



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations. ("The Regulations.")

Chamber Ref: FTS/HPC/PR/24/3111

Re: Property at Flat 9/5, 289 Bath Street, Glasgow, G2 4LP ("the Property")

Parties:

Principal Dwellings Limited, 7 Draper Crescent, Wokingham, RG40 1GW ("the Applicant")

Mr Modar El Ousta, 107 Cortmalaw Crescent, Glasgow, G33 1TD ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") refused the Application.

Background

[2] The Applicant seeks an order under the Regulations on the basis that the Respondent failed to register a tenancy deposit into an approved scheme as required by the Regulations. This raised a question as to whether the Respondent was obliged under the Regulations to register the deposit paid into an approved scheme as the Applicant is a limited company.

[3] At an initial Case Management Discussion, the Tribunal had assigned a Hearing by video call for submissions to be heard on this matter. The Tribunal had also made case management orders in the form of a Direction regulating the production of any legal authorities or further submissions.

[4] The Application then called for a Hearing by video call at 10 am on 29 October 2025. The Applicant was represented by its own Mr Rishi Kalanke. The Respondent was personally present. Neither party had any preliminary matters to raise. The Tribunal explained that it would begin by hearing submissions on whether there was an obligation under the Regulations to register the deposit with an approved scheme. Each party was given an opportunity to reply to the submissions made by the other.

Applicant's submissions

[5] Mr Kalanke pointed to the fact that the tenancy agreement itself stated that the deposit ought to be registered in an approved scheme. He also pointed out that the agreement was very much based on a private residential tenancy agreement under the Private Housing (Tenancies) (Scotland) Act 2016 ("The Act"). He pointed out that if the deposit didn't have to be registered, then it would undermine the whole system of deposit protection.

[6] Mr Kalanke could refer to no legislation which stated that the Regulations applied in situations where the tenant was a body corporate. Mr Kalanke was also somewhat confused regarding what outcome he was hoping to achieve from this Application. He said in his representations that he simply wanted his deposit returned to him and then for the Tribunal to consider an award of compensation under the Regulations. However, it was explained to him that this was an Application under Rule 103 for an award under the Regulations and that this was not an Application under Rule 111 for the return of the deposit itself. Mr Kalanke had been told this in writing before by the Tribunal and when he was reminded of this, he accepted that the Application before the Tribunal was to do with any compensation to be paid under the Regulations as distinct from an Application for the return of the deposit itself.

Respondent's submissions

[7] Mr El Ousta explained that by virtue of Section 1 of the Act, the parties were unable to have created a Private Residential Tenancy Agreement. Section 1 is in the following terms:

1.1.1 Meaning of private residential tenancy

(1) A tenancy is a private residential tenancy where —

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

[8] He explained that as the Applicant was not “*an individual*” and was not occupying the Property as “*their only or principal home*”, the arrangement was clearly not capable of being construed as a Private Residential Tenancy. He also pointed out that for the purposes of the Regulations, the only types of tenancy that gave rise to the duty in Regulation 3 were Private Residential Tenancies, Assured Tenancies and Short Assured Tenancies. Mr El Ousta explained that Safe Deposit Scotland (one of the relevant deposit schemes in Scotland) had themselves told him that they could not accept registration of a deposit from a tenant who was a body corporate.

Analysis

[9] The Tribunal notes that the arrangement was clearly not a PRT. It clearly did not meet the criteria set out in Section 1 (1) of the Act. Section 2 of the Act is also relevant. It makes reference again to any let property being let to “*individuals*”. It is in the following terms:

1.1.1 2 Interpretation of section 1

(1) This section makes provision about the interpretation of section 1.

(2) A tenancy is to be regarded as one under which a property is let to an individual notwithstanding that it is let jointly to an individual, or individuals, and another person.

(3) A tenancy is to be regarded as one under which a property is let as a separate dwelling, despite the let property including other land, where the main purpose for letting the property is to provide the tenant with a home.

(4) A tenancy is to be regarded as one under which a property is let as a separate dwelling if, despite the let property lacking certain features or facilities—

(a) the terms of the tenancy entitle the tenant to use property in common with another person (“shared accommodation”), and

(b) the let property would be regarded as a separate dwelling were it to include some or all of the shared accommodation.

(5) In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in section 1(1)(b) and in subsection (3) are to any one of those persons.

[10] The arrangement also clearly could not be an Assured Tenancy or a Short-Assured Tenancy. Schedule 5 of the Act stated that no such tenancies could be created after the enactment of the 2016 Act. This arrangement between the parties came into effect on 25 March 2021.

[11] The Tribunal therefore determines that civil disputes regarding the terms of the arrangement between the parties are out with the jurisdiction of the Tribunal which is in turn derived from section 71 of the 2016 Act.

[12] However the Tribunal notes that it is also necessary to consider whether the arrangement between the parties may still yet give rise to obligations under the Regulations.

Regulation 3 (3) defines a 'relevant tenancy'

"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.

In this regulation, the expressions "relevant person" and "unconnected person" have the meanings conferred by section 83(8) of the 2004 Act.

[13] Section 83 (8) of the Antisocial Behaviour etc. (Scotland) Act 2004 defines a relevant person as a:

In this Part—

"relevant person" means a person who is not—

a local authority;

a registered social landlord; or

Scottish Homes; and

"unconnected person", in relation to a relevant person, means a person who is not a member of the family of the relevant person.

[14] The tenant in this case is not *"a person"*. The tenant is a limited company. The Applicant cannot therefore be an *"unconnected person."* This means that Regulation 3 (3) cannot be engaged as the test in Regulation 3 (3) (b) is not met. This means that the

arrangement between the parties cannot be considered a “*relevant tenancy*” that creates obligations under the Regulations.

[15] The Application also falls to be refused as it is brought by Application in Form G under Rule 103. This rule is for Applications brought under the 2016 Act, the Housing (Scotland) Act 1988 or the Rent (Scotland) Act 1984. For the reasons given above, the contractual arrangement between the parties has no relevance to these Acts.

Decision

[16] Having made the above findings, the Respondent is therefore not bound by the Regulations and this Tribunal cannot competently make any order under those Regulations. This Application must be refused.

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.

Andrew McLaughlin

Legal Member/Chair

29 October 2025
Date