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

Chamber Ref: FTS/HPC/PR/23/1990

Re: Property at 6 Blenheim Place, Edinburgh, EH7 5JH ("the Property")

Parties:

Jack Sykes, 12 Chapel Lane, Benson, Oxfordshire OX10 6LU ("First Applicant")

Henry Crone, 90 Drayton Gardens, Priory Mansions, Flat 6, London SW10 9RG ("Second Applicant")

George Tompkins, Pallingham Lock Farm, Toat Lane, Pulborough, West Sussex RH20 1BX ("Third Applicant")

Arthur Wills, Weedon Hill Farm, Farthingstone Road, Weedon, Northants NN7 4RP ("Fourth Applicant")

Hugo Andrew, 14 Henderson Road, Wandsworth, London SW18 3RR ("Fifth Applicant")

Ms Judith Kennard, 109 Church Way, Iffley, Oxfordshire, OX4 4EG ("the Respondent")

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to dismiss the application.

Background

1. By application dated 11 June 2023 the applicants seek an award under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations").
2. A hearing took place on 3 April 2024. The Tribunal issued a decision dated 22 April 2024 that the respondent should pay a total sum of £5,175 in aggregate to the five applicants.
3. The respondent appealed the decision to the Upper Tribunal for Scotland ("the UTS") on 2 grounds. The first ground of appeal was that the First-tier Tribunal ("FTS") erred in law in determining that the 2011 Regulations applied to the deposit. That is because while the FTS made a determination that the accommodation was the applicants' only or principal home for the period 15 September 2022 to 20 May 2023, the FTS was not entitled to reach that conclusion on the evidence presented to it. The second ground of appeal was that the FTS was wrong in law to conclude that the applicants were personally barred from making the application to the FTS.
4. The UTS found both grounds of appeal to be established and referred the case to a freshly constituted Tribunal.
5. A case management discussion by a freshly constituted Tribunal took place via teleconference on 12 December 2024. Mr Charles Sykes, attended on behalf of the applicants The respondent attended with her solicitor, Ms Wooley, Bannatyne Kirkwood France & Co.
6. Parties were in dispute as to whether the 2011 Regulations apply, whether the applicants are personally barred and the amount of any award in the event that the application is competent. The Tribunal fixed a hearing to establish the facts prior to determining the application.

Hearing – 2 April 2024 – video conference

7. The first, second and fifth applicants were in attendance. Mr Charles Sykes attended as representative for all five applicants. The respondent attended with her solicitor, Ms Wooley, Bannatyne Kirkwood France & Co.
8. Prior to the hearing Mr Charles Sykes had lodged emails from Mr Wills and Mr Andrews authorising him to act on their behalf at the hearing. He advised the

Tribunal that due to work commitments Mr Wills and Mr Andrews were unable to attend the hearing.

9. The following documents were lodged in advance of the hearing:
    - Correspondence between Charles Sykes and the respondent
    - Written submissions
    - Text messages and email correspondence between the parties
    - Copy private residential tenancy agreement
    - Email correspondence with Safe Deposits Scotland
    - Copy bank statements from the respondent showing return of the deposit on 9 and 12 June 2023
    - Holiday let agreements
    - House of Multiple Occupation licence application dated 14/10/2022
    - Photographs of the property

10. Issues not in dispute

It was not disputed that the property had been rented out by the respondent to a group of students for the 2021-2022 academic year. The applicants were friends with that group and approached the respondent to enquire about renting the property out for the following academic year. All the applicants and Oliver Brookes were students at University of Edinburgh. The applicants and respondent met near the property during March 2022. After meeting with the applicants the respondent provided them with a private residential tenancy ("PRT") agreement that had a duration from 10 July 2022 until 30 June 2023. The applicants and Mr Brookes signed the tenancy agreement and returned it to the respondent. Mr Brookes is not a party to the application. The tenancy specified that the rent was £3450 per calendar month payable in advance. A deposit of £3450 was paid by the applicants to the respondent on 29 March 2022. The applicants moved some of their possessions into the property before the end of May 2022, before the previous contractual tenancy came to an end. The respondent was unhappy that the applicants had moved personal possessions into the property before the commencement date of the PRT. Nine separate holiday let agreements were signed between the respondent and various combinations of the applicants spanning the period from 1 June 2022

to 20 May 2023. The first holiday let agreement was emailed to Mr Crone on 30 May 2022. The holiday let agreements were all in similar terms specifying that there was a deposit of £3450 payable and a monthly rent also of £3450. The first holiday let agreement was signed by all the applicants and Mr Brookes. Subsequent holiday letting agreements were signed by 2 of the applicants with variations between the consecutive agreements. The property had been a house of multiple occupation. The previous licence had expired on or around July 2022. The respondent submitted an application for a fresh HMO licence dated 14 October 2022. The applicants left the property on or around 25 May 2023. The respondent inspected the property after the applicants left. The respondent sought to make deductions from the deposit due to damage to the property. On 8 June 2023 Mr Charles Sykes emailed the respondent on behalf of the applicants regarding the return of the deposit. The full deposit was returned to the applicants in 2 instalments, £2024.20 on 9 June 2023 and £1425.80 on 12 June 2023.

Oral evidence at the hearing

11. Summaries of the oral evidence heard at the hearing are undernoted. For the avoidance of doubt it is not a verbatim record and focuses on the areas relevant to the application and in particular areas of dispute between the parties. Mr Sykes and Ms Wooley were given the opportunity to question/cross examine the witnesses.

Summary of Henry Crone's evidence

12. Mr Crone is 23 years old. He lived at the property whilst he was in his third year studying for a history of art undergraduate degree at the University of Edinburgh. He had known the previous tenants at the flat and had visited the property on a few occasions. He had been given the respondent's details and had reached out to her to see if he and his group could sign a lease for the next academic year. Mr Crone stated that as was the case with most students at Edinburgh a lease was signed which ran over the summer to ensure that they would have the property for the next academic year. He stated that the 5 applicants and Mr Brookes had met the respondent at the Omni Centre. The

meeting had gone well and shortly afterwards the respondent had provided the applicants with a tenancy agreement with a commencement date of 10 July 2022. Mr Crone stated that he had been the point of contact with the respondent for the group and collected the tenancy deposit of £3450 from the joint tenants. The agreement was signed by all the applicants and Mr Brookes and returned to the respondent. The deposit was transferred to the applicant on 29 March 2022. Mr Crone stated that he knew the previous tenants were moving out at the end of May. He and the other applicants moved some of their possessions into the property before the end of May. He stated that he couldn't remember the specifics of what he moved in but thought it was 1 or 2 suitcases and the odd object such as a lamp or a mirror. He had moved the items into 6 Blenheim Place as his previous tenancy had come to an end. Mr Crone stated that he left Edinburgh over the summer and returned to his parents' house.

13. Mr Crone stated that the property had 6 bedrooms one for each of the joint tenants named on the PRT where they kept their personal possessions during the time that they lived at the property. Mr Crone stated that he was quite naïve about the tenancy process and his main focus was on securing the property as it was a very attractive place to live. He stated that he had communicated with the respondent over the summer. She had been in touch as there was an issue with the HMO licence over the property. Mr Crone stated that the respondent had requested that the group sign a holiday let. His understanding was that this was done as there was an issue with the HMO licence and was a precaution that the respondent wanted to take as a result of that. Mr Crone stated that he had not retained a copy of the signed PRT agreement. He stated that he had returned to the property around 15 September 2022 and that the other applicants also returned to Edinburgh at that time. Mr Crone stated that he lived in the property at 6 Blenheim Place for the academic year from September 2022 until May 2023 along with the other applicants and Mr Brookes. He stated that he went back to his parents' house for Christmas and also went there for the Easter holiday. He stated that he was never away from the property for longer than 2 weeks. He stated the group had paid the utility bills while they lived in the property. There had also been a parking permit purchased. Mr Crone stated that he had membership of a gym near to the property while he was living there.

The applicants agreed to sign a series of holiday lets while they were living in the property as they were aware of the issue with the HMO licence and they were content to do what needed to be done to help with that and be allowed to stay in the property.

14. Mr Crone stated that all the applicants had moved out of the property at the same time around 25 May 2023. Mr Crone stated that there were an extensive number of photographs of the applicants being in the property which he thought numbered in the thousands. The number reflected the fact that they had lived there for the whole academic year. Mr Crone stated that while he was at the property he received birthday cards that were posted there. He stated that his mobile phone contract was registered at his parents' address – that is where it is still registered.

15. Mr Crone stated that after he moved out of 6 Blenheim Place in May 2023 he went to his parents' house for the summer before renting a flat in Edinburgh from August. Mr Crone stated that there had been a gathering at the property while the group lived there however it was not a "rave". He stated that there was damage to some items in the property when they moved out. He stated that he emailed the respondent outlining the various items and accepted that there should be some deductions. He stated that he and the other applicants were out of their depth in relation to the negotiations regarding the return of the tenancy deposit and that was when collectively all of their parents became involved. Eventually Mr Charles Sykes took over the negotiations. Mr Crone stated that the applicants felt that the respondent was seeking to charge too much for the damage in the property. He stated that shortly after they left he became aware that the tenancy deposit should have been placed into a safety deposit scheme. Mr Crone was referred to the email sent by Mr Charles Sykes to the respondent on 8 July 2023. He stated that there was a lot of stress on the group at that time. He stated that he had handed over the negotiations regarding the return of the deposit to Mr Sykes however he confirmed that he had been consulted about the email dated 8 July 2023 before it was sent.

Summary of Mr Tompkins evidence

16. Mr Tompkins is 23 years old. Mr Tompkins had studied history of art and architecture at the University of Edinburgh. He stated that he and 5 friends had decided to get a property together for their third year at university. He stated that it was very difficult to find a 6 person property .They knew the students who had been staying at 6 Blenheim Place and through them a meeting was arranged with the respondent. The meeting took place at the Omni Centre. Mr Tompkins thought that the respondent was meeting with a few different groups before deciding who would be allowed to rent the property.
17. Mr Tompkins stated that the discussion was about renting the property and no mention was made of short term lets at the meeting at the Omni Centre. Mr Tompkins remembered paying the deposit for the property however he did not recall signing the tenancy agreement although he thought he must have. He remembered a discussion of the short term lets and recalled signing one of the agreements with either Mr Wills or Mr Sykes. He stated that the respondent had told the applicants that if they didn't sign the holiday let agreements then all 6 of them wouldn't be able to stay in the property.
18. Mr Tompkins stated that he had not stayed in the property for the summer however he had lived there from early September. He stated that each of the applicants had their own room in the property which they stayed in until May 2023. He stated that he lived in the property from September continuously until Christmas when he went back to his parents for two and a half weeks. After Christmas he returned to 6 Blenheim Place and lived there until the end of the academic year. He stated that his sister and brother had both visited him at the property. His personal possessions had been in the property including his golf clubs, bedding and clothing. He stated that the level of personal decoration in each of the rooms varied between the applicants. He stated that he did not drive while he was in Edinburgh however there had been 2 parking permits for use by the applicants. Mr Tompkins stated that while he was living in the property he had been a member of Edinburgh Leisure which allowed him to play golf at a number of clubs. His Edinburgh Leisure account was registered at the property. Mr Tompkins stated that during his 3rd year at university the address provided to the university for matriculation purposes was 6 Blenheim Place. Mr Tompkins stated that his phone contract has always been registered at his

parents address and remains so. His bank account had also remained registered at his parents' address.

19. Mr Tompkins stated that the applicants had behaved well in the property. They had some dinner parties and one large gathering which had been referred to by the respondent however the damage to the property had been minimal. He stated that they had informed their neighbour before having the gathering as a courtesy to her.
20. Mr Tompkins was aware that the full deposit had been returned. He had been aware of discussion around the return of the deposit however he couldn't recall any specifics and could not recall whether he had agreed the terms of the email sent by Mr Sykes dated 8 July 2023. He was not sure whether there had been an inventory for the property.

Summary of Jack Sykes evidence

21. Mr Sykes had stayed in the property during his 3rd year studying philosophy at the University of Edinburgh. He stated that the property had 6 bedrooms. There were not many 6 bedroom properties for students in Edinburgh. The applicants had become aware of the property as they were friends with the previous tenants. Mr Sykes stated that the applicants had met the respondent at the Omni centre to discuss renting out the property. He stated that each of the applicants had paid £575 per month to rent the property. The deposit paid was equal to one month rent.
22. Mr Sykes stated that after the meeting at the Omni Centre the group had signed the tenancy agreement and returned it to the respondent. He stated that around the end of May 2022 he moved some of his personal possessions into the property such as bedding. There was an overlap with the possessions being moved in before the previous tenants had moved out. Mr Sykes stated that the respondent became unhappy with the group leaving items in the property and there was a dispute about that. Mr Sykes stated that he didn't think the respondent had a valid point. Mr Sykes stated that he had originally intended to spend time in Edinburgh during August however due to the dispute with the respondent he didn't do that.

23. Mr Sykes stated that the respondent had realised that the HMO licence had come to an end and that was connected to the signing of the short term holiday let agreements. He stated that being asked to sign holiday lets did not set off any alarm bells as his main concern was having somewhere to live. He stated that if he hadn't signed he would have had nowhere to stay. Mr Sykes stated that he hadn't been concerned about the lack of an HMO licence.
24. Mr Sykes stated that he stayed in the property from September 2022. He had his own bedroom and had taken bedding and a rug. He had posters on the wall and had changed the position of the bed. He stated that he went home for a week at Christmas before returning to Edinburgh for New Year. He stated that he went away for a holiday in February. Mr Sykes stated that his driving licence and bank accounts had remained registered at his parents' address while he lived at Blenheim Place.
25. Mr Sykes stated that all the applicants lived in the property until May 2023 when they had moved out. After they moved out they arranged for the property to be cleaned. He had a receipt for a payment of £760 for the cleaning of the property on 9 May 2023. He stated that a repair had been necessary to a glass section of a door in the property that had been smashed. He stated that the email sent by his father, Charles Sykes to respondent on 8 June 2023 regarding the deposit was a group decision and that his father had acted on behalf of all the applicants in that regard.

Summary of the respondent, Judith Kennard's evidence

26. Ms Kennard had submitted 2 witness statements which she adopted as her evidence. Within the statements Ms Kennard stated that she had been renting out the property for 17 years and usually to University of Edinburgh students.
27. She had met with the applicants and Mr Brookes and offered them a PRT with a proposed date of entry of 10 July 2022. Ms Kennard received the deposit on of £3450 on 29 March 2022. Her intention had been to hold the deposit personally before lodging it with Safe Deposits Scotland when the tenancy commenced. She stated that a deposit for the previous group of tenants was still with Safe Deposits Scotland at that time. She stated that she received the signed tenancy agreement from the applicants and Mr Brookes however she

herself never signed the agreement. She considered that the PRT never became “operative” as before the commencement date she entered into a series of short term lets. In her witness statement she stated that a PRT would not have been competent anyway as the property would have been a term time address and not a principal home.

28. Ms Kennard’s evidence was that the previous group of tenants had changed their planned moving out date from the end of June to the end of May 2022. She stated that when she attended the property on 27 May 2022 it was in chaos. It was full of possessions and had not been cleaned. She was advised that many of the possessions belonged to the applicants and Mr Brookes. Ms Kennard was displeased as she had not consented to this. Although the tenancy agreement that had been signed had a commencement date of 10 July 2022 she had been led to understand that the applicants and Mr Brookes would not be in the property over the summer.
29. Ms Kennard stated that she had to act to regulate the situation . She stated that the groups’ actions in putting possessions in the property had made her concerned about whether she was in breach of her mortgage or insurance conditions. She stated in her witness statement that the primary reason for the initial holiday let was to give the group a basis under which to store possessions in the property over the summer period.
30. Ms Kennard stated that she had found out in July 2022 that the HMO licence for the property had lapsed. She had believed when she put together the original lease that the HMO licence would be in place. She was reluctant to continue to let the property to the applicants due to their conduct and the HMO licence issue. She had spoken with Mr Brooke’s mother, who had asked her to let the group stay in the property. Ms Kennard’s statement was that she did not want to leave the group with nowhere to stay as she was aware of the lack of 6 bedroom properties.
31. Ms Kennard’s evidence was that Mr Brookes and Mr Crone had requested that she issue another holiday letting agreement from 1 September 2022. It was agreed that the other applicants might stay in the property occasionally but merely as guests. Her understanding was that none of the applicants including

Mr Brookes and Mr Crone were occupying the property as their principal residence as they had family homes elsewhere.

32. Between 15 October 2022 and 15 April 2023 Ms Kennard entered into a series of holiday let agreements with different combinations of the applicants and Mr Brookes. For each agreement there would be 2 tenants who would be allowed up to 4 guests to stay in the property.
33. Ms Kennard stated that she was advised by Mr Crone that the property would be empty for 21 days at Christmas. She stated that she inspected the property at Easter and Christmas and found it to be empty.
34. At the hearing Ms Kennard stated that she had agreed to sign a series of short term lets to allow for some of the group to stay in the property while they were on internships. She stated that there were arrangements for payment of council tax during the year – she had not paid it. She stated that the idea of short term lets had been proposed by Mr Brooke's mother as a way to allow the group to stay in the property as Ms Kennard had been having misgivings about whether to allow the group to have the property due to their moving possessions in early and the communications she had with them afterwards.
35. Ms Kennard's second statement concerned the negotiations regarding the return of the deposit after the applicants had left the property. Her evidence was that she had been corresponding with Mr Crone by email regarding proposed deductions from the deposit. In one email Mr Crone had accepted various items of damage and proposed a deduction of £1425.80 to cover the cost of those items. She stated that the email from Mr Charles Sykes on 8 June 2023 was her first correspondence with him. As she had been primarily dealing with Mr Crone, she took an email from one of the parents very seriously. She stated that email was in a very different tone from those she had received from Mr Crone. Her evidence was that she repaid the deposit in full to avoid further action being taken against her. She was prepared to bear the costs of the damaged items in exchange for a line being drawn under the matter.
36. Ms Kennard's evidence was that the two payments were deliberate. The first payment on 9 June 2023 of £2024.20 was the figure that Mr Crone had suggested should be returned in the earlier negotiations. The second payment

was roughly the figure that Mr Crone had suggested should be deducted. She paid in 2 instalments to draw attention to these 2 categories.

Submission from Charles Sykes

37. Mr Sykes stated that Ms Kennard had asked the applicants to engage in deceit in relation to the position of the HMO licence. He stated that the applicants had signed a PRT agreement. He stated that the respondent had not paid council tax for the period when the applicants had resided in the property. He stated that the whole issue had been as a result of the respondent's failure to renew the HMO licence. He stated that the property had been the applicants' principal home for the academic year when they lived there regardless of how the agreements had been described. He stated that he acted on behalf of all the applicants since becoming involved and sending the email dated 8 June 2023. He did not accept that the email of 8 June 2023 was in terms that prevented the applicants from continuing to pursue an application for sanction under the 2011 Regulations as it was solely concerned with the return of the deposit.

Findings in fact

38. From September 2022 the applicants were undergraduate students in their 3rd year at the University of Edinburgh.
39. The property is a 6 bedroom house.
40. The applicants contacted the respondent in March 2022 to enquire about leasing the property after the existing tenants moved out.
41. Mr Crone was the main point of contact with the respondent in March 2022.
42. The respondent provided a PRT agreement to Mr Crone by email on 9 March 2022.
43. The tenancy agreement specified a commencement date of 10 July 2022.
44. The deposit due in terms of the tenancy agreement was £3450.
45. Monthly rent due in terms of the tenancy agreement was £3450.
46. On 26 March 2022 the respondent acknowledged receipt of the signed PRT agreement.
47. Mr Crone collected the deposit from the applicants and Mr Brookes and transferred payment of the deposit to the respondent on 29 March 2022.

48. On 19 May 2022 the respondent emailed Mr Crone with a new lease with a start date of 1 June 2022 asking him to confirm if the group were happy for previous signatures to be used and stating that if so she would also sign the lease.
49. The respondent received rent of £3450 per month from June 2022 until May 2023.
50. Mr Crone, Mr Sykes and Mr Tompkins moved a number of personal possessions into the property at the end of May 2022.
51. On 30 May 2022 each applicant and Mr Brookes signed a "Holiday Letting Agreement" spanning the period from 1 June 2022 to 1 September 2022. Rent due under the holiday letting agreement was £3450 per month. The deposit specified in the holiday letting agreement was £3450 per month.
52. Mr Crone emailed the respondent on 30 May 2022 stating, "*As you said over the phone, just confirming that this short term tenancy agreement will not hinder or change our agreement to take the flat full-time in September*".
53. The applicants did not reside in the property between 1 June 2022 and 1 September 2022.
54. The HMO licence for the property expired in July 2022.
55. The respondent applied to renew the HMO licence on or around October 2022.
56. The respondent signed a holiday letting agreement with Mr Crone and Mr Brookes spanning the period from 15 September 2022 to 15 October 2022 at a rent of £3450 per month.
57. The respondent signed a holiday letting agreement in respect of the property with Mr Wills and Mr Andrew for the period 15 October 2022 to 15 November 2022 at a rent of £3450 per month.
58. The respondent signed a holiday letting agreement in respect of the property with Mr Tompkins and Mr Sykes for the period 15 November 2022 to 15 December 2022 at a rent of £3450 per month.
59. The respondent signed a holiday letting agreement in respect of the property with Mr Crone and Mr Brookes for the period 15 December 2022 to 15 January 2023 at a rent of £3450 per month.
60. The respondent signed a holiday letting agreement in respect of the property with Mr Andrew and Mr Wills for the period the 15 January 2023 to 15 February 2023 at a rent of £3450 per month.

61. The respondent signed a holiday letting agreement in respect of the property with Mr Sykes and Mr Tompkins for the period 15 February 2023 to 15 March 2023 at a rent of £3450 per month.
62. The respondent signed a holiday letting agreement in respect of the property with Mr Crone and Mr Brookes for the period 15 March 2023 to 15 April 2023 at a rent of £3450 per month.
63. The respondent and the applicants with Mr Brookes entered into a holiday letting agreement in respect of the property for the period 15 April 2023 to 20 May 2023 at a rent of £3450 per month plus an additional 6 days bringing the total rent to £4083.29 for the period.
64. Each of the holiday letting agreements specified a deposit of £3450.
65. The applicants moved into the property on or around 15 September 2022 to coincide with the beginning of the academic year.
66. The applicants and Mr Brookes each had their own bedroom within the property.
67. The applicants resided in the property as their only or principal home from September 2022 until May 2023.
68. The applicants and Mr Brookes occupied the property under a PRT which commenced when they moved into the property on or around 15 September 2022.
69. The tenancy agreement was subject to the requirement to lodge the deposit in a suitable scheme in terms of regulation 3 of the 2011 Regulations.
70. The deposit was not placed in a relevant tenancy deposit scheme.
71. The respondent sought to make deductions from the deposit due to damage to the property after the applicants moved out.
72. On 31 May 2023 the respondent emailed Mr Crone regarding a list of damaged items at the property. The respondent sought to reduce the deposit refunded to the applicants by £2036.79.
73. On 31 May 2023 Mr Crone emailed the respondent stating that he had passed this list “to all the boys who rented the flat this last year”. The email stated in relation to the deductions sought by the respondent: “We are happy to pay £1425.80 out of our original damage deposit.”

74. The respondent rejected the proposed reduction in an email also sent on 31 May 2023.
75. By email dated 6 June 2023 to Mr Crone, the respondent proposed to reduce the level of deduction by £169.50.
76. Mr Crone and the other applicants delegated responsibility for negotiations regarding the deposit to Mr Sykes after 6 June 2023.
77. Mr Charles Sykes emailed the respondent on behalf of the applicants and Mr Brookes on 8 June 2023 stating:

    "I am writing to inform you that the full deposit should be paid into the following bank account by Monday the 12th June following advice received from the Private Rented Services Enforcement team at Edinburgh Council…. If I do not hear from the account holder by 5 pm on 12 June that the full deposit (£3,450) has been paid I will submit a form G to the Housing and Property Chamber First Tier Tribunal for Scotland indicating that you are in breach of rule 103 of the Tenancy Deposit Scheme (Scotland) Regulations 2011. I will also be forced to inform Private Rented Services of this action as well as Licensing Enforcement of my concerns that you are not a fit and proper person due to concerns about your inability to comply with your responsibilities. Please note neither I nor any of the tenants will enter into any further correspondence until the monies are repaid in full as per our request."
78. Mr Charles Sykes emailed after a group decision by the applicants.
79. The deposit was repaid to the applicants in 2 instalments - £2024.20 on 9 June 2023 and £1425.80 on 12 June 2023.
80. The respondent returned the full deposit to the applicants as a result of the email sent on 8 June 2023.
81. An application was submitted to the Tribunal by Charles Sykes on 17 June 2023 via email. The application was dated 11 June 2023 however it was not emailed to the Tribunal until 17 June 2023.

Reasons for the decision

82. The applicants seek an award under the 2011 Regulations in relation to the deposit of £3450 paid on 29 March 2022. The respondent's position is that the 2011 Regulations do not apply. The respondent's alternative *esto* position is

that even if the Regulations are found to apply the applicants are personally barred from insisting on the application. The Tribunal considered the following:

1) Did the applicants occupy the property under a tenancy agreement to which the 2011 Regulations applied?
2) Are the applicants personally barred from pursuing an application under the 2011 Regulations as a result of the email sent by Mr Charles Sykes on 8 June 2023?

Application of the tenancy regulations

83. Regulation 2, paragraph 3(b) states:

> *(3) A "relevant tenancy" for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*
>
> *(a)in respect of which the landlord is a relevant person; and*
>
> *(b)by virtue of which a house is occupied by an unconnected person,*
>
> *unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

84. Section 83(6) of the 2004 Act sets out exceptions to the requirement for landlord registration. Paragraphs (d) and (n) set out the following exceptions:

> *(d)the house is being used for holiday purposes.*
>
> *(n) the house is being used for a short-term let as defined in article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order*

85. Article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 states that a "short-term let" means the use of residential accommodation provided by a host in the course of business to a guest, where the guest does not use the accommodation as their only or principal home.
86. Schedule 1 of the Order states that a private residential tenancy cannot be a "short term let".
87. Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 sets out the requirements for a private residential tenancy ("PRT").

> *(1) A tenancy is a private residential tenancy where—*

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

88. Section 3 of the 2016 Act is in the following terms:

3 Writing not required to constitute private residential tenancy

(1) A purported contract becomes lawfully constituted, despite not being constituted in a written document as required by section 1(2) of the Requirements of Writing (Scotland) Act 1995, when—

(a) a person occupies a property as the person's only or principal home in pursuance of the purported contract's terms, and

(b) the tenancy which the purported contract would create, were it lawfully constituted, would satisfy the conditions in paragraphs (a) and (c) of section 1(1).

(2) Any term of a purported contract which is unrelated to a private residential tenancy is not to be regarded as a term of the contract for the purpose of subsection (1)

89. In light of the above provisions if the property was the applicants' only or principal home then the 2011 Regulations would apply as a PRT would have been created and the exemption for short term lets would not apply.

Only or principal home.

90. Whether or not a property is a tenant's only or principal home has been considered in a number of housing cases, in particular in relation to succession to a tenancy. In this context in the case of *Roxburgh District Roxburgh District Council v Collins* 1991 SLT (Sh Ct) 49 Sheriff Principal Nicholson concluded that regular or habitual residence was not a prerequisite and that the question that must be asked, in cases where regular or habitual residence is lacking, is whether on the facts of the case, the person concerned had such a real, tangible and substantial connection with the house in question that it, rather than any

other place of residence, can properly be described as having been his only or principal home during the relevant period.

91. In the Upper Tribunal case *Ramsay v Johnson* 2023 UT 40, Sheriff Collins considered the phrase in a case which concerned the application of the 2011 Regulations. Sheriff Collins referred at paragraph 10 to *Williams v Horsham District Council* [2004] 1 WLR 1137 where it was suggested that a person's main residence will usually be the dwelling that a reasonable onlooker, with knowledge of the material facts, would regard as the person's home at the material time. He states :

> *in any event this is a fact sensitive issue in relation to which various factors may be relevant, depending on the circumstances of the particular case. And it is likely to require a comparison between the nature and extent of the occupation of the various dwellings resided in by the relevant person at the material time.*

92. Whether a property was a tenant's only or principal home as opposed to it being a holiday let, was considered in the case of *St Andrews Forest Lodges Ltd v Grieve* [2017] SC DUN 25. In that case, Sheriff Collins determined a tenancy did not become a holiday let simply because one party wished to describe it as such. He concluded that whether or not a holiday let existed as opposed to any other type of tenancy was a matter for the Court to determine in light of the evidence before it.

93. The Tribunal accepted the evidence of Mr Crone, Mr Syke and Mr Tompkins at the hearing that they and the other applicants, Mr Andrew and Mr Wills lived in the property from mid -September 2022 until the end of May 2023. The Tribunal found the evidence of Mr Crone, Mr Sykes and Mr Tompkins on this point to be credible. It was not disputed that all the applicants were university students in their 3rd year at Edinburgh university. The Tribunal accepted their description and found their occupation as typical of students who required accommodation for the full academic year. The Tribunal accepted their evidence that they went back to their parents' houses at Christmas and Easter. Mr Sykes also had a brief holiday in February. The Tribunal did not accept the respondent's position that the large 6 bedroom property was occupied by a rotating pair of the

applicants with some guests occasionally allowed. This would have meant that each student was paying £1725 per month rent and occupying a largely empty property. The respondent's position would also have meant that the applicants had no stable accommodation throughout the year, moving in and out of the property according to when the holiday lets were signed by them. This position lacked credibility and would have been a departure from the previous practice of renting the property out to groups of students. It was not supported by any evidence that the applicants moved between 6 Blenheim Place and other properties in Edinburgh. The respondent had stated that her reason for entering into the holiday lets was to provide the group with somewhere to stay, which was at odds with her position that all the applicants did not reside in the property.

94. Having determined that the applicants were in physical occupation of the property continuously from September 2022 to May 2023, the Tribunal then considered whether this equated to their occupying the property as their only or principal home. The respondent's submissions stated that the as the property was only intended to be a term time address whilst studying at university it could not be considered the applicants only or principal home. In her written submissions Ms Wooley stated that "*whilst it was conceded that the agreements entered into could not be classed as "holiday lets" that does not mean that they would be a prt… Any tenancies entered in to would, at best, be a series of contractual tenancies which were ended each time and replaced with new agreements".* Ms Wooley also sought to rely on the lack of documentary evidence submitted and highlighted that Mr Sykes, Mr Crone and Mr Tompkins had their mobile phones and bank statements registered at their parents' address.

95. The Tribunal considered that as services such as mobile phone and banking were increasingly managed online the direct connection between paper bills and establishing whether a property was a principal home had been reduced. This differed from the circumstances in some of the earlier cases when it would still have been common for bills to be issued in paper form to an address. It was particularly likely that students would use online accounts due to their age and the fact that they frequently moved to new properties. The Tribunal gave less

weight to the absence of paper documentation than may have been applied in the earlier cases for this reason.

96. The Tribunal did however consider that the applicants could have done more to lodge evidence of their connection to the property. For example they referred to parking permits and gym membership in their evidence but had not submitted documentary evidence. Neither had they submitted evidence showing that they had used the property as their official address whilst at university. The applicants relied on the various emails that had been produced showing their discussions with the respondent, the agreements produced and the oral evidence at the hearing. Mr Sykes, Mr Tompkins and Mr Crone were in concert in describing how they occupied the property with each applicant having their own room, the deposit and ongoing monthly rent being split between the 6 tenants.

97. Neither Mr Andrew or Mr Wills attended the hearing to provide evidence on their occupancy of the property. The Tribunal was mindful of the need to examine the circumstances of each of the applicants to ascertain whether there was a real, tangible and substantial connection with the property. The oral evidence from Mr Crone, Mr Sykes and Mr Tompkins which the Tribunal accepted was that all the applicants and Mr Brookes lived in the property between September 2022 and May 2023. Each of the applicants had their own room and studied at the University of Edinburgh. Each of the applicants paid rent throughout the year. Mr Andrew and Mr Wills had both signed 4 holiday let agreements spanning the period from 1 June 2022 until 15 April 2023. The Tribunal was satisfied on the basis of the oral and documentary evidence that Mr Andrew and Mr Wills occupied the property from September 2022 until May 2023.

98. The Tribunal also noted that in terms of section 125(4) of the Housing (Scotland) Act 2006 which relates to houses in multiple occupation accommodation occupied by students during terms time is to be treated as their only or main residence:

> *125 (4)For the purposes of this section—*
>
> *(b)living accommodation occupied during term time by a person undertaking a full-time course of further or higher education is, at all times*

during that person's residence, to be treated as being that person's only or main residence,

125 The Tribunal considered that on the balance of probabilities the property was the principal home of the applicants from September 2022 until May 2023. The Tribunal found that a reasonable onlooker, with knowledge of the material facts, would regard the property as the applicants' home for the academic year 2022-2023. The Tribunal found that the applicants had a real, tangible and substantial connection with the property and that it, rather than any other place of residence was their principal home during the relevant period.

126 The Tribunal did not accept the respondent's position that students who returned to their parents for visits at Christmas and Easter and had a "term time address" could not be said to occupy a property under a PRT as their principal home was fixed at their parents' address.

127 The Tribunal determined that the holiday let agreements had been signed as means to avoid the respondent falling foul of the HMO licensing requirements. The respondent was open in her evidence that the reason holiday letting agreements had been used was due to the lapsing of the HMO licence. The Tribunal determined that both the applicants and the respondent had thought that the use of holiday letting agreements would resolve the HMO licensing issue.

128 As was considered in *St Andrews Forest Lodges Ltd v Grieve* given that the applicants occupied the property as their principal home the agreements could not be holiday letting agreements. The Tribunal determined that there a contractual tenancy in place between the applicants and the respondent from on or around 15 September 2022 until 25 May 2023 the period during which they occupied the property as their principal home. The tenancy agreement was therefore a PRT to which the 2011 regulations applied.

99. Personal Bar

Following the end of the tenancy in May 2023 there was considerable correspondence between Mr Crone and the respondent regarding the level of deduction that should be applied to the deposit as a result of alleged damage to the property. Mr Crone conceded in his email dated 31 May 2023 that a deduction of £1425.80 was agreeable to the applicants. In that email Mr Crone stated that the issue had been discussed by all the tenants. It was therefore the case that the applicants accepted that a significant deduction from the deposit was appropriate. The respondent did not accept the proposed deduction as she maintained that a larger deduction of £1867.29 was required to cover the cost of damage. In his evidence Mr Crone stated that the applicants were out of their depth in negotiating the return of the deposit and that Mr Charles Sykes stepped in to take over negotiations. Mr Crone and Mr Jack Sykes both stated that they had been consulted in advance of the email dated 8 June 2022 being sent. Mr Jack Sykes said it had followed a group decision on the approach in the email and that Mr Charles Sykes was authorised to act on behalf of all the tenants. Following that email the respondent refunded the deposit in full over 2 payments- £2024.20 on 9 June 2023 and £1425.80 on 12 June 2023. The respondent had complied with the deadline set out in the email. The respondent made payment of the full deposit, despite her view that significant deductions were appropriate. The respondent's written statement of evidence set out that the email on 8 June 2023 was her first correspondence with Mr Charles Sykes. As she had been primarily dealing with Mr Crone, she took an email from one of the parents very seriously. She stated that she would not have repaid the full amount had it not been for the threat contained in the email dated 8 June 2023. The Tribunal accepted the respondent's evidence on this point which was supported by the contents of the lengthy emails before 8 June 2023 where it was clear that she was seeking a significant deduction from the deposit, a position that was changed following the email on 8 June 2023. The Tribunal also took into account the deposit was returned in 2 payments to reflect the level of deduction that had been discussed with Mr Crone.

100. The Tribunal determined that the respondent returned the full amount of the deposit directly as a result of the email on 8 June 2023 threatening to raise

proceedings and in compliance with the deadline of 12 June set out in that email.

101. The Tribunal determined that Mr Charles Sykes had been instructed by all the applicants to send the email on 8 June 2023. In reaching that finding the Tribunal took into account the evidence of Mr Crone and Mr Jack Sykes that there had been a group decision to send the email. The Tribunal also took into account that Mr Sykes had since that dated acted as a representative of all 5 applicants who had all signed mandates authorising him to act on their behalf in relation to the present application.

102. The Tribunal determined that whilst the email incorrectly referred to rule 103 as being part of the 2011 Regulations the clear meaning of the email was that if the deposit was not returned an application using rule 103 which applies solely to applications under the 2011 Regulations would be submitted. The email sets out that Mr Charles Sykes had sought advice from the Private Rented team at the local authority and it was clear from the contents of the email that he had knowledge of the 2011 Regulations. Taking that into account the Tribunal does not accept that the email was only intended to refer to the applicants not lodging an application for return of the deposit rather than under the 2011 Regulations.

103. The Tribunal took into account that although the application was dated 11 June 2023, before the second payment had been received by the respondent the Tribunal had received the application by email on 17 June 2023 after the deposit had been repaid, accordingly the date of 11 June 2023 in the application had little bearing on the matter.

104. The Tribunal considered whether the actions of the applicants amounted to personal bar. The Tribunal was assisted by the analysis of the law in *Gloag and Henderson, The Law of Scotland* (15th ed., 2022), at paragraphs 3.05 to 3.07. For personal bar to be demonstrated 2 elements must be considered- inconsistency and unfairness.

105. In the present case the applicants' conduct has been inconsistent. In the email of 8 June 2023 the applicants' representative stated that if the deposit was not returned an application would be submitted under the 2011

Regulations. The deposit was returned and the applicants have nevertheless submitted an application and are now seeking to exercise that right.

106. The second element of personal bar is unfairness. Personal bar will only be upheld even with inconsistent actings where there is clear evidence of unfairness if the right is allowed to be exercised:

107. In respect of unfairness the Tribunal accepted the respondent's evidence that she repaid the full deposit in reliance on the representations in the email of 8 June 2023 that no further action would be taken by the applicants under the 2011 Regulations as a result. In repaying the deposit in full the respondent was prejudiced to the extent that she had previously stated that a significant deduction from the deposit was appropriate. Had the respondent been aware that the applicants would proceed to submit an application under the tenancy deposit regulations it can reasonably have been expected that she would not have refunded the disputed parts of the deposit..

108. The respondent's belief that the offer in the email could be relied on was reasonable. The circumstances in which a plea of personal bar will be sustained are set out in *Gatty v MacLaine* 1921 SC (HL) 1.

> '*Where A has by his words or conduct justified B in believing that a certain state of facts exists, and B has acted upon such belief to his prejudice, A is not permitted to affirm against B that a different state of facts existed at the same time.' It seems to us that the most important word in that dictum is 'justified'. There must be a representation made by A, whether by words or by conduct, as to the existence of a certain state of fact. B must believe the representation, and must act in reliance upon it to his prejudice. But that is not sufficient. The belief in that state of fact must be justified by the representation.*
>
> *… [T]o found a plea of personal bar, the representation must be such that a reasonable man would regard it as intended to be believed and relied upon. In other words, the representation must be interpreted objectively. If it conveys to the reasonable man that it was seriously intended, and that the person to whom it was made was being invited to believe it and act upon it, it matters not that the party making the representation may not in fact have intended that it be relied upon, either*

generally or for a particular purpose. If, judged objectively in that way, the representation is to be treated as one which its maker intended should be relied upon, the person to whom the representation was made is then, to revert to Lord Birkenhead's language, 'justified' in believing it, and if he is justified in believing it, he is entitled, in a question with the representor to rely on it. Entitlement to rely on the representation is a consequence of justified belief in the represented state of facts. As expressed in the authorities, where the representation has produced a justified belief in a state of facts, the representor is personally barred from maintaining that the facts were other than as represented. …"

109. The email dated 8 June 2023 would have led a reasonable person in the position of the respondent to expect that the applicants would waive their rights to pursue an application under the 2011 Regulations.

110. In *Inch v Totten* [2024] CSOH 25, Lord Sandison stated that in order to assess whether personal bar had been established:

[65] Up to three questions may require to be addressed in order to determine the proper resolution of this action. Firstly, what exactly was said to the defender by the pursuers (and in particular the second pursuer) about the loan in the run-up to the sale of Akari Group? Secondly, did what was said form a proper basis upon which a reasonable person might conclude that the pursuers were representing that they intended the loan to be forgiven? Thirdly, did the defender in fact reach that conclusion and act in reliance on it to her detriment in agreeing to the sale of Akari Group (which involved the gratuitous transfer of her shares in VKY)?

111. In the present case, the terms of the email are not disputed and is not disputed that it was sent on behalf of all the applicants. The contents of the email would have led a reasonable person to conclude that no further action would be taken under the 2011 regulations if the deposit was repaid in full. The respondent repaid the full deposit in reliance of the representation to her detriment. Applying the 3 questions posed by Lord Sandison in *Inch v Totten* personal bar has been established.

Outcome

112. As it was determined that personal bar has been established the Tribunal did not proceed to make a determination in relation to the level of any award under the 2011 Regulations as the application fell to be dismissed.

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.

M-C.Kelly

13 June 2025

_____ _____

Legal Member/Chair **Date**