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 Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/2303

Re: Property at 5 (3/1) Lloyd Street, Glasgow, G31 2PE ("the Property")

Parties:

Mr Ejaz Farooqui, Flat 1/2, 7 Main Street, Bridgeton, G40 1QA ("the Applicant")

Mr Finlay Morrison, Flat 3, 75 Maberly Street, Aberdeen, AB25 1NL ("the Respondent")

Tribunal Members:

Ruth O'Hare, Legal Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent had failed to comply with the duties under Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations") in respect of the deposit of £200 paid by the Applicant.

The Tribunal therefore made an order for payment in the sum of Three hundred pounds (£300) Sterling.

Background

1 This is an application under Rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 and Regulation 10 of the 2011 Regulations. The Applicant sought an order for payment against the Respondent as a result of the Applicant's failure to lodge his tenancy deposit with an approved tenancy deposit scheme.

2 The application was referred to a case management discussion ("CMD") to take place by teleconference on 25 October 2024. The Tribunal gave notification of the CMD to the parties in accordance with Rule 17(2) of the Rules. Both parties were invited to make written representations.

3 On 24 September 2024 the Tribunal received an email from the Respondent requesting a postponement of the CMD. The Respondent explained that he would be flying home from holiday on the 25 October 2024 and would be unable to join the call. The Applicant did not oppose the request. The Tribunal therefore agree to postpone the CMD.

4 The CMD was rescheduled to take place on 30 April 2025. The Tribunal gave notification of the CMD to the parties in accordance with Rule 17(2) of the Rules.

5 On 10 October 2024 the Tribunal received written representations from the Respondent.

The CMD

6 The CMD took place on 30 April 2025 by teleconference. Both parties joined the call.

7 The Tribunal had the following documents before it:-

(i) Form G application form dated 16 May 2024;
(ii) Private residential tenancy agreement between the parties;
(iii) The Applicant's redacted bank statements;
(iv) Email correspondence between the Applicant and Slater Hogg and Howison; and
(v) The Respondent's written representations.

8 The Tribunal heard submissions from the parties. For the avoidance of doubt the following is a summary of the key elements of the discussion and does not constitute a verbatim account of the discussion.

9 The Applicant explained that he had liaised with Slater Hogg and Howison ("the letting agent") throughout the tenancy, not the Respondent himself. The Applicant was asked by the letting agent to pay a deposit due to him keeping a pet in the property. The Applicant paid the deposit of £200 on 12 September 2023. The Applicant and the joint tenant had been asked to sign an addendum regarding the deposit, however the joint tenant refused to sign it. The Applicant has asked the letting agent what would happen next. The Applicant did not receive any response from the letting agent for several months. The Applicant explained that the situation with the joint tenant had deteriorated and the Applicant wished to leave the property. The Applicant moved out of the property in January 2024. He contacted the letting agent to ask about the deposit of £200. At first they disputed having received £200 from the Applicant. The letting agent subsequently advised the Applicant that the £200 had been paid towards rent arrears. The Applicant did not understand this as he had never been in arrears. The letting agent had kept the £200 in a holding account. The Applicant was never advised of this by the letting agent. The Applicant confirmed that his tenancy had ended on 17 February 2024.

10 The Respondent confirmed that the Applicant paid a deposit of £795 at the start of the tenancy. The deposit had been lodged with MyDeposits Scotland. It was all dealt with by the letting agent. The Respondent had subsequently noticed from an inspection report that the Applicant was keeping a cat in the property. The letting agent had advised the Respondent to take a further deposit of £200 from the tenants. The Respondent accepted that the Applicant had paid the £200 to the letting agent. An addendum to the tenancy agreement was prepared however the joint tenant refused to sign it. Because the addendum was not signed, the letting agent did not pay the deposit into the scheme. The letting agent had claimed that the Applicant was aware of this. The £200 was held in the Applicant's reserve account by the letting agent. It was then paid towards rent arrears. The Applicant had been provided with proof on this on 17 May 2024. The tenants were both liable for the rent arrears. The Respondent did not know who was paying what. There was damage to the property after the tenants vacated, and the Respondent had received the deposit back from the scheme to put towards the remedial costs. If the £200 had been paid into the scheme, the Respondent believed he would also have received this towards the damages. The Respondent had incurred a large bill for repairs and redecoration, which far exceeded £795. The Respondent had lost out. The Respondent also pointed out that the tenants had moved out without giving lawful notice.

11 The Applicant explained that the letting agent had been aware of his cat when he moved in, and had told him there were no issues. The letting agent did not tell the Applicant what had happened with the £200 deposit. The Applicant did sympathise with the Respondent for the issues at the property and the joint tenant's conduct.

12 The Respondent explained that the letting agent had taken advice and had been told that the deposit did not require to be paid to a scheme as the addendum had not been signed.

13 The Tribunal asked for submissions on the aggravating and mitigating factors in this case. The Applicant explained that the lack of information regarding his deposit was an aggravating factor, as was the fact that he had not received the deposit back. Instead it had been paid towards the rent arrears, which was not the purpose for which it was paid. The Applicant felt that he had been misled by the letting agent. The Applicant also felt sorry for the Respondent, as the Applicant did not think the letting agent had handled the matter legally, nor appropriately. They could have sorted things out over a year ago.

14 The Respondent felt that he personally had not done anything wrong. He had made it clear to the letting agent that no pets were allowed in the property. He first became aware of the Applicant's cat when viewing the inspection report. He was out of pocket to the amount of over £2000 due to the costs incurred at the end of the tenancy. Some of the damage could be attributed to the Applicant's cat. There was a lot of rubbish left and the Respondent had to pay for the property to be cleared. He thought it was crazy that the Applicant was fighting over the sum of £200.

Findings in fact

15 The Applicant and Respondent, along with the joint tenant Fraser Dunsmuir, entered into a tenancy agreement in respect of the property, which commenced on 17 December 2022.

16 The tenancy between the parties was a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.

17 The Applicant and Mr Dunsmuir paid a tenancy deposit of £795 to the letting agent prior to the commencement of the tenancy.

18 The deposit of £795 was paid to MyDeposits Scotland within the statutory timescale.

19 The Respondent became aware from viewing an inspection report that the Applicant was keeping a cat in the property. On 14 September 2023 the letting agent asked the Applicant and Mr Dunsmuir to sign a "Pet Clause" and to pay an additional deposit of £200. The additional deposit was to be held a security for the performance of the Applicant's obligations arising from the tenancy, and the discharge of any of his liabilities, in relation to his cat.

20 The Applicant paid the deposit of £200 to the letting agent on 12 September 2023.

21 The "Pet Clause" document was not signed by both the Applicant and Mr Dunsmuir.

22 The letting agent did not pay the deposit of £200 into an approved tenancy deposit scheme because the "Pet Clause" document was unsigned.

23 The tenancy between the parties terminated on 17 February 2024.

24 The deposit of £200 was paid towards outstanding rent arrears at the end of the tenancy.

25 The Respondent received the deposit of £795 from MyDeposits Scotland following adjudication to pay towards damages to the property.

Reasons for decision

26 The Tribunal was satisfied that it had sufficient information to make relevant findings in fact and reach a decision on the application following the CMD under Rule 17(2) of the Rules and in the absence of a hearing under Rule 18. The substantive facts were not in dispute and there were no issues to be resolved that would require a hearing to be fixed.

27 Regulation 3 of the 2011 Regulations place duties on landlords when dealing with tenancy deposits. The definition of a tenancy deposit is contained within section 120 of the Housing (Scotland) Act 2006:-

"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"

28 Based on its findings in fact, the Tribunal was satisfied that the £200 paid by the Applicant to the letting agent on 16 September 2023 was a tenancy deposit for the purpose of the 2011 Regulations. It was clear that the Respondent had raised concerns regarding the risk of damage to the property by the Applicant's cat, and wished to seek the additional payment of £200 as security for any costs incurred should the Applicant failed to prevent the cat from damaging the property.

29 The Tribunal then considered the provisions of regulation 3 of the 2011 Regulations which provide 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.

(1A) Paragraph (1) does not apply—

(a)where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and

(b)the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,

within 30 working days of the beginning of the tenancy.

(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.

(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—

(a)the references to deposit were to each instalment of the deposit, and

(b)the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord."

30 In this case the deposit of £200 was received by the letting agent over a year after the commencement of the tenancy. The Tribunal therefore concluded that it could apply the provisions of Regulation 2A, essentially treating the payment of £200 as a second instalment of the original deposit. The letting agent, on the Respondent's behalf, had requested the additional payment, and the Applicant had agreed to pay it. The Respondent therefore had a period of 30 working days from receipt of the deposit to pay it over to an approved tenancy deposit scheme.

31 The Tribunal considered the argument from the Respondent that the deposit did not require to be paid into a scheme as the "Pet Clause" document had not been signed by both joint tenants. However, the provisions of regulation 3 place the duties on the landlord as soon as the tenancy deposit is received. There is no requirement to have anything formalised in writing. It is clear from the communication between the Applicant and the letting agent that all parties were agreed as to the purpose of the £200 payment, namely that it was an additional deposit. The letting agent had then treated it as a deposit at the end of the tenancy by using it to pay off outstanding rent arrears. The Tribunal was therefore satisfied that the Respondent, having received a deposit from the Applicant, had a duty under regulation 3 to pay that deposit into a deposit scheme.

32 The Tribunal concluded that the Respondent was therefore in breach of Regulation 3 in respect of the £200 deposit paid by the Applicant on 16 September 2023. For the avoidance of doubt, the Tribunal was satisfied that insofar as the initial deposit of £795 was concerned, the Respondent had complied with the duties under the 2011 Regulations.

33 Regulation 10 states that in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply, the Tribunal then had to consider what sanction to impose having regard to the particular facts and circumstances of the case. The application of the sanction must seek to act as a penalty to landlords and ensure compliance with their statutory duties in relation to tenancy deposits.

34 The Tribunal had regard to the decision of Sheriff Cruickshank in *Ahmed v Russell (UTS/AP/22/0021)* which provides helpful guidance on the assessment of an appropriate sanction. In doing so the Tribunal must identify the relevant factors, both aggravating and mitigating, and apply weight to same in reaching its decision. The Tribunal is then entitled to assess a fair and proportionate sanction to be anywhere between £1 and three times the sum of the deposit, which in this case is £600. As per Sheriff Cruickshank at paragraph 40 of his decision in *Ahmed:*

"*The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose of the sanction is not to compensate the tenant. The level of sanction should reflect the level of overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations."*

35 The Tribunal went on to consider the aggravating and mitigating factors in this case. When identifying relevant factors, the Tribunal must focus on the circumstances surrounding the deposit. Whilst the Respondent had outlined the damages and the costs he had incurred at the end of the tenancy, the Tribunal did not consider these to be directly relevant to the nature and extent of the breach of regulation 3.

36 In terms of aggravating factors, the Tribunal took into account the fact that the Applicant had not received his deposit back, and had not been provided with the opportunity to dispute the letting agent's use of the deposit to pay off the outstanding rent arrears. The Tribunal also took into account the lack of information provided to him by the letting agent regarding the deposit. Whilst the Respondent had opined that it would have been inevitable the £200 would have been returned to him by the deposit scheme because of the costs of the damages, ultimately it had not been used for that purpose. The Applicant was also entitled to have an independent dispute resolution scheme adjudicate on the matter, rather than it being unilaterally decided upon by the letting agent, as had happened in this case. The Tribunal gave great weight to these as aggravating factors.

37 The Tribunal also identified a number of mitigating factors in this case. It was clear that the Respondent did not have any malicious intentions regarding the deposit. He had been acting on advice from his letting agent, which was understandable. The Tribunal did not believe that there had been any deliberate attempt on his part to avoid his obligations under the 2011 Regulations. However, the duties under Regulation 3 are incumbent upon the landlord, not the letting agent. If the Tribunal finds a breach has occured, it must sanction the landlord accordingly.

38 Accordingly, having weighed the aggravating and mitigating factors in this case the Tribunal considered that the level of culpability was not towards the higher end of the scale in this case, when measured against the nature and extent of the breach. Accordingly taking into account the potential for a maximum award of £600 the Tribunal determined that a fair and proportionate sanction in this case would be £300.

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.

Ruth O’Hare

30 April 2025

Legal Member/Chair

Date