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 Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/2488

Re: 1/1 9 Prince Albert Road, Glasgow G12 9JR ("the Property")

Parties:

Holly Elissa Dignard, Rua da Fonte Longa 29, 3350-204, Portugal ("Applicant")

Unlimited One Ltd, Suite 14, Ellismuir House, 6 Ellismuir Way, Uddingston G71 5PW ("First Respondent")

Jonathan Mair, 1 Devon Road, Dollar FK14 7EY("Second Respondent")

Lynsey Raybould, 23 Queensberry Avenue, Bearsden, Glasgow G61 3LR ("First Respondent's Representative")

Tribunal Members:
Joan Devine (Legal Member)

Decision :
The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Second Respondent should pay to the Applicant the sum of £500.

Background

1. The Applicant made an application in Form G ("Application") dated 30 May 2024 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The documents produced to the Tribunal by the Applicant were:

    - A tenancy agreement which commenced on 1 November 2023.

    - Screenshot of a payment of £1600 being paid to Unlimited One Ltd on 31 October 2023.

- Copy emails from Letting Protection Scotland, MyDeposits Scotland and Safe Deposits Scotland dated 29 May 2024 in which they stated they did not hold a deposit for the Property.

2. On 16 September 2024 the Applicant lodged a written representation in which she stated that the tenancy ended on 14 September 2024 and attached Deposit Protection Certificate from Safe Deposits Scotland which noted that the deposit for the Property was received on 31 May 2024 and registered on 30 May 2024.

3. On 4 October 2024 the First Respondent's Representative lodged a written representation which attached an email from the First Respondent in which she stated inter alia, that the Property is owned by her son, Jonathan Mair. On 11 October 2024 the Applicant lodged a further written representation. On 17 October 2024 the First Respondent's Representative lodged a written representation in which she stated that the First Respondent does not own the Property and would not take part in the case management discussion fixed for 18 October 2024. On the morning of 18 October 2024 the First Respondent's Representative lodged screenshots of text messages.

Case Management Discussion ("CMD")

4. A CMD took place on 18 October 2024 by conference call. Reference is made to the Note of the CMD. The outcome was that a date was fixed for a further CMD and a Direction was issued in the following terms :

The First Respondent is required to lodge with the Tribunal :

1. *A written submission stating whether they have held title to the Property and if so the date on which title was acquired and explaining the basis on which the First Respondent entered into a tenancy agreement with the Applicant which commenced on 1 November 2023.*

The Second Respondent is required to lodge with the Tribunal :

1. *A written submission stating the date on which the Second Respondent acquired title to the Property and explaining the basis on which the First Respondent entered into a tenancy agreement with the Applicant which commenced on 1 November 2023.*

The said submissions should be lodged with the Tribunal no later than close of business on 29 November 2024.

5. On 9 November 2024 the First Respondent's Representative lodged a response to the direction on behalf of both Respondents which included copy letters signed by each Respondent. In the letters the Second Respondent stated that he acquired title to the Property on 26 March 2024 and the First Respondent stated that as at 1 November 2023 title to the Property was held by Christopher Mair and the Second Respondent. On 20 February 2025 the

First Respondent's Representative lodged a submission in which she stated that the Second Respondent is a student. She also stated that both Respondents were keen to do whatever was required to bring the matter to a close.

6. The address provided to the Tribunal for the Second Respondent was Lynedoch Crescent, Glasgow G3 6EQ. The Tribunal attempted to serve the application at that address without success. On 25 February 2025 the Applicant confirmed that the address for the Second Respondent was now shown on the landlord register as being 1 Devon Road, Dollar FK14 7EY. The application was served on the Second Respondent at that address on 16 April 2025.

CMD on 27 June 2025

7. A continued CMD took place on 27 June 2025. Despite several attempts, the Applicant was unable to join the conference call. The First Respondent's Representative did join the call albeit 30 minutes late. As the Applicant was unable to join, the continued CMD could not proceed. The Tribunal issued a direction in the following terms :

The Parties are required to state to the Tribunal whether or not they are content for the Tribunal to proceed to make a decision on the application on the basis of the written submissions lodged to date.

A response to this direction requires to be lodged by 18 July 2025. If no response is lodged the Tribunal will proceed on the basis that the Party who has not responded is content for the Tribunal to make a decision on the basis of the written submissions lodged to date.

8. By email dated 1 July 2025 the Applicant responded to the direction stating that she was content for the Tribunal to proceed to make a decision. By email dated 2 July 2025 the First Respondent responded to the direction stating that she was content for the Tribunal to proceed to make a decision. The Second Respondent did not lodge a response to the direction. The direction clearly stated that if a response to the direction was not lodged, the Tribunal would proceed to make a decision on the basis of the submissions lodged to date.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant entered into a tenancy agreement for the Property which commenced on 1 November 2023.

2. At the date of commencement of the tenancy the First Respondent acted as agent of the Second Respondent regarding the tenancy.

3. At the date of commencement of the tenancy the Second Respondent held title to the Property.

4. The Applicant paid to the First Respondent, as agent for the Second Respondent, a deposit of £800 on 31 October 2023.

5. The deposit became protected by Safe Deposits Scotland on 31 May 2024.

6. The deposit was not paid to the administrator of an approved scheme in compliance with the timescales set out in Regulation 3 of the 2011 Regulations.

7. The deposit of £800 was paid into an approved scheme some 5.5 months outwith the timescales stated in the 2011 Regulations.

8. At the time of receipt of the deposit from the Applicant, the First Respondent was unaware of the need to lodge the deposit in an approved scheme in accordance with the 2011 Regulations.

Reasons for the Decision

9. The first issue to be addressed is to establish against whom the application should be directed. Only the person holding title to a property can grant a tenancy in respect of the property. The direction response lodged on 9 November 2024 included copy letters signed by each Respondent. In the letters the Second Respondent stated that he acquired title to the Property on 26 March 2024 and the First Respondent stated that as at 1 November 2023, the date on which the tenancy commenced, title to the Property was held by Christopher Mair and the Second Respondent. The First Respondent's Representative lodged a written submission dated 4 October 2024 which included an email from the First Respondent to her Representative in which she stated that the Property was owned by the Second Respondent. The documents lodged indicated that the First Respondent managed the Property on behalf of the Second Respondent who held the title. It was apparent that the First Respondent acted on behalf of the Second Respondent who, at the date on which the tenancy commenced, was an undisclosed principal. As the application progressed the identity of the Second Respondent as the party holding title to the Property became apparent. In the direction response lodged by the First Respondent's Representative on 9 November 2024, the First Respondent's Representative stated that she was lodging the response on behalf of both Respondents. The application was served on the Second Respondent on 16 April 2025.The Second Respondent was clearly aware of

the application. In all the circumstances, the Tribunal considered that the First Respondent acted as agent for the Second Respondent when entering into the tenancy agreement with the Applicant.

10. Section 10 of the 2011 Regulations provides that the Tribunal must make an order against "the landlord". Only the Second Respondent was able to grant a tenancy of the Property. The Tribunal determined that the application was properly directed against the Second Respondent alone.

11. The Tribunal noted the timeline of events from the documents and written submissions lodged with the Tribunal which did not appear to be in dispute was as follows :

- 31 October 2023 – deposit of £800 paid
- 1 November 2023 – tenancy commenced
- 1 November 2023 – title to the Property was held by Christopher Mair and the Second Respondent
- 13 December 2023 – date by which deposit should have been protected
- 26 March 2024 – Second Respondent acquired sole title to the Property
- 30 May 2024 – application lodged
- 31 May 2024 – deposit protected some 5.5 months late
- 14 September 2024 – tenancy ended
- 5 October 2024 – deposit repaid to the Applicant in full
- 18 October 2024 – Second Respondent added as a respondent to the application

12. The timeline of events indicated that a deposit was paid but was not lodged in an approved scheme until some 5.5 months after expiry of the period during which it should have been lodged.

13. The Tribunal noted the terms of the written submission lodged by the First Respondent's Representative dated 4 October 2024 in which she stated that the reason the deposit was not lodged in an approved scheme was that the First Respondent was unaware of the need to do so. The submission attached an email from the First Respondent to her Representative in which she stated that she had no idea that the deposit required to be lodged in an approved

scheme. The documents lodged did not provide any reason why the Second Respondent failed to comply with the 2011 Regulations.

14. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal was satisfied that the Second Respondent did not lodge the deposit in accordance with the timescales required by the 2011 Regulations. The deposit was lodged more than 5 months late.

15. The amount to be awarded is a matter for the discretion of the Tribunal having regard the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.

[14] Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present."

16. The Tribunal considered all of the circumstances presented to it and found it to be of significance that the deposit was lodged in an approved scheme although it was unprotected for a period of 5.5 months. It was also significant that the deposit was returned to the Applicant in full within a matter of weeks after the tenancy ended. The documents lodged indicated that the Property had been owned by the Second Respondent's grandparent and had generally been used by family. The Tribunal had been told that the Second Respondent is a student. This suggested to the Tribunal that the Second Respondent was not an experienced landlord. The First Respondent, although not the Second Respondent, admitted that there had been a breach of the Regulations. It

appeared to the Tribunal that once the First Respondent became aware of the requirement to lodge the deposit in an approved scheme, she proceeded to do so. The explanation given, albeit only on behalf of the First Respondent, for the failure to comply with the 2011 Regulations was lack of awareness of the Regulations.

17. The Tribunal considered that there were no aggravating factors present such as those outlined in *Rollett v Mackie*. The Tribunal considered that the case was not at the most serious end of the scale. The Tribunal attached weight to the fact that the deposit was lodged in an approved scheme during the tenancy and to the fact that the deposit was repaid to the Applicant in full shortly after the tenancy ended. The Applicant therefore suffered no loss or inconvenience. There had however been a breach of the 2011 Regulations. Ignorance of the Regulations is not a valid excuse for non-compliance. The Tribunal determined that the sanction should be £500 in the particular facts and circumstances of this case. The Tribunal considered that figure to be fair and proportionate.

Decision

The Tribunal granted an Order against the Second Respondent for payment of £500 in terms of Regulation 10(a) of the 2011 Regulations.

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.

Joan Devine
Legal Member **Date: 23 July 2025**