Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/3717

Re: Property at 121 Crewe Crescent, Edinburgh, EH5 2JN ("the Property")

Parties:

Miss Kelly Mccafferty, 121 Crewe Crescent, Edinburgh, EH5 2JN ("the Applicant")

Mr Gerald Young, 30 Crosshill Terrace, Wormit, Newportontay, DD6 8PS ("the Respondent")

Tribunal Members: Ruth O'Hare, Legal Member

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent has failed to comply with the duties under regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 in respect of the Applicant's tenancy deposit.

The Tribunal therefore determined to make an order for payment in the sum of **Three hundred pounds (£300) Sterling** against the Respondent under Regulation 10(a) of the 2011 Regulations.

Background

1 The Applicant applied to the Tribunal seeking an order for payment as a result of the Respondent's failure to lodge their deposit in an approved tenancy deposit scheme under Rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules") and Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations").

2 The application was referred to a Case Management Discussion ("CMD") to take place by teleconference on 13 March 2025. The Tribunal gave notice of the CMD

to the parties in accordance with Rule 17(2) of the Rules and invited them to make written representations in advance of the CMD.

3 On 24 February 2025 the Respondent submitted written representations which included a screenshot of his SafeDeposits Scotland ("SDS") account, emails from SDS confirming receipt of the deposit on 2 August 2024, deposit protection certificate dated 2 August 2024, and prescribed information regarding the deposit.

The CMDs

4 The CMD took place on 13 March 2025 by teleconference. The Applicant and Respondent both joined the call. The Tribunal explained the purpose of the CMD and the legal test to be applied under the 2011 Regulations. The Tribunal proceeded to discuss the terms of the application with the parties.

5 The Applicant confirmed that she had moved into the property in 2005 and had been there for nearly 20 years. The Respondent had given her a notice to quit in June 2024. She was advised at that stage to check the position regarding her deposit. She contacted the Respondent on 2 August 2024. She had received the information regarding her deposit from him that same day. She then made the application to the Tribunal on the advice of the deposit scheme and the council's homelessness section. Shelter had also advised her that she could claim up to three times the amount of the deposit.

6 The Respondent summarised his written representations. He confirmed that he and the Applicant had maintained a good relationship. Her deposit had been safeguarded in a bank account. The Respondent became aware of the 2011 Regulations in 2011/2012. He had registered the tenancy with the deposit scheme on 29 November 2012. However, he had not paid the deposit over to the scheme. He did not know why this was. It was simply an oversight. The Applicant had contacted him on 2 August 2024 whilst he was on holiday and he had paid the deposit over to the scheme that same day. This was his only rental property. He confirmed that the property was no longer financially viable and he had explained this to the Applicant. That was the reason for sending her the notice to quit.

7 The Respondent did not dispute anything that the Applicant had said. The Tribunal therefore concluded that the Respondent was in breach of regulation 3 of the 2011 Regulations. The Tribunal would therefore have to consider the appropriate level of sanction to award in terms of a payment order, by weighing up the aggravating and mitigating factors in this case. The Tribunal asked parties if they wished the opportunity to discuss the application between them to see if they could reach an agreement, as opposed to the Tribunal making a final decision. Both parties confirmed they were willing to do so.

8 The Tribunal therefore determined to adjourn the CMD to a further CMD for settlement discussions between the parties. Parties were advised that if

agreement could not be reached the Tribunal would proceed to make a final decision on the application.

9 Following the CMD the Tribunal received correspondence from both parties stating that they had failed to reach agreement.

10 The second CMD took place on 27 August 2025 by teleconference. The Applicant joined the call. The Respondent did not attend. The Tribunal therefore delayed the start time of the CMD for a short period before determining to proceed in the Respondent's absence, noting that he had been given notice of the CMD under Rule 17(2) of the Rules and had acknowledged that it was now for the Tribunal to reach a decision on the application.

11 The Tribunal had the following documents before it:-

(i) Form G application form;
(ii) Excerpt from short assured tenancy agreement between the parties;
(iii) Deposit protection certificate;
(iv) Section 33 notice;
(v) The Respondent's written representations dated 24 February 2025; and
(vi) Emails from the parties dated 1, 25 and 27 August 2025.

12 The Applicant confirmed that the parties had failed to reach agreement. She was content for the Tribunal to make a decision on the basis of the information before it and had nothing further to add. She continued to reside in the property.

13 Following the CMD, the Tribunal was contacted by the Respondent. He had erroneously diarised the start time of the CMD and hoped that explained his absence. He confirmed that he would await the outcome of the CMD.

Findings in fact

14 The Applicant entered into a tenancy agreement with the Respondent, which commenced on 1 December 2005.

15 The tenancy between the parties is a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.

16 The Applicant paid the Respondent a tenancy deposit of £640.

17 The Respondent registered the Applicant's tenancy with SDS on 29 November 2012. The Respondent did not pay the Applicant's deposit into the scheme due to an oversight on his part.

18 On 2 August 2024 the Applicant contacted the Respondent to inquire about her tenancy deposit, having sought advice regarding a notice to quit she had received from the Respondent. The Respondent paid the deposit into the scheme that same day and provided the Applicant with the prescribed information required under regulation 42 of the 2011 Regulations.

19 The Respondent has no other rental properties.

Reasons for decision

20 The Tribunal was satisfied that it had sufficient evidence before it to make relevant findings in fact in order to reach a decision on the application in the absence of a hearing under Rule 18 of the Rules. The parties were in agreement as to the substantive facts of this case and there were no issues to be resolved that would require a hearing to be fixed.

21 Regulation 3 of the 2011 Regulations states that "*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".*

22 The Tribunal was satisfied that the tenancy between the parties was a relevant tenancy for the purpose of Regulation 3. The Tribunal also accepted based on the evidence before it that the Applicant had paid a tenancy deposit of £640 to the Respondent, and the Respondent had failed to pay the deposit into a tenancy deposit scheme. The Tribunal therefore found the Respondent to be in breach of regulation 3.

23 Regulation 10 of the 2011 Regulations states "*if satisfied that the landlord die not comply with any duty in regulation 3 the First-tier Tribunal (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 First-tier Tribunal 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".*

24 Accordingly, having been satisfied that the Respondent had failed to comply with the duties in regulation 3, the Tribunal went on to consider what sanction to impose having regard to the particular facts and circumstances of the case. The application of the sanction must seek to act as a penalty to landlords and ensure compliance with their statutory duties in relation to tenancy deposits.

25 The Tribunal had regard to the decision of Sheriff Cruickshank in *Ahmed v Russell (UTS/AP/22/0021)* which provides helpful guidance on the assessment of an appropriate sanction. In doing so the Tribunal must identify the relevant factors, both aggravating and mitigating, and apply weight to same in reaching its decision. The Tribunal is then entitled to assess a fair and proportionate sanction to be anywhere between £1 and three times the sum of the deposit, which in this case is £3000. As per Sheriff Cruickshank at paragraph 40 of his decision in *Ahmed:*

"*The sanction which is imposed is to make the gravity of the breach which has occurred. The purpose of the sanction is not to compensate the tenant. The level*

of sanction should reflect the level of overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations."

26 In terms of aggravating factors, the Tribunal took into account the fact that the deposit has been unprotected from the start of the tenancy in 2005 up until 2 August 2024, a period of approximately 19 years. The Tribunal also considered that the Respondent, as a private landlord, should have been mindful of his responsibilities with regard to tenancy deposits and taken care to ensure the deposit was protected in line with his duties under the 2011 Regulations.

27 The Tribunal did however identify a number of mitigating factors in this case which are:-

(i) The Respondent had registered the tenancy with SDS in 2012, demonstrating an intention to comply with the duties under regulation 3. The Tribunal accepted that his subsequent failure to pay the deposit into the scheme was a genuine oversight, and there was no malicious intent on his part to avoid his responsibilities.

(ii) The Respondent, having been made aware of the error by the Applicant, immediately took action to pay the deposit into the scheme that same day, again displaying a willingness on his part to comply with his statutory duties.

(iii) The Applicant does not appear to have suffered any real harm as a result of the Respondent's breach of regulation 3. She confirmed that she had queried the deposit upon advice from others, rather than her own concerns. She would now be protected by the SDS adjudication process should therefore be any dispute regarding the deposit at the end of the tenancy.

28 Accordingly, the Tribunal concluded that the level of culpability was low in this case. The Tribunal therefore concluded that an award at the lower end of the scale was justified and determined that a fair and proportionate sanction would be £300.

29 The Tribunal therefore made an order for payment in the sum of £300.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

5 September 2025

Legal Member/Chair **Date**