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 Rules 18 and 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/24/5548

Re: Property at 3/2, 50 GEORGE STREET, EDINBURGH, EH2 2LE ("the Property")

Parties:

Dr EADAOIN LYNCH, FLAT 34, 4 CHESTNUT WYND, EDINBURGH, EH5 1SJ ("the Applicant")

Mr ANTONY MOWER, 14 MIKADO STREET, HAMILTON, QUEENSLAND, 4011 AUSTRALIA ("the Respondent")

Tribunal Member:

Nicola Weir (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment in the sum of £712.50 should be made by the Respondent to the Applicant.

Background

1. By application received on 2 December 2024, the Applicant sought an order against the Respondent in respect of the Respondent's alleged breach of their duties in relation to a tenancy deposit. Supporting documentation was submitted with the application, including a copy of the Tenancy Agreement, proof of payment of the deposit, communications between the parties and communications from the three tenancy deposit schemes, each stating that the Applicant's tenancy deposit had not been lodged with them. The Applicant's position was that her tenancy commenced on 1 September 2019 and ended on 17 October 2024 and that her deposit of £475 had not been secured in a

tenancy deposit scheme during that whole period. She had only discovered this when the tenancy ended. The deposits of other joint tenants had been protected with Safe Deposits Scotland but the scheme had no record of any deposit in her name. She had received the full tenancy deposit back from the Respondent but considers she should be due the maximum compensation of three times the deposit amount, namely £1,425.

2. On 5 December 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance in respect of the application in terms of Rule 9 of the Regulations.

3. Attempted service of the Tribunal papers was made by Sheriff Officer but in their Report, they reported that this had been unsuccessful as the Respondent's father who resided at the property in England advised that the Respondent resided in Australia. The Respondent did, however, subsequently contact the Tribunal Administration and supplied his contact email address and requested a copy of the papers.

4. On 21 March 2025, the Respondent requested an extension of time to submit representations, which was granted. The Respondent lodged detailed written representations dated 9 April 2025. He did not provide confirmation of his address in Australia. *[For clarification, further to subsequent written representations from the Respondent, there is no suggestion that the Respondent's representations were lodged late, nor that he had been slow to either make contact with the Tribunal nor lodge his written representations with the Tribunal.]* The Respondent admitted a technical breach of the tenancy deposit regulations but provided detailed information in mitigation, explaining the fairly complicated background to the tenancy and previous attempts by himself and a former tenant to have the records held by Safe Deposits Scotland (SDS) amended to show the updated names of the tenants who were residing at the Property and whose names should be reflected in their records in respect of the deposit held. He stated that the tenancy with the Applicant had been harmonious, that she had received her full deposit back shortly after the tenancy ended, that he had not made any financial gain as he had not held on to the tenancy deposit and that he did not, therefore, consider the Applicant's claim for compensation to be reasonable. Supporting documentation was submitted by the Respondent.

Case Management Discussion

5. The CMD took place on 13 May 2025 at 10am by telephone conference call. Only the Applicant was in attendance. The Respondent had been in contact with the Tribunal Administration to advise of technical difficulties with him being able to join the call. Several attempts were made to connect the Respondent but these were unsuccessful. The Tribunal sought agreement from the Respondent for the CMD to proceed in his absence, based on the written representations he has lodged in advance, on the basis that the application would not be decided today and that he would be given an opportunity to lodge

further representations before the application would either be decided or adjourned to a further hearing. The Respondent agreed to this. The CMD eventually commenced around 10.40 am.

6. Following introductions and introductory comments by the Legal Member, she apologised to the Applicant for the delay in the CMD commencing and explained the position as well as what the Legal Member intended to do with the case procedurally.

7. There was then discussion regarding the application and the representations received from the Respondent. The Applicant was still of the view that, despite the explanation from the Respondent, she wished her application and compensation claim to proceed.

8. The Applicant confirmed her understanding as to the background of the tenancy, as stated by the Respondent. She confirmed that there were four tenants originally on the tenancy which had started in May 2019. She had viewed the property in August 2019 and her tenancy commenced on 1 September 2019. She said that there were people moving in an out of the Property and that the Respondent was taking over the management of the Property himself around that time. It was noted from the Respondent's representations that Grosvenor Property Management, the Respondent's former managing agent, had initially lodged the original deposit with SDS and the Deposit Protection Certificate produced by the Respondent showed the sum of £1,750 being lodged in the scheme from 28 May 2019 in the names of four tenants (not including the Applicant). The Applicant had paid a deposit amounting to £475 and had signed up to the tenancy agreement she had produced. The Applicant stated that whilst the extract of the tenancy agreement produced by the Respondent is the deposit clause from her tenancy agreement, there is more detailed tenancy deposit information elsewhere in the tenancy documentation she has produced *(the wording of this sentence has been amended following subsequent written representations from both parties. The more detailed tenancy deposit information referred to by the Applicant is noted to be contained in the "Easy Read Notes" to the Model Private Residential Tenancy issued by the Scottish Government).*

9. The Applicant confirmed that the tenancy had operated harmoniously, as stated by the Respondent but that she does consider the circumstances around the deposit to have been more than a mere oversight on the part of the Respondent. She had not received confirmation from the Respondent regarding her deposit having been placed in the scheme, other than what had been stated in the tenancy agreement but she had trusted that he had complied with his obligations and done so. He had breached that trust in not fulfilling his legal obligations and she only found out at the end of the tenancy that her deposit had not been protected for almost 5 years. She had initially asked him regarding the deposit and when she did not receive a response, she made her own investigations with the three tenancy deposit schemes. The Applicant accepts that she got her deposit back in full but stated that there was a period of time, albeit quite short, when she was aware that her deposit had not been secured

in a scheme and was worried that she would not get it back. Although there was no dispute raised by the Respondent regarding her getting back her deposit in full, the Applicant made the point that, had any such dispute arisen, she would not have been able to enlist the assistance of the scheme in resolving that dispute. She does not consider that the Respondent has produced any proof that her deposit was lodged with SDS (albeit under a different tenant's name) or that he had not held it himself during her tenancy. He has not produced any evidence-trail showing where her deposit had been for the 5 years. The Applicant considers that the Respondent had mis-managed the various joint tenancies that occurred before and after her taking occupation in terms of some of the tenancy deposits involved and been irresponsible and reckless in terms of his obligations regarding her tenancy deposit in that he missed multiple opportunities to rectify the situation with Safe Deposits Scotland when dealing with the tenant changeovers during her tenancy *(wording amended following subsequent written representations from both parties).* She does not accept that he was unaware of his obligations to ensure that the correct tenants' names were on the SDS records. He had had prior notification of the issue as can be seen from the correspondence he and a former tenant had engaged in with SDS in 2020. It was noted from that correspondence that, although intimation had been made to SDS of changes in the tenants' details, the Respondent had not intimated the Applicant's own details to SDS, although she had been residing in the tenancy since the previous year. The Applicant understood from her previous flatmates that the Respondent may let out other properties in Edinburgh, as well as this one, and was an experienced landlord *(wording amended following subsequent written representations from both parties)*. She thought that he needed to be more careful and she did not want the same thing to happen to any of his other tenants. She was unaware whether he has had any other cases with the Tribunal regarding alleged breaches of the tenancy deposit regulations.

10. The Legal Member thanked the Applicant for attending the CMD and providing all of the above information. It was explained that the Legal Member would prepare a CMD Note, detailing the discussions which had taken place, which would be forwarded to parties for information. The Applicant could make any comments she wished in respect of the CMD Note, if she considered there were any inaccuracies. The Legal Member would also issue a Direction to the Respondent requiring further information and inviting any further representations he wished to make within a set period. The Applicant would then be provided an opportunity to respond in response to the reply from the Respondent and a decision thereafter made as to whether the Tribunal's decision could be made on the basis of the further representations received or if a further hearing would be required.

Further Procedure

11. Following the CMD, a CMD Note and Direction were issued. The Direction stated as follows:-

"The Respondent is required to lodge:

1. *Any supplementary written submissions that he wishes to make, setting out his position in respect of this application or in response to the Applicant's position at the CMD (as narrated in the CMD Note);*
2. *Written confirmation of his contact address in Australia; and*
3. *Written confirmation as to the length of time he has been a landlord; how many properties he lets out; and whether he has had any further Tribunal applications made against him alleging breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011;*

The said written representations should be lodged with the Chamber no later than 14 days from the date of issue of this Direction."

12. On 4 June 2024, the Respondent complied timeously with the Direction and provided all the information which had been sought by the Tribunal, including his address in Australia and further written representations that he wished to make in respect of the application and the discussions which had taken place at the CMD. The Respondent took issue with various statements contained within the CMD Note, some of which have been dealt with under the heading "Case Management Discussion" above, with amendments indicated by italics. He lodged a copy of the full tenancy agreement and refuted any suggestion that the extract he had produced with his original representations was not from this agreement. This issue has now been clarified, as above. He stated that he considered that the Applicant had exaggerated matters, been unfair and unreasonable in her comments and tried to paint him as a bad landlord. He explained that there had not been as many changeovers of tenants during the tenancy as the Applicant had suggested. He clarified that neither he nor his family own any other property in Edinburgh or Scotland. He had been the landlord of this Property since 2007 and prior to that had let out a different property in Edinburgh for four years, but that property had been sold to purchase this one. Both properties were managed by a letting agent (until he took over the management of this property himself in 2019). He has a current Landlord Registration and has never had any other Tribunal applications made against him in respect of the tenancy deposit scheme or any other matter. He was fair towards the Applicant during her tenancy and mentioned not having increased rents during the Covid pandemic and that the rent he was receiving from the Applicant and her co-tenants after the pandemic was 30% lower than it should have been. One of the co-tenants is in the same position with their deposit as the Applicant, which means he is exposed to similar action possibly being taken by them. The Respondent stated that Safe Deposits Scotland now have all of the correct tenants listed. He considers he has strong mitigation and that the Applicant should not be awarded any compensation.

13. The Respondent's response was issued to the Applicant and any further representations requested from her. She responded on 5 June 2025 with some further representations in response to those from the Respondent. She also clarified several issues raised by the Respondent regarding the wording of the CMD Note and requested that the necessary amendments be made. These of

issues have now been clarified, as above. She confirmed that the copy of the whole tenancy agreement documentation now produced by the Respondent accords with the copy she lodged with her application and clarified what she had stated at the CMD regarding the tenancy clauses. She stated that, although the Respondent considers that he has done his best to fulfil his obligations with due diligence, he was under a legal obligation to ensure that each deposit was held in the scheme under the correct tenant's name and her deposit was not. He should also have issued her with information at the outset of the tenancy confirming details of the deposit and scheme where it was held but did not. She stated that she had not sought to exaggerate matters or give misleading information. She had, in fact, agreed at the CMD with the Respondent's original representations that the tenancy had otherwise been harmonious, as noted in the CMD Note. She had answered the Legal Member's questions at the CMD to the best of her ability and noted that the Legal Member had then included in the Direction the matters on which she required further information from the Respondent, which he has now given. She was relieved to note that the deposits for the tenants who remain are now correctly lodged. She provided some comments in response to the points that the Respondent had made regarding not putting the rent up and provided further details regarding the rent increase he had imposed in April 2024 once Government restrictions had been eased and a further increase that he was seeking to impose once she had moved out.

14. The Legal Member was unable to consider the above representations when they were lodged, due to leave and availability issues but instructed acknowledgement responses to be sent to both parties, explaining the position and the likely timescale for decision.

15. The Legal Member has now considered the further representations and documentation lodged and has determined that there was no requirement for a further hearing to be convened. Both parties had fully stated their positions in the further written submissions lodged. Accordingly, the Legal Member decided to determine the application without a further hearing in terms of Rule 18 of the Procedure Regulations.

Findings in Fact

1. The Respondent is the owner and landlord of the Property.

2. The Applicant was a joint tenant (with three others) of the Property by virtue of a Private Residential Tenancy commencing on 1 September 2019, which ended on or around 17 October 2024.

3. The Respondent had previously had letting agents manage the Property on his behalf, including in respect of tenancy deposits, but had taken over management of these matters himself shortly before the Applicant's tenancy began.

4. The Applicant paid a tenancy deposit of £475 to the Respondent on 28 August 2019.

5. The Respondent did not provide the Applicant with a tenancy deposit certificate or the required information regarding the lodging of her deposit within the statutory time limit, nor at any time during her tenancy.

6. A total deposit amounting to £1,750 was lodged with Safe Deposits Scotland during the Applicant's tenancy but her name was not listed at any time as one of the joint tenants in whose names the total deposit was held.

7. The Applicant gave notice to end the tenancy on 19 September 2024, with the notice period ending on 17 October 2024.

8. The Applicant first raised the issue of return of her tenancy deposit with the Respondent in her communication giving notice on 19 September 2024 and followed this up in a further communication dated 9 October 2024.

9. The Applicant further queried the matter with the Respondent by communication dated 24 October 2024, having received confirmation from Safe Deposits Scotland on that date that they did not hold a deposit in her name in respect of the Property.

10. The Respondent responded on 29 October 2024, stating that the Applicant would receive her full deposit back but not explaining the position with regard to the Safe Deposits Scotland issue raised by the Applicant.

11. The Applicant received the full deposit of £475 directly from the Respondent on 1 November 2024.

12. The Respondent admitted the position with regard to the tenancy deposit but put forward his explanation for same and mitigating circumstances.

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 and written representations from both parties, together with 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 under her name and that she was provided with the necessary information regarding the deposit, within 30 working days of the start of the tenancy, contrary to Regulation 3 of the 2011 Regulations. Although the Respondent had previously had a letting agent manage the tenancy on his behalf, he was managing the tenancy himself by the time the Applicant's tenancy began and was solely responsible for ensuring compliance with the 2011 Regulations. The Respondent admitted the breach of the Regulations but sought to argue that it

was a technical-type breach, not justifying any compensation award being made to the Applicant. The Legal Member noted the terms of the Deposit Protection Certificate produced by the Respondent in support of his position and that it established that a tenancy deposit totalling £1,750 had been lodged with Safe Deposits Scotland in the name of four joint tenants in respect of the Property. However, none of the named tenants were the Applicant and the response obtained by the Applicant from Safe Deposits Scotland dated 24 October 2024 confirmed this. The Respondent had not produced any evidence that he had, in fact, lodged the Applicant's deposit with the scheme, by way of a 'paper-trail' or otherwise and that the error in not recording the Applicant's name against the deposit had been that of the scheme. Accordingly, the Legal Member was satisfied that there had been a clear breach of the 2011 Regulations and that, in terms of Regulation 10 above, a sanction must be imposed on the Respondent in respect of this breach.

2. The Legal Member considered that, as the pertinent facts were not in dispute and she had obtained full written submissions from both parties in respect of the matter, including on the issue of compensation, there was no necessity to convene an Evidential Hearing and decided to determine the matter without a further hearing in terms of Rule 18 of the Procedure Regulations which state as follows:-

*"**Power to determine the proceedings without a hearing***

***18.**—(1) Subject to paragraph (2), the First-tier Tribunal—*

(a)may make a decision without a hearing if the First-tier Tribunal considers that—

(i)having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii)to do so will not be contrary to the interests of the parties; and

(b)must make a decision without a hearing where the decision relates to—

(i)correcting; or

(ii)reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties."

3. 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 both parties 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. The

Respondent considered that there should be no sanction. As the deposit here was £475, in terms of Regulation 10(a) above, the maximum possible sanction was £1,425. There is no minimum sanction stipulated in the 2011 Regulations.

4. The Legal Member considered the length of the tenancy of just over five years and that no evidence had been produced to show that the Applicant's actual deposit was deposited in the scheme for any part of that period. The Applicant's tenancy deposit was therefore 'unprotected' for a lengthy period of just over five years. Had a dispute arisen at the end of this tenancy over the return of the deposit, there would have been considerable prejudice to the Applicant as she would have been unable to take advantage of the free resolution service provided by the tenancy deposit scheme, given that they had no record of holding any deposit in her name. The Legal Member also accepted the Applicant's position that the matter caused her some concern and anxiety at the end of this tenancy, albeit for a relatively short period and that what had otherwise been a very amicable tenancy had ended on a 'sour note' as a result of the Respondent's error in respect of the tenancy deposit and delay in fully explaining the position to the Applicant. The Respondent had no doubt hoped that by returning the deposit very quickly and in full to the Applicant, this would resolve the matter. However, the factors outlined above in this paragraph were such that the Legal Member did not consider that only a nominal or minimal amount of compensation was merited here.

5. Nor, however, did the Legal Member consider that the maximum compensation sought by the Applicant was merited. The Applicant's tenancy deposit had been returned to her in full around two weeks after the tenancy ended and around one week from the date the Applicant discovered that there was an issue with her deposit and the scheme where she had thought her deposit was held. Although she had been caused anxiety for a short period of time, she did not sustain any financial loss. There was no material to suggest that the Respondent had deliberately not placed the Applicant's deposit in the scheme or had deliberately misled her. It appeared that the correct deposit amount in respect of four tenants had been deposited in the scheme, albeit the details of the four tenants had not always been correctly updated. The Legal Member was satisfied that there had been a genuine error or oversight on the part of the Respondent. It was clear that there had been changes in the joint tenants on the tenancy several times so the situation was not as straightforward as might otherwise have been the case. It was also clear from the correspondence from 2020 lodged by the Respondent in support of his position that he had had some difficulty previously with Safe Deposits Scotland in respect of them updating their records with the names of new joint tenants. Indeed, he had previously required to enlist the help of a former joint tenant in having her name removed from the tenancy deposit scheme records and a new joint-tenant added. However, as had been noted at the CMD, the terms of the correspondence in 2020 appeared to have been another missed opportunity for the Respondent to notice his oversight and to rectify the position with Safe Deposits Scotland in respect of the Applicant's name not appearing in the records. The Respondent is an experienced landlord, having let out property since around 2003 and ought to have been fully aware of his obligations in respect of tenancy deposits. Although there were multiple tenants in this Property, he did not have a large

portfolio of properties that he was managing himself. This was the only Property he was letting out at the relevant time. The Legal Member was satisfied that there had thus been a degree of carelessness on the part of the Respondent with regard to the Applicant's tenancy deposit throughout the tenancy. He had failed to provide the Applicant with the requisite information regarding the lodging of the tenancy deposit, etc at the outset of the tenancy and appeared not to have noticed that the Applicant's name was not included in the scheme records during the five year period of the tenancy, despite having had contact with Safe Deposits Scotland on at least one occasion regarding similar issues during the tenancy period.

6. Weighing all of these factors, the Legal Member determined that a mid-range sanction was appropriate of £712.50, which is one and a half times the amount of the tenancy deposit. Accordingly, a payment order against the Respondent in the sum of £712.50 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 **27 July 2025**
Date