



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 (Regulations)

Chamber Ref: FTS/HPC/PR/24/5528

Re: Property at 3/4 Crown Street, Edinburgh, EH6 8LU (“the Property”)

Parties:

Mr Thomas Soriano Paya, 130 Crewe Road W., Edinburgh, EH5 2PE (“the Applicant”)

Mr Abraham Adeyemi, 31/2 Royston Mains Crescent, Edinburgh, EH5 1LN (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of £1,200 to the Applicant.

Background

This is an application under Regulation 9 of the Regulations and Rule 103 of ***The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)*** in respect of an alleged failure to protect a tenancy deposit.

The Tribunal had regard to the following documents lodged in advance of the Hearing:

1. Applications received 3 December 2024;
2. Lodger Agreements commencing 1 November 2017, 12 January 2028 and 29 September 2019;
3. Applicants’ Written Representations and attachments dated 25 April 2025;
4. Direction dated 5 April 2025;
5. Hearing Note 20 June 2025;
6. Respondent’s Written Representations dated 28 July 2025;
7. Applicant’s Written Representations dated 7 August 2025;

8. Applicant's Written Representations dated 20 and 22 August 2025;
9. Respondent's Written Representations dated 26 August 2025;

Hearing

The case called for a Hearing by telephone on 7 August 2025. The Applicant participated and was represented by Mr Maloney of Living Rent. The Respondent did not participate and was represented by Mr Livingston of Landlord Agents Limited.

The Tribunal ran through the procedure to be followed with the Parties and the fact that this case was conjoined with PR/24/5575. Both cases were being heard together as the Applicant's had both lived in the Property and their periods of occupancy overlapped.

Mr Livingston confirmed that the Respondent was abroad and would not be participating in the Hearing. The Respondent's position was that he was a resident landlord and that the Applicant's in both cases were occupying the Property under Lodger Agreements which had been produced.

Mr Maloney confirmed that both Applicants would give evidence.

Evidence

The Tribunal heard evidence from both Applicants and also heard from Mr Livingston on behalf of the Respondent.

In so far as relevant to this case the evidence was as follows:

Respondent's Reason for not protecting the deposit in time

The Respondent's position was that he had been a resident landlord in the Property until June 2023. He lived in the Property as his principal home 3-5 days per week.

He had obtained a deposit of £400 from the Applicant on 30 September 2019. The deposit had not been protected with Safe Deposit Scotland until 30 June 2023.

The reason for the delay was that the Respondent believed the Applicant was a lodger and that the deposit did not require to be protected as a consequence. When the Applicant's Representative contacted him in 2023 then he put together a draft tenancy agreement. He thought he had to wait until there was a signed tenancy agreement in place before protecting the deposit. He had contacted the Scottish Association of Landlord's for advice and had been told that he should protect the deposit. He acted following receipt of that advice.

He had sent the draft tenancy agreement to the Applicant by email of 22 June 2023.

This was the only Property that the Respondent let out to lodgers. He now has 8 properties in Scotland but Mr Livingston did not have any information about them.

Applicant's Evidence

Both Ms Rios and Mr Paya gave evidence in support of their applications.

Ms Rios paid a deposit of £400 to the Respondent on 30 September 2019. She lived in the Property from 30 October 2019 until 13 September 2024. Her deposit was not protected until 30 June 2023.

Ms Rios denied that the Respondent had ever lived in the Property during the time she had lived there.

Mr Paya paid a deposit of £400 on 1 November 2017. He moved into the Property on that date and lived there until 31 August 2024. His deposit was not protected until 30 June 2023.

He confirmed that the Respondent had not lived in the Property during the time he had lived there. All the bills were in Mr Paya's name and were settled by him – this includes utilities, council tax and so on.

This was a 3 bedroom Property and there had been a third tenant during his period of occupancy.

Issue arising

During the course of the Hearing an issue arose in respect of the Respondent's alleged occupation of the Property. Mr Maloney referred to entries from Companies House and also from the Register which appeared to indicate that the Respondent had another address in Edinburgh and that was the address he was living at. This contradicted the Respondent's position that he was living in the Property at the time.

The Applicant was given time after the conclusion of the Hearing to submit these documents and the Respondent was given time to respond. The submissions were made by emails of 7, 20 and 22 August 2025 from the Applicant and 26 August 2025 from the Respondent.

Submissions

Both Parties made submissions.

Mr Livingston adhered to the position he had communicated at the outset and which is narrated above.

The additional representations in the email of 26 August 2025 are also considered as part of the submissions.

Mr Maloney set out that both Applicants were tenants and that the Respondent had cynically and fraudulently tried to avoid his responsibilities as a landlord by asserting that he was a resident landlord. It was clear from the evidence of the Applicants and from Companies House and the Property Register that the Respondent lived elsewhere at the time. He had only protected the deposit when put under pressure to do so from Living Rent.

The Respondent was a professional landlord with years of experience in dealing with tenancies.

In the circumstances a maximum sanction should be imposed. The Upper Tribunal case of ***Rollet v Mackie 2019 UT 45*** was relied upon.

The emails of 7, 20 and 22 August are also considered as part of the submissions.

Having considered the Parties' evidence in so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a tenancy agreement commencing 1 November 2017;
2. The Applicant paid a deposit of £400 on 1 November 2017;
3. The deposit was not protected until 30 June 2023;
4. The tenancy terminated on 31 August 2024;
5. The Respondent did not at any time during the period of the tenancy occupy the Property as a resident landlord or at all;
6. The Respondent is an experienced landlord;
7. The Respondent has 8 other properties.

Decision and Reasons

Resident Landlord

The Tribunal considered the Parties' evidence and concluded that the Respondent had at no time during the tenancy been a resident landlord. He had not, at any time, lived in the Property during the Applicant's tenancy.

It was significant that the Respondent had clearly decided not to attend and give evidence as he was given sufficient notice of the Hearing and arrangements could have been made for him to participate remotely. Mr Livingston was somewhat constrained in the information he could give to the Tribunal on the Respondent's behalf. The information he could provide was extremely limited.

The Tribunal had no hesitation in accepting the evidence of the Applicant and Ms Rios. Their evidence was consistent, credible and reliable. No challenge was made to their evidence. Their evidence was also corroborated by the documentary evidence produced which included correspondence from Living Rent to the Respondent which had ultimately prompted the Respondent to produce a tenancy agreement.

The Tribunal did not accept the explanation afforded by Mr Livingston that the Respondent thought he had to wait until the tenancy was signed before protecting the deposit. The issue of protection of the deposit had been raised with the Respondent by Living Rent on 31 March 2023. He had been referred to his obligations under the Regulations and the requirement to produce a tenancy agreement.

The Tribunal considered that it was clear the Respondent was attempting to avoid his responsibilities as a landlord by asserting that the Applicant was a lodger and he was a resident landlord when in fact he clearly was not.

Many further allegations were made against the Respondent regarding his actions over purported increases in rent, attempts to evict and so on which were not relevant to this application under Rule 103 and in respect of which the Tribunal make no findings.

Failure to protect the deposit

It was clear that the tenancy deposit had not been protected in breach of the regulations. Having made those findings it then fell to the Tribunal to determine what sanction should be made in respect of the breaches. In so doing the Tribunal considered and referred to the cases of ***Russell-Smith and others v Uchegbu [2016] SC EDIN 64*** and ***Rollet v Mackie 2019 UT 45***. The Tribunal considered what was a fair, proportionate and just sanction in the circumstances of the case always having regard to the purpose of the Regulations and the gravity of the breach. Each case will depend upon its own facts and in the end of the day the exercise by the Tribunal of its discretion is a balancing exercise.

The Tribunal weighed all the factors and found the following factors to be of significance:

- (a) The Respondent had been a landlord for a number of years;
- (b) The Respondent had another 8 Properties in Scotland;
- (c) The Respondent had attempted to avoid his responsibilities as a landlord by purporting to create Lodger's Agreements rather than legitimate tenancies;
- (d) The Respondent was not, at any material time, a resident landlord and had not lived in the Property as claimed through his representative;
- (e) The Respondent had not protected the Applicant's deposit from the commencement of the tenancy until 30 June 2023.

The Tribunal consider and find that this was not a breach that could be said to have been at anything other than the higher end of the scale given the Respondent's experience, knowledge and his reasons for not protecting the deposit. Following the guidance in ***Rollett*** the Tribunal are of the view that the Respondent's breach was a deliberate attempt to avoid his statutory responsibilities and that the Respondent had instructed his representative to put a version of events to the Tribunal which was clearly lacking in credibility and was not true.

In the circumstances the Tribunal considered the breach to be at the highest end of the scale. The Tribunal considered the sum of £1200 to be a fair, proportionate and just sanction in the circumstances of the case.

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.

Alan Strain

8 September 2025

Legal Member/Chair

Date