Housing and Property Chamber
First-tier Tribunal for Scotland

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 14(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended ("the Regulations")

Chamber Ref: FTS/HPC/PR/25/0321

Re: Property at 8/2 Eyre Crescent, Edinburgh, EH3 5ET ("the Property")

Parties:

Mr Christopher Lynch, formerly of 8/2 Eyre Crescent, Edinburgh, EH3 5ET and now of no fixed abode ("the Applicant")

Ms Carolyn Clark, 65 Dukes Avenue, New Malden, Kent, KT3 4HW ("the Respondent")

Tribunal Members:

Nicola Weir (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment by the Respondent in the sum of £870 should be made in favour of the Applicant.

Background

1. By application received on 27 January 2025, the Applicant sought an order against the Respondent in respect of the Respondent's alleged breach of her landlord duties in relation to a tenancy deposit. Supporting documentation was submitted with the application, including proof of payment of the deposit of £435 to the landlord on 31 December 2018; proof from the three approved tenancy deposit schemes in Scotland that the tenancy was not lodged with them and various copy messages/emails between the parties. The applicant claimed that his tenancy deposit had not been placed in a scheme for the whole duration of the tenancy, which is still ongoing, and sought the maximum sanction available (3 times the amount of the deposit). Two further applications were subsequently lodged by the Applicant on 26 February 2025 against the Respondent in respect

of Rule 105 and 107 applications (alleged breaches in respect of “tenancy terms” and seeking a financial sanction). These applications were conjoined and proceeded together through the Tribunal process.

2. On 29 January 2025, 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. Papers were served on the Respondent by Process Server on 2 April 2025 at her residential address in England.

3. On 15 April 2025, the Applicant lodged the completed attendance form with the Tribunal, confirming that he would attend the CMD.

4. On 19 April 2025, the Respondent lodged written representations in respect of the applications. In relation to this application, she claimed to have initially deposited the Applicant’s tenancy deposit in a scheme in England and having subsequently transferred it into one of the Scottish schemes (Safe Deposits Scotland) (“SDS”) in January 2025, coinciding with her issuing a new PRT tenancy agreement. She provided a reference number for SDS but no supporting documentation.

5. On 2 June 2025, the day before the CMD and after close of business, the Respondent lodged a large volume of documentation which was circulated to the Tribunal Members and the Applicant on the morning of the Tribunal. The documentation did not appear to relate to this particular application, but to the other two applications.

Case Management Discussion

6. The CMD took place by telephone conference call on 3 June 2025 at 10am. It was attended by both the Applicant and Respondent. The Applicant had a Ms Claire McIntyre attending in a supportive capacity and the Respondent had a Dr Cliff Morgan attending in a supportive capacity.

7. Following introductions and introductory comments by the Legal Member, there were discussions regarding the late lodging of documentation the previous evening by the Respondent. She did not provide any explanation as such for the late lodging but explained that this followed on from the representations she had lodged in April 2025. The Applicant confirmed that he had received copies just a few minutes before but was happy to proceed with the CMD, without a brief adjournment which had been offered. Both the Applicant and Respondent addressed the Tribunal at length in respect of their respective positions and answered questions from the Tribunal Members. It was apparent that they were at odds over numerous tenancy-related matters and it appeared that both had raised, or were intending to raise, other applications, both at the Tribunal and the Sheriff Court.

8. As to this application, the Respondent reiterated what was said in her written representations from April 2025 as regards the deposit. She maintained that

the deposit was previously lodged in an English tenancy deposit scheme but that she has "lost" any documentation verifying this and could not recall the specific details. The Applicant stated that he thinks this is untrue and that she would not have been able to lodge a deposit concerning a Scottish property in an English scheme. This was also the Tribunal's understanding of the position but the Respondent made no comment on this. The Respondent confirmed that she had transferred the deposit to SDS in Scotland in January 2025 and reiterated the relevant reference number. The Applicant stated that he had tried twice since to locate the deposit with SDS but this has been unsuccessful. The Respondent confirmed that it has been lodged under the Applicant's name and the correct property address but then stated that the amount deposited was £430, not £435. No explanation was given for this. The Legal Member confirmed to the Applicant that he may wish to check with SDS again, regarding an amount of £430 but that, in any event, the Respondent would be required to produce the deposit certificate from SDS to the Tribunal and the Applicant, as this should confirm all the relevant details as to the date of lodging, the amount, the tenant's details under which it is held, the property address and whether the deposit was transferred from another scheme or came from the landlord direct. The Legal Member confirmed that the Tribunal would issue a formal Direction to the Respondent in this regard following the CMD. Appropriate further procedure in this application would be determined in due course, on receipt of the required documentation but, for the meantime, the Tribunal would adjourn the application to an Evidential Hearing, together with the other two applications.

9. The outcome of the CMD was that the application was adjourned to an Evidential Hearing, to take place in-person at a suitable venue. A CMD Note dated 3 June 2025 detailing the discussions at the CMD was issued to parties, together with a formal Direction, requiring the lodging of certain documentation by the Respondent, within 28 days.

Direction and Further Procedure

10. The Direction issued was in the following terms:-

"The Respondent is required to lodge:

1. *Documentary evidence showing that she lodged the Applicant's tenancy deposit of £435 in a tenancy deposit scheme in England and all relevant details concerning same; to include details of the scheme involved, the relevant reference/deposit number, the sum lodged, the date it was lodged, the date it was withdrawn/transferred on the instructions of the Respondent, the address to which the deposit relates and the name of the tenant under whose name the deposit was lodged.*

2. *The Tenancy Deposit Certificate or other documentation issued by Safe Deposits Scotland confirming that the Applicant's tenancy deposit is lodged with them and all relevant details concerning same; to include the relevant reference/deposit number, the sum lodged, the date it was lodged, whether it was lodged by the Respondent or transferred from another tenancy deposit scheme, the address to which the deposit relates and the name of the tenant under whose name the*

deposit was lodged.

3. *Any further written representations setting out the Respondent's position in respect of this application, including confirmation as to whether they accept or deny the alleged breach/breaches of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and if she accepts the breach, any explanation or mitigating circumstances that she wishes to provide to the Tribunal, or comments on the amount of the penalty sought by the Applicant.*

   The documentation specified above should be lodged with the Chamber no later than 28 days from the date of this Direction."

11. On 7 July 2025, in response to the Direction, the Respondent lodged written submissions in respect of this application, together with some supporting documentation. She stated that she was unable to document the deposit having been lodged in an English scheme; that she was lodging documentary evidence of the deposit being lodged with Safe Deposits Scotland; and that she had assumed that the tenancy was not a PRT and that she had been acting as being in a "live-in Landlord situation" until she was made aware that she had "inadvertently created a PRT". The Respondent lodged an extract to do with HMOs which she stated had been taken from the Edinburgh City Council website which she said stated than an HMO licence is required where there are more than 5 unrelated people living in a property. Most of the text is in the extract provided (which appeared to be a photograph of a computer screen) was blurred and difficult to read. The Respondent had typed "Ed city council on HMO 22/4/25 across the document, presumably indicating that she had taken it from their website on that date. The Respondent also lodged two Deposit Protection Certificates from Safe Deposits Scotland (SDS) in respect of the Property, naming the Applicant as tenant and the Respondent as landlord, the date of deposit having been 24 January 2025 and the tenancy beginning date as 1 February 2025. The only difference in the two certificates was that one stated the deposit amount of £430 and the other £435 (the correct deposit amount).

12. The Evidential Hearing was subsequently scheduled to take place at George House in Edinburgh on 6 November 2025 at 10am.

13. Other than the Respondent acknowledging the hearing notification on 13 October 2025, no further written representations were lodged prior to the Evidential Hearing.

Evidential Hearing

14. The Evidential Hearing took place at George House, Edinburgh on 6 November 2025. It was attended by both the Applicant and the Respondent and neither party had any witnesses.

15. Both parties initially gave evidence in respect of the Rule 103 application, although were some areas of overlap with the other applications. In the course of the hearing, it was noted from the Applicant that he had now vacated the

Property, as at the end of June 2025, following formal notice being given by the Respondent. The tenancy which was the subject of this application was therefore at an end. The Applicant stated that he was currently of no fixed abode, although he provided a 'care of' correspondence address to the Tribunal. As to the current position with the tenancy deposit, parties indicated that, due to the disputed issues between them, this was currently going through the arbitration process provided by SDS.

Evidence of Respondent

16. The Respondent's evidence was that the sum of £435 had been deposited by her with SDS in January 2025. She had subsequently obtained an amended certificate from them as the original certificate issued showed the deposit amount as £430, as the Applicant had intimated at the CMD. The Respondent reiterated what she had stated at the CMD, that she thought she had lodged the deposit in an English scheme at the start of the tenancy. However, she had been unable to provide proof of this, as had been requested by the Tribunal. She said that she had tried to trace it but that her relevant bank account may have been closed. She said that she had, however, been transparent about the deposit at the start of the tenancy and had provided the Applicant with a receipt. She clarified that her position now, in respect of this application, is that she disputes that she was under an obligation to place the deposit in a scheme at the outset of the tenancy, as she regarded herself as being a 'live-in' landlord at that time. She now accepts that she was subsequently not a 'live-in' landlord and this is why she lodged the deposit in the SDS scheme in January 2025.

17. The Respondent was asked to go through the chronology of events by the Tribunal. She stated that she had lived in the Property from 1981 but that she had spent a lot of time abroad and lived abroad for a number of years, returning around 2015. She had previously had factors managing the Property on her behalf from around 1989 until 2005. She had subsequently started managing the Property herself, with the assistance of her brother. The Respondent had explained to the Applicant at the outset that she was to be a 'live-in' landlord and that she had produced, and they had signed, a written tenancy agreement. This had been left at the Property and she could not retrieve it once things were in dispute as the Applicant had prevented her access. There had been three tenants at the outset, including the Applicant. It is a five bedroomed property (one of which was a boxroom) and the Respondent had retained one bedroom and the boxroom for her own use. She said that most of the contents in the Property were hers and that there was a bed in the bedroom that she had retained. The Respondent accepted that she did not stay at the Property 90% of the time. She was still travelling abroad frequently but visited the Property for overnights and weekends here and there. Her mother is elderly and lived nearby and the Respondent's daughter sometimes stayed at the Property too. The Respondent stated that she could, however, have lost her employment at any time and required to return to live at the Property. The Respondent said that her mail was still being received at the Property and that she was registered to vote there until she moved in with her partner in Kent in January 2024, which is the address above, where she had resided meantime. She had last visited

the Property in January 2025, when she did the 'pre-tenancy inspection, in advance of issuing the Applicant with the terms of a proposed PRT tenancy. This offer of tenancy was the basis for the Respondent paying the Applicant's tenancy deposit of £435 into the SDS scheme in January 2025.

18. The Respondent stated that issues had arisen with the Applicant and the tenancy during 2024, mostly to do with the utility bills, which she had requested that he manage on her behalf as she was no longer around, in return for a deduction in his rent. One of the three tenants had subsequently moved out and the other remaining tenant moved out prior to the Applicant vacating at the end of June 2025. The Respondent had been contacted by Edinburgh City Council (Private Rented Sector) during 2024 regarding her HMO status and other matters raised by the Applicant and she had dealt with a Mr Gormley there. It was explained to her that she required an HMO licence as she had three unrelated tenants living in the Property. She had not been aware of this and referred to the guidance on the Edinburgh City Council website which she says still states that an HMO licence is only required where there are five or more unrelated tenants. The Respondent indicated that, it was on Edinburgh City Council's advice that she had instructed a letting agent to serve notice on the grounds of the non-compliance with HMO licensing requirements to try and get the three tenants to leave during 2024. The Council had also provided her with the template PRT which she issued to the Applicant in January 2025, having indicated to her that this was the appropriate tenancy style, given that she accepted that she was no longer a resident landlord. The Respondent indicated that she had also joined the Scottish Association of Landlords (SAL) around this time. She deposited the tenancy deposit in the scheme to coincide with the PRT which she had proposed to the Applicant, with a start date of 1 February 2025. The Respondent had also instructed solicitors in relation to the various tenancy related matters and she confirmed that they had advised her around April 2025 that she had 'inadvertently' created a PRT. Further notice was served, as a consequence of which the Applicant had moved out at the end of June 2025. The Respondent stated that she had since moved back into the Property.

Evidence of Applicant

19. The Applicant stated that he thought he was entering into an HMO tenancy with the Respondent. He was told by the Respondent that there were two other tenants already there and that she also kept a room there. He does not remember signing anything at the outset of the arrangement and denied that the Respondent had left the written tenancy agreement at the Property and that he had subsequently prevented her being able to retrieve it, as she had claimed. He said that the Respondent had subsequently produced 'lodger agreements' and asked him to sign these but he refused because they were 'self-drafted' by her, sent as images only, were not in a correct format and did not accurately reflect the tenancy terms. One of these agreements had been requested by him in order to support a benefits claim.

20. The Applicant stated that he had realised straight away, after moving in, that the Respondent was not a resident landlord at all. He thinks that she just

claimed this so that she would be exempt from having to comply with HMO safety standards and have a Landlord Registration. She had only obtained a Landlord Registration last year and had never had an HMO licence as the Property was non-compliant, he stated, in terms of the additional safety requirements. She did not 'live' at the Property at any time during his six year tenancy and he estimated she had only been at the Property around six times during the whole period, although her mother had stayed overnight on one occasion. He said that, after Covid, from 2023, the Respondent had visited the Property three times at most. He confirmed that most of the furniture and contents did belong to the Respondent but that this was always the case in a furnished flat. She did have a room retained for herself which was locked, as were the other bedroom and boxroom doors, during 2024. The Applicant stated that the Respondent had given him notice that she was going to do a property inspection on 13 January 2025, which was a Monday, but she had then turned up unannounced on the Friday before to stay the weekend. The Applicant did not consider she had any right to stay at the Property. The Police had become involved in giving advice. The Applicant had also had ongoing contact and advice from Mr Gormley at Edinburgh City Council from 2024 into 2025.

21. The Applicant referred to how the Respondent's story had changed throughout these proceedings. She had told him when he first asked about his deposit, that she was not aware of the tenancy deposit scheme. She had then said, at the CMD, that she had lodged his tenancy deposit in an English scheme, then that she was not able to trace this and now that she does not think she required to lodge the deposit in a scheme at all. She had not produced any tenancy agreements signed by him because he had refused to sign them. She had not issued him with a PRT at any time. He had received an email from her in January 2025, attaching the guidance notes for a PRT, but not the template PRT which she produced to the Tribunal, which the Applicant maintained had not been attached to her email. He considers that she has presented misleading evidence and doctored documents to the Tribunal and has been attempting to obfuscate the facts throughout.

Summing-up/Submissions

22. The Applicant stated that the Respondent was in breach of the tenancy deposit regulations as she had not paid his deposit of £435 into a scheme within 30 days of the tenancy start date which he stated was 1 January 2019. She had only paid the deposit into the scheme in January 2025, so the deposit was not lodged for a period of 6 years. He thinks this justifies the maximum penalty that the Tribunal can impose. The Applicant said that he hoped the Tribunal had noted what the Respondent had said at the CMD compared to what she is now saying. He considers that she is lying to the Tribunal. She has demonstrated obfuscation and deceit and presented a confused picture. Initially she said she had placed the deposit in an English scheme, even although she would not have been able to do so because the Property was in Scotland. She was not clear in her position and had no proof of any of it. He thinks that punitive measures are called for in this situation. He has suffered a lot of stress over this whole scenario and has been on anxiety medication. He has also suffered

financial loss and she is continuing to withhold the deposit from him, unjustifiably.

23. The Respondent stated that she denies being in breach of the tenancy deposit regulations. She considered that she had been a resident landlord and that it was not a PRT at the outset of the tenancy. She spoke to a police officer recently who said that as she had previously been contributing herself to the gas and electricity costs, she was a 'live-in' landlord. She said that, as soon as she had found out that she was no longer a 'live-in' landlord, she did what was necessary. She now has a Landlord Registration. She issued a PRT tenancy to the Applicant and paid the deposit into the scheme, both in January 2025. She confirmed that she had no other properties that she lets out and that she had been managing this Property herself, with advice from her brother, since around 2015. She was aware of her obligations. She did not think there was any need to lodge the Applicant's deposit in a scheme whilst she was a 'live-in' landlord. She accepts that she was resident in England, with her partner, since January 2024 but maintains her position that she could have lost her job at any moment and may have had to return 'home' to Edinburgh. She had not been aware that there were 'grey areas' in the law but, after speaking to people, reading all the documentation issued to her and taking legal advice in March/April 2025, she accepts that she may have inadvertently created a PRT situation. Her primary position was therefore that she denied being in breach of the regulations but, if the Tribunal were to find that she was, she asked for a minimum penalty to be imposed.

24. The Tribunal adjourned to consider the matter and, on re-convening, advised that the Tribunal had found in favour of the Applicant, that the Respondent had breached the Tenancy Deposit Regulations and that the appropriate penalty to be imposed was two times the amount of the deposit, namely the sum of £870. Parties were advised that the Tribunal's detailed Decision and reasoning would be issued in writing, parties were thanked for their attendance and the hearing was concluded.

Findings-in-fact

1. The Respondent was the landlord of the Property.

2. The Applicant was the tenant of the Property by virtue of a tenancy which commenced on or around 1 January 2019.

3. The terms and nature of the tenancy between the parties were in dispute.

4. The Applicant paid to the Respondent a tenancy deposit of £435 at the outset of the tenancy, on or around 31 December 2018.

5. The Respondent lodged the deposit in a tenancy deposit scheme with Safe Deposits Scotland on 24 January 2025, advising that the start date of the tenancy was 1 February 2025.

6. The Respondent was not a resident landlord.

7. The Respondent was under a duty to lodge the tenancy deposit in a tenancy deposit scheme within 30 working days of the beginning of the tenancy, which duty she did not comply with.

8. The tenancy ended on or around the end of June 2025, when the Applicant vacated the tenancy, following notice being served by the Respondent.

9. The tenancy deposit was still held in the tenancy deposit scheme at the date of the Evidential Hearing, pending the adjudication procedures taking place as to release of the deposit.

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."

2. The Tribunal had regard to the Regulations narrated above and the terms of Sections 83(6) and 83(8) of the 2004 Act in respect of the definitions of "relevant tenancy" and "relevant person" referred to in Regulation 3(3)(a) and (4) above. These sections of the Antisocial Behaviour, etc (Scotland) Act 2004 (which relates to Landlord Registration) are as follows:-

   "83(6)For the purposes of subsection (1)(b), the use of a house as a dwelling shall be disregarded if—

   (e)the house is the only or main residence of the relevant person;

   (8)In this Part—

   "relevant person" means a person who is not—

   (a) a local authority;

   (b)a registered social landlord; or

   (c)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."

3. The Tribunal carefully considered all the material before it, consisting of the application and supporting documentation lodged by the Applicant, the written representations and supporting documentation lodged by the Respondent, the discussions which had taken place at the CMD, the terms of the Direction issued to the Respondent thereafter, the further written representations and

supporting documentation lodged by the Respondent in response to the Direction and the oral evidence given by both parties at the Evidential Hearing.

4. The Tribunal first determined whether it considered the Respondent to be in breach of the 2011 Regulations. The Respondent denied that she was under the duties contained in the Regulations and therefore submitted that she had been under no obligation to lodge the Applicant's tenancy deposit in a scheme within the relevant 30 working day time-limit from commencement of the tenancy. The basis of the Respondent's position was that she had considered herself as a 'live-in' landlord at the time, although she conceded that, based on legal advice, that she had subsequently stopped considering herself to be a 'live-in' landlord. In order for the Tribunal to be satisfied in this regard, the Tribunal had to be satisfied from the evidence before it that *"the house is the only or main residence of the relevant person"* [or was at the relevant time], in terms of Section 83(6)(e) of the 2004 Act. The Tribunal was not so satisfied. The Tribunal did not consider that the Property was either the only or main residence of the Respondent at any point during the tenancy which had lasted over six years. The Tribunal took into account the agreed facts, that there was a bedroom and boxroom within the Property that the Respondent 'retained for her own use' and which were not occupied by any tenants and that many of the furniture and contents of the flat belonged to the Respondent. However, the Tribunal considered that it was a question of fact and degree as to whether the Respondent could be considered to have been a resident landlord. In this regard, the Tribunal preferred the evidence of the Applicant, whom it considered had been a credible witness and consistent throughout the Tribunal process in respect of his position. Consideration was also given to the terms of the various communications between the parties prior to the matter being referred to the Tribunal which had been lodged by both parties. The Tribunal considered the evidence to support many of the contentions being made by the Applicant. On the contrary, the Tribunal did not consider the Respondent to be credible nor to have given reliable or consistent evidence to the Tribunal. The Tribunal agreed with the Applicant in his assertion that the Respondent had 'changed her story' and had presented a confused picture of events. The Tribunal Members had questioned the Respondent in detail regarding her position at both the CMD and the Evidential Hearing and found her to be vague, contradictory and rather evasive in answering the questions put to her. The Tribunal considered the Respondent's position to be inconsistent and contradictory in that she maintained that she thought she had lodged the Applicant's deposit in an English scheme at the outset of the tenancy but had been unable to establish this as she had not been able to trace the paperwork. Had the Respondent truly considered that she had done so, then why had she done so, if her position was that she had been under no obligation to do so, being a resident landlord in Scotland? The Tribunal considered it likely that she would have considered an English scheme only if she herself was "resident" in England, particularly given that the Property concerned was situated in Scotland. The Tribunal was satisfied from the evidence as a whole that, on the balance of probabilities, the Respondent had only attended at the Property a handful of times over the duration of the tenancy and that her visits had mostly been for purposes of landlord inspection or attending to tenancy related matters and the disputes

which had arisen with the Applicant. Accordingly, the Tribunal determined that the Respondent had not established her defence to the application as the Tribunal was not satisfied that the Property was her sole or main residence during this tenancy.

5. Having determined 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 within 30 working days of the start of the tenancy, contrary to Regulation 3 of the 2011 Regulations, the Tribunal considered that, in terms of Regulation 10 above, that a sanction must be imposed on the Respondent in respect of this breach of the 2011 Regulations.

6. In determining the appropriate amount of the sanction to be imposed on the Respondent, for payment to the Applicant, the Tribunal considered all the background circumstances. The amount of the sanction should reflect the gravity of the breach. The Respondent had requested leniency. The Applicant sought the maximum penalty of three times the amount of the tenancy deposit. In terms of Regulation 10(a) above, the maximum possible sanction here was £1,305. There is no minimum sanction stipulated in the 2011 Regulations.

7. The Tribunal considered the length of the tenancy and the period of time during which the deposit was unprotected, not having been placed in a scheme. This was a lengthy period of over six years, which was considered an aggravating factor in terms of the penalty to be imposed. So to was the fact that the Respondent was a relatively experienced landlord, having let this Property out to tenants over a number of years. The Tribunal was of the view that she should therefore have been aware of her various obligations as a landlord, including in respect of tenancy deposits. As to mitigating factors, the Respondent had provided her explanation that she thought she had lodged the deposit in an English scheme at the outset of the tenancy but that, in any event, she did not consider that she was obligated to place the deposit in a scheme, until she had received advice to the contrary. As narrated above, the Tribunal was not persuaded by either of those explanations. However, the Tribunal did consider the fact that, whatever the reason, the Respondent had eventually lodged the deposit in a scheme in January 2025 to be a mitigating factor in respect of the penalty to be imposed. This no doubt provided some reassurance to the Applicant, given that the parties were, by then, embroiled in a number of tenancy-related disputes. The lodging of the deposit in the scheme, albeit very late, meant that both parties could take advantage of the free remediation process provided by the tenancy deposit scheme at the end of the tenancy. Indeed, at the time of the Evidential Hearing, the Tribunal noted that this process in respect of the tenancy deposit was ongoing. Although the Applicant claimed to have sustained financial loss, the Tribunal was of the view that any such loss may have related to other aspects of the various disputes between the parties, as opposed to being a direct consequence of the Respondent's delay in placing the deposit in a scheme. The deposit had not been returned to the Applicant but the dispute over this was presently being adjudicated on by the scheme, as is appropriate in these circumstances. The Tribunal was satisfied from the Applicant's evidence and demeanour at the Evidential Hearing that the Respondent's failures in respect of the tenancy deposit and the way she had dealt with the situation throughout had caused him upset,

anxiety and frustration. Accordingly, the Tribunal also took this into account as an aggravating factor in assessing the penalty. Weighing all of these factors, the Tribunal determined that the failure of the Respondent was at the more serious end of the scale, but not the maximum, and that the appropriate amount of the sanction to be paid by the Respondent to the Applicant was two times the amount of the tenancy deposit, amounting to £870.

8. The Tribunal's decision in this matter was unanimous.

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

_____ **6 November 2025**

Legal Member/Chair **Date**