accepted that she had received a deposit of £1,500.00. She accepted that it had not been registered in an approved scheme. She explained that she had retained it in full because she said the Property was left in a poor condition. She explained that she thought My Chaudhary had misled the Tribunal by submitting false documentation including a fake tenancy agreement with his name on it. Ms Zhu suggested that the Applicants had agreed with her not to register the deposit in an approved scheme. This was something which was expressly denied by Ms Shah and which was not supported by any contemporaneous message exchanged between the parties.

[17] Ms Zhu came across as defensive and confrontational. She took no responsibility for the non- registration and went on the attack attributing blame to the Applicants for leaving the Property in a poor condition. Ms Zhu had no check-in or check-out report to refer to and appeared to see it as legitimate that she act as sole arbiter in respect of any deposit dispute. It is not for a tenant to determine what should be done with a deposit, the duty is on the landlord to protect it, if this was done both parties would have benefited from professional arbitration.

[18] The Tribunal listened carefully to Ms Zhu's allegations that the tenancy agreement submitted by Mr Chaudhary was "*fake*". The Tribunal however could find no legitimate basis for accepting this. The Tribunal listened to Ms Zhu describe the font used in the agreement and the alignment of certain words. The Tribunal was left with the impression that Ms Zhu was willing to say anything rather than acknowledge that she should have put the deposit in an approved scheme.

[19] The Respondent also clearly knew that Mr Chaudhary was living in the Property and the evidence suggested that he had actually paid the deposit. Ms Zhu later referred to Mr Chaudhary as a lodger. She made no reference to the fact that the lease agreements had been signed electronically from abroad as explained by Ms Shah. She appeared uninterested in such details and offered no account of the circumstances of the signing of the leases of her own.

[20] The Tribunal also raised with Ms Zhu that the tenancy agreements she had used for the Property seemed amateurish and included sections written in broken English. The tenancy agreements were certainly not examples of the model Private Residential

Tenancy Agreement. The agreements didn't even describe themselves as being Private Residential Tenancies. Ms Zhu explained that she had "*got them from her old landlord*".

[21] This left the Tribunal with a poor impression of the Respondent's knowledge or understanding of her legal responsibilities of being a landlord. The Tribunal could not find the Respondent credible or reliable about any issues that were not accepted by Ms Shah.

[22] Having heard from parties, the Tribunal made the following findings in fact.

1. *The Parties entered into a tenancy agreement in terms of which the Applicants paid a deposit of £1,500.00 to the Respondent ahead of taking occupation of the Property under a tenancy agreement between the parties. The tenancy commenced on 19 September 2021.*
2. *The Respondent failed to register the deposit paid by the Applicants into an approved scheme as required by Regulation 3.*
3. *At the end of the tenancy, the Respondent retained the whole deposit paid supposedly on account of damage alleged to have been carried out by the Applicants in the Property and for cleaning and general reinstatement costs. The Respondent has attempted to act as sole arbiter in respect of whether the deposit was to be returned or retained. The Respondent provided no check-in or check-out report that might reliably demonstrate the Respondent's position.*
4. *The sum of £1,500.00 is resting owed by the Respondent to the Applicant.*

Decision

[23] Having made the above findings in fact, the Tribunal had to determine what, if any, award ought to be made under Regulation 10. The Tribunal proceeded on the basis that the determination of the award required the Tribunal to exercise its judicial discretion to consider what would be fair, proportionate and just.

[24] The Tribunal noted that the Applicants had been put to considerable effort to secure the return of the deposit which ought to have been registered in a scheme. The Respondent appeared unwilling to accept any responsibility for her actions and has made allegations against the Applicants of fraud and deception. Those allegations do not stand up to scrutiny. The Respondent's actions served to underline exactly why deposits ought to be registered in approved schemes. There is no real mitigation before the Tribunal. The Tribunal decided that the breach ought to be treated at highest end of the scale of options open to the Tribunal. The Tribunal therefore made an award under Regulation 10 in the sum of £4,500.00 in addition to a Payment Order in the sum of £1,500.00 for the return of the sum wrongfully retained by the Respondent.

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.

Andrew McLaughlin

Legal Member/Chair

7 April 2025

Date