

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Regulations”) and The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/25/1063

Re: Property at 3/1 37 ARGYLE STREET, PAISLEY, PA1 2ES (“the Property”)

Parties:

MR ABDUL-RAHEEM ODERINDE, 4F WHITESBRIDGE AVENUE, PAISLEY, PA3 3BS (“the Applicant”)

ILJA REAL ESTATE LTD, 01 MEADLAKE PLACE THORPE LEA ROAD, EGHAM SURREY, TW20 8HE (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £772.50 should be made by the Respondent to the Applicant.

Background

1. By application received on 11 March 2025, the Applicant applied to the Tribunal for an order for payment against the Respondent in respect of failure to carry out their duties as landlord in relation to a tenancy deposit. The failure alleged was a failure to lodge the deposit within an approved scheme within the required time limit (30 working days) in terms of the 2011 Regulations. He had paid the deposit of £650 on 8 August 2024 and it was not placed into the tenancy deposit scheme until 28 February 2025 and only after several enquiries had been made by the Applicant to the Respondent’s letting agent. Supporting documentation was lodged in respect of the application, including a copy of the tenancy agreement and copy messages between the Applicant and letting

agent. The Private Residential Tenancy had commenced on 4 August 2024 and ended on or around 2 March 2025, following the Applicant giving notice. The Applicant sought the maximum compensation of three times the amount of the deposit, amounting to £1,950 less the sum of £227.50 which he had already received from the Respondent's letting agent as a goodwill gesture. The amount claimed accordingly amounted to £1,722.50.

2. Following initial procedure, on 27 March 2025, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 27 May 2025, a copy of the application papers and details of the Case Management Discussion ("CMD") to take place were served on the Respondent by Process Server. Any written representations by the Respondent were to be lodged with the Tribunal by 11 June 2025. No representations were lodged by the Respondent prior to the CMD.

Case Management Discussion

4. The CMD took place by telephone conference call on 15 July 2025 at 11.30am. Only the Applicant, Mr Abdul-Raheem Oderinde was in attendance. The Legal Member delayed the commencement of the CMD for 5 minutes to give the Respondent the opportunity to join late but they did not do so.
5. After introductions and introductory remarks by the Legal Member, there were discussions regarding the application and the Respondent's lack of response. Mr Oderinde explained the background to the tenancy and reference was made to the supporting documentation he had lodged, particularly the messages back and forth between himself and the Applicant's letting agent, who had handled matters, including the deposit, on behalf of the Respondent. Mr Oderinde stated that he had had a number of issues with the Property, including in relation to repair-type issues and security which he had taken up with the letting agent. He was concerned that, after entering into the tenancy, he had not received confirmation that his tenancy deposit had been lodged in a scheme. He raised this issue with the letting agent in October 2024 and he was told that it was in a scheme and that they would get back to him with the further details but failed to do so. Following further issues arising and there being a period over Christmas 2024 when he had no heating or hot water, he had decided to give 28 days' notice on 2 February 2025 to end the tenancy on 2 March 2025. He asked again about the tenancy deposit and eventually contacted the tenancy deposit schemes himself. He was informed by Safe Deposits Scotland on 4 March 2025 that the deposit of £650 had been lodged with them, but only on 28 February 2025. He received back half of the deposit as he had withheld rent due to the other issues and accepted that some rent was owing. The letting agent initially offered him food and drink vouchers by way of an apology regarding the tenancy deposit issue, which he rejected. They subsequently made an offer of £227.50 by way of a goodwill gesture, which he accepted. He is agreeable to this amount being deducted from his compensation claim in

respect of his application. The letting agent's explanation regarding the tenancy deposit failings was human error and staff absence.

6. The Legal Member stated that it was clear from the messages from the letting agency to the Applicant that it was admitted that the tenancy deposit had been lodged late and that they had provided an explanation for this and tried to make amends by offering the food and drink vouchers and then the goodwill payment. There had, however, been a clear breach of the 2011 Regulations and it would be the intention to make a finding in this regard in respect of the application and also to impose a financial sanction. It was explained that there is quite a wide discretion available to the Tribunal and it was noted that the Applicant had requested the maximum sanction of three times the amount of the tenancy deposit, less the deduction in respect of the goodwill payment he had already received. The Legal Member indicated that she did not consider this case would attract the maximum sanction. It was also explained that the 30 day time limit for placing the deposit in a scheme is actually 30 'working days', so is generally not lodged quite as late as tenants often think. Excluding weekend days, the Legal Member confirmed that her calculation was that the deposit here had been lodged around five and a half months late as opposed to the Applicant's statement that it was almost seven months late. The Legal member asked the Applicant for his arguments in favour of a higher amount of compensation.
7. The Applicant conceded that the maximum compensation is quite high but he feels this case was more than just a staff oversight or minor breach of the regulations. He considered that there was an element of deception on the part of the letting agent as they misled him when he first asked about the tenancy deposit in October 2024. They had tried to convince him that it was in a scheme when it was not and he thinks they were hoping that he would just drop the matter or forget about it. He thinks they handled the situation badly and that they managed the tenancy badly generally, given the number of repair and other issues he required to raise with them, which were not dealt with properly. He is aware that the landlord has other rental properties in the UK and that the letting agent was managing two or three properties for this landlord. The Applicant stated that this was the first property he had had by himself and that the letting agent had tried to take advantage of him. His deposit was not protected until right before the end of the tenancy, well after he had given notice, even although he had made several enquiries regarding the deposit beforehand. This issue had caused him stress and uncertainty throughout the tenancy and at the end of the tenancy as he did not know when, or if, he would get his deposit back. It also impacted on him financially as he had had to obtain another property to move to and needed to find rent and a deposit for that property, whilst not knowing if he would get this deposit back.
8. Following the Applicant's submissions, the Legal Member indicated that she was satisfied that, as there was a clear breach of the 2011 Regulations, which had been admitted in writing by the letting agency, a payment order would be made in favour of the Applicant today. She indicated that she wished to fully consider the representations made by the Applicant and the circumstances of the case in further detail before determining the appropriate sanction but would

issue a written decision shortly, specifying the amount of the payment order and explaining the reasons for same. It was explained that the decision would be issued to both parties and regarding the 30-day appeal period which then follows.

9. The Applicant was thanked for his attendance and the CMD concluded.

Findings in Fact

1. The Respondent is the landlord of the Property and had letting agents acting on their behalf in respect of the management of the Property.
2. The Applicant was the tenant of the Property by virtue of a Private Residential Tenancy commencing on 4 August 2024, which ended on or around 2 March 2025.
3. The Applicant paid a tenancy deposit of £650 to the Respondent's letting agents at the outset of the tenancy, in accordance with the terms of the tenancy agreement.
4. The tenancy deposit was lodged in a tenancy deposit scheme with Safe Deposits Scotland on 28 February 2025, around five and a half months late in terms of the 2011 Regulations and just a few days before the tenancy ended.
5. The Applicant sought confirmation from the Respondent's letting agents several times during the tenancy regarding the tenancy deposit being lodged in a scheme but did not receive satisfactory response.
6. In October 2024, when the Applicant first raised the issue of the deposit, he was informed that it had been lodged in the SDS scheme.
7. The Applicant received half of the deposit back at the end of the tenancy, by agreement with the letting agents.
8. The Respondent's letting agents had admitted in writing to the Applicant that the tenancy deposit was lodged late in the scheme, had explained the reason for same, and had already made a goodwill payment to the Applicant amounting to £227.50 in this regard.
9. The Respondent did not lodge any written representations nor attend the CMD.

Reasons for Decision

1. The application was in order and had been submitted timeously to the Tribunal in terms of Regulation 9(2) of the 2011 Regulations [as amended to bring these matters within the jurisdiction of the Tribunal], the relevant sections of which are as follows:-

“9.—(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.”

Regulation 3 [duties] referred to above, is 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.

(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.

(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.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.”

The Legal Member was satisfied from the documentation before her and the oral representations made by the Applicant at the CMD that the Respondent was under the duties outlined in Regulation 3 above and had failed to ensure that the deposit paid by the Applicant was paid into an approved tenancy deposit scheme within 30 working days of the start of the tenancy, contrary to

Regulation 3 of the 2011 Regulations. The Respondent had entrusted the management of the tenancy, including the tenancy deposit, to their letting agent and it appeared from the various messages between the letting agent and Applicant that he had lodged in support of his application that the letting agent had accepted responsibility for the late lodging of the deposit, explaining that it had been caused by human error and staff absence, and had sought to resolve the matter by making 'goodwill' offers to the Applicant. The Legal Member was therefore satisfied that the application did not require to be continued to an Evidential Hearing and that, in terms of Regulation 10 above that a sanction must be imposed on the Respondent in respect of this breach of the 2011 Regulations.

2. In determining the appropriate amount of the sanction to be imposed on the Respondent for payment to the Applicant, the Legal Member considered carefully the background circumstances and the information and submissions provided by the Applicant in respect of the matter. The Legal Member considered that the amount of the sanction should reflect the gravity of the breach. The Applicant considered that the maximum sanction should be payable. As the deposit here was £650, in terms of Regulation 10(a) above, the maximum possible sanction was £1,950. There is no minimum sanction stipulated in the 2011 Regulations.
3. The Legal Member considered the relatively short duration of the tenancy of around seven months and that the deposit had been placed in the scheme around five and a half months late and only after the Applicant had already given notice and a few days before the 28-day notice period ended the tenancy. The tenancy deposit had therefore been unprotected for nearly the whole duration of the tenancy. The Applicant had clearly had some other grievances regarding the property itself and the conduct of the letting agents in respect of their management of the tenancy generally, leading to him serving notice and vacating after a relatively short tenancy period. However, the Legal Member did not consider that she could take these other issues into account in determining the appropriate sanction, other than the Respondent's letting agent's failures to respond to the Applicant's queries regarding the tenancy deposit and having provided him with misleading information in October 2024 when they had stated that the deposit was lodged in a scheme. The situation should have been checked by the letting agents at that time, which would have allowed the situation to be rectified sooner. It appeared from the timing of the deposit being lodged that the letting agents may only have checked the position for the first time after the Applicant had served notice and the tenancy was coming to an end, despite his several previous requests in relation to the matter. The Legal Member considered that the Applicant had been caused unnecessary stress and uncertainty through the late lodging of the deposit but also due to the misinformation from the letting agents and their failure to deal with his enquiries regarding the tenancy deposit properly. As the deposit had been placed in a scheme by the Respondent, albeit right at the end of the tenancy, and agreement was reached with the Applicant regarding partial return of the deposit to him, the Legal Member considered that there had not been substantial prejudice nor serious financial implications to the Applicant caused by the Respondent's breach of the 2011 Regulations. Had a dispute arisen regarding return of the deposit, the Applicant would have had access to the free

resolution process available through the scheme. It was clear that the letting agents had sought to resolve matters by lodging the deposit, apologising and making goodwill gestures to the Applicant and the Legal Member considered that these factors should be taken into account in assessing compensation. The Applicant had received the sum of £227.50 by way of a goodwill payment, which perhaps partly alleviated the financial situation he found himself in, in having to secure an alternative rental property. As the Respondent did not enter into the Tribunal process, the Legal Member did not have detailed information as to their experience as a landlord or the number of properties they let out. However, it appeared likely from the information provided by the Applicant and the fact that the letting agents were managing more than one property for this Respondent, that they were professional landlords, employing letting agents to manage properties for them. Weighing all of these factors, the Legal Member determined that a mid-range sanction was appropriate of £1,000, less the goodwill payment of £227.50 already made to the Applicant. Accordingly a payment order against the Respondent in the sum of £772.50 would be made.

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.

N Weir

Legal Member/Chair

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**15 July 2025
Date**