Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 in an application made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/25/1234

Re: Property at 1/2 216 Berkeley Street, Glasgow, G3 7HQ ("the Property")

Parties:

Miss Lucia Falcioni, 1/1 18 Brisbane Street, Glasgow, G42 9HY and Miss Sara Zimmermann, 2/1 15 Water Tower Court, Glasgow, G20 9AP ("the Applicants")

Miss Kirsty McDermott, 18 Strowan Street, Sandyhills, Glasgow, G32 9DN ("the Respondent")

Tribunal Member:
George Clark (Legal Member)

Decision
The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicants of the sum of £750.

Background

1. By application, 7 April 2025, the Applicants sought an Order for Payment in respect of the failure of the Respondent to comply with Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Applicants' complaint was that the Respondent had failed to lodge the First-named Applicant's deposit of £420 in an approved tenancy deposit scheme. The Applicants were seeking an Order for Payment for full return of their deposit and compensation of up to three times the amount of the deposit.

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 1 October 2022 at a rent of £880 per month, with a deposit of £880, confirmation from SafeDeposits Scotland that a deposit of £440 paid by the Second-named Applicant was lodged with them on 3 October 2022, and a

screenshot of a message of 1 October 2022 from the Respondent to the Applicants confirming that the First-named Applicant's deposit would be retained and used as part of the deposit for the new tenancy.

3. On 6 October 2025, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 27 October 2025.

4. On 27 October 2025, the Respondent made written submissions to the Tribunal. She confirmed that the deposit paid by the First-named Respondent had not been lodged in an approved scheme, but stated that it had been repaid to the First-named Applicant on 8 October 2025, under deduction of sums claimed by the Respondent by way of cleaning costs and minor repairs to the Property following the end of the tenancy, and sums due by the First-named Applicant by way of reimbursement of a proportion of factoring charges, for which the Applicants had agreed to be responsible. The amount refunded was £42.70. The Respondent also stated that the First-named Applicant had been aware that the Respondent continued to hold her deposit when the "Lodger Agreement" ended and was replaced by the Private Residential Tenancy Agreement, that having been confirmed in her message of 1 October 2022 to the First-named Applicant.

5. The Respondent confirmed that the tenancy ended on 28 February 2025. Two days previously, she had conducted an inspection of the Property, which she had found in an unsatisfactory condition. She gave the Applicants a further opportunity to return it to such condition, but they failed to do so. The First-named Applicant had a damaged mirror in her bedroom, and the mattress protector was missing. Accordingly, the Respondent took steps through SafeDeposits Scotland to withhold part of the deposits paid. She also withheld deposit for outstanding bills incurred during the tenancy period. The Applicants disputed the withholding of the deposits and the matter proceeded to the SafeDeposits Scotland dispute resolution process. The Applicants accepted that sums were due in respect of unpaid bills and allowed part of the deposit to be held in respect of this. Accordingly, the return of the First-named Applicant's deposit was net of the unpaid bills. The SafeDeposits process concluded and repayment of the deposit, minus the "undisputed amount", was made to the Second-named Applicant. Payment of the "undisputed amount" of the First-named Applicant's deposit was made on 8 October 2025, the delay being due to the personal circumstances of the Respondent, namely pregnancy and childbirth on 4 September 2025.

6. The Respondent had withheld the deposit paid by the First-named Applicant pending the outcome of the dispute resolution process. She regarded the Applicants' actions and claim as wholly disproportionate and argued that, the deposit paid by the First-named Applicant having been returned net of sums for unpaid bills and replacing missing and damaged items, the application should be dismissed.

Case Management Discussion

7. A Case Management Discussion was held by means of a telephone conference call on the morning of 13 November 2025. All Parties were present.

8. The Respondent told the Tribunal that the SafeDeposits Scotland adjudication is respect of the Second-named Applicant's deposit had resulted in deductions of £211.41. This had been agreed by the Applicants and comprised £56.50 in cleaning costs and £154.91 in factors' charges. There were also factoring charges that came through after the tenancy ended and the view of the Respondent was that the Second-named Applicant now owes her £192.40, being one-half of the factoring charges of £694.61 minus the £154.91 taken from the deposit.

9. In relation to the First-named Applicant, the Respondent had deducted £347.31, being one-half of the factors' charges, £14.50 for the bedroom mirror, having allowed 50% for fair wear and tear, and £14.99 for replacing the mattress protector. This left £42.70 from the deposit held by the Respondent, which had been refunded to the First-named Applicant.

10. The Applicants told the Tribunal that they had expressed their concern to the Respondent about the level of factoring charges and did not think that the charges for cleaning were justified. The First-named Applicant said that she did not accept the cost of replacing the mattress protector, as she had subsequently found it and returned it to the Respondent, who said that she had already replaced it. The Respondent told the Tribunal that she had raised with the property factors the substantial increase in their charges in an effort to assist the Applicants, who would be bearing the additional cost.

11. All Parties expressed regret that the matter had come to the Tribunal, as they had enjoyed a good relationship until the tenancy ended. The First-named Applicant reminded the Tribunal that it was not until then that she discovered her deposit was not protected with an approved scheme. The Respondent's view was that everything could have been sorted out amicably if the Applicants had communicated directly with her instead of applying to the Tribunal. They all wanted to see an end to the process.

Findings of Fact

(i) The Applicants entered into a tenancy agreement with the Respondent commencing on 1 October 2022.

(ii) The Applicants agreed to pay, in addition to their rent, the proportion of the factoring charges which was applicable to stair cleaning and lighting.

(iii) The Respondent lodged the Second-named Applicant's share of the deposit in an approved tenancy deposit scheme, SafeDeposits Scotland, and did so timeously.

(iv) The Respondent already held a deposit from the First-named Applicant in respect of an earlier arrangement which ended when the tenancy agreement was put in place and in a message to the First-named Applicant on 1 October 2022, the Respondent confirmed "I already hold your deposit of £420 so will hold that as deposit for this."

(v) The Respondent did not lodge the First-named Applicant's share of the deposit in an approved tenancy deposit scheme.

(vi) In a message sent to the First-named Respondent on 12 February 2025, the Respondent stated that the "deposits" (plural) were currently held by SafeDeposits Scotland.

(vii) The tenancy ended on 28 February 2025.

(viii) After adjudication by SafeDeposits Scotland, the sum of £228.60 was, by agreement, refunded to the Second-named Applicant, with the balance of £211.41 being paid to the Respondent on 28 August 2025.

(ix) The Respondent deducted £330.70 from the deposit moneys she had received from the First-named Applicant and refunded to her the balance of £42.70.

(x) The Respondent did not refund the balance until 8 October 2025.

Reasons for Decision

12. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to determine the application without a Hearing.

13. Under Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The 2011 Regulations"), a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme. Under Regulation 10, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit. Regulation 42 of the 2011 Regulations requires a landlord to provide certain information to tenants, including the name and contact details of the scheme administrator of the tenancy deposit scheme to which the deposit has been paid.

14. The Tribunal could not make a finding in respect of the proportion of the deposit which had been secured with SafeDeposits Scotland, as it had been the subject of adjudication by the scheme administrator. The Tribunal's Decision was, therefore limited to the portion of the deposit that was not secured and to the actings of the Respondent when the tenancy came to an end. The Tribunal's view was that, whilst one of the Applicants had paid £440 to the Respondent whilst the other had had her previous deposit "rolled over" into the new tenancy, the total deposit was deemed

to have been paid by both Applicants and the failure to lodge part of it was a failure in the Respondent's duty to both of them.

15. The Tribunal noted that the Respondent had not refunded the deposit when the tenancy came to end. She had arbitrarily made deductions from it, without the Applicants having any opportunity to dispute them. The whole purpose of the 2011 Regulations is to provide both landlords and tenants access to a system of independent adjudication in situations where Parties cannot agree what should happen to a tenancy deposit. By failing to lodge the deposit "rolled over" from the previous agreement between the Respondent and the First-named Applicant, the Respondent denied the Applicants the right to challenge any deductions the Respondent chose to make. The Tribunal also noted that the Respondent stated in a message to the Applicants of 12 February 2025 that deposits (plural) were currently held by SafeDeposits Scotland and that she did not seek to return even the balance she regarded as due until after she received the case papers from the Tribunal.

16. The Tribunal accepted that the Respondent's failure may not have been deliberate, but it was a serious failure and had significant consequences for the Applicants, as they had no say in how the balance of deposit was dealt with when they vacated the Property. It was clear to the Tribunal that the Applicants would have challenged at least some of the deductions that the Respondent chose to make. The Applicants had not been aware before the tenancy ended that almost half of their deposit was not lodged in an approved tenancy deposit scheme. Indeed, little more than two weeks before that date, the Respondent implied in a message that the whole deposit was secured.

17. Having considered all the evidence before it, the Tribunal decided that it would order the Respondent to pay the sum of £750. The Tribunal regarded this as fair, reasonable and proportionate, taking into account the seriousness of the Respondent's failure and the impact on the Applicants of her actions in seeking to retain almost the entire amount that was unsecured, with the Applicants having no ability to challenge her decisions.

18. This application relates purely to the failure to lodge a deposit and the Respondent cannot deduct from the figure awarded by the Tribunal any sums she regards as being due by the Applicants.

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.

G Clark

______________________________ **19 November 2025**

Legal Member/Chair **Date**