Housing and Property Chamber
First-tier Tribunal for Scotland

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref:FTS/HPC/PR/24/1917

Re: Property at 2 1/2 Whitehill Gardens, Glasgow, G31 2PR ("the Property")

Parties:

Mr Michael Humphries, 2 1/2 Whitehill Gardens, Glasgow, G31 2PR ("the Applicant")

Mr Imran Jaffri, 21 Circus Street, Glasgow, G31 2JN ("the Respondent")

Tribunal Members:

Mark Thorley (Legal Member)
Ashan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for an order for payment by the Respondent to the Applicant in the sum of One Thousand Two Hundred and Sixty Pounds (£1,260) be granted.

Background

1. The applicant applied to the tribunal for an order under regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The application was dated 25 April 2024. No documents were attached to the application. On 30 April 2024 the applicant forwarded documentation consisting of bank withdrawals and also a copy of an agreement from one of the other persons within the property. The applicant set out that although he had signed an agreement he was never provided with a copy of it.

2. The application was received by the tribunal on 2 May 2024. It was accepted for determination on 24 May 2024. By this stage the applicant had returned to live in America.

3. The application was served on the Respondent by sheriff officers on 26 July 2024.

4. A case management discussion (CMD) was scheduled for 27 August 2024. Neither party attended (the applicant having requested a video conference). It appeared however that issues with the telephone system prevented both parties attending, and so a further CMD was arranged for 24 January 2025.

5. On that date both parties attended. The Respondent raised a preliminary issue that the property was not occupied as a tenancy and that accordingly the Regulations did not apply.

6. A hearing was fixed for 6 June 2025 to determine this issue. On that date the Respondent advised that he wished to be represented by a solicitor. His solicitor could not attend on the date of the hearing. The hearing was continued to allow this to happen. A Direction was issued to which the Applicant provided additional information in support of his claim. The Respondent did not comment. The Tribunal also noted there was no contact from any solicitor to indicate that one had been instructed by the Respondent.

The Hearing 9th October 2025

7. At 20.48 on the evening before the hearing, the Respondent emailed the Tribunal advising that he was unexpectedly required to attend the Sheriff Court at the same time as the hearing and would therefore be unable to attend. He did not explicitly request a further continuation.

8. The first issue for the tribunal to consider was whether to proceed in the absence of the Respondent and his solicitor. The Applicant was opposed to the hearing being postponed.

9. The tribunal determined to proceed with the hearing. The previous hearing had been continued at the Respondent's request to allow his solicitor to attend. The Tribunal had therefore expected the Respondent to be represented by a solicitor at this hearing. His email suggested that he had intended to represent himself, contrary to the basis on which the previous continuation had been granted.

10. The Applicant thereafter provided oral evidence.

11. The Applicant explained that he had seen the property advertised on the "NextDoor" website. The Respondent had two properties available. Mr Humphries paid £1272.50 to the Applicant, which consisted of four weeks' rent of £630, £12.50 for internet access, and £630 as a deposit.

12. It was a five bedroom property, and he was one of four residents. During the three months he was in the property, he advised that one bathroom did not work, renovations were carried out to some of the rooms, and the kitchen was strewn with dishes that did not belong to anyone in the flat. Neither the landlord, nor any caretaker or receptionist lived on the site. He only saw the Applicant occasionally and he tended to call round after 10pm. His mother stayed in the property for a week and the landlord charged her £100 for this. He spoke with representatives of the Glasgow City Council who said that the property should be registered as a House in Multiple Occupation (HMO) and it had several defects that required to be rectified. He had to return to the USA unexpectedly and gave 14 days' notice, leaving the property without paying the full rent. His deposit was not returned.

Findings in Fact

13. A tenancy agreement existed for the property at 2 1/2 Whitehill Gardens, Glasgow G31 2PR.

14. A tenancy deposit of £630 was paid.

15. The tenancy commenced on 6th February 2024 and concluded on 14th May 2024.

16. The tenancy deposit was not secured during the tenancy.

17. The tenancy deposit was not returned to the Applicant.

Reasons for Decision

18. The issue for the tribunal to determine was whether this was a tenancy or a licence. For a tenancy to exist there had to be four constituent parts.

- Agreement between the contracting parties.
- Possession of the property.
- A duration of time.
- Rent payable.

19. The Tribunal was satisfied that all of these conditions were met. There was an agreement, the Respondent was in possession, a time period was agreed, along with a rental payment of £630 per four weeks. Further, although bathroom and kitchen facilities were shared, the Applicant had exclusive occupation of his room. The Respondent did not occupy the property in any way. There was no cleaning undertaken of the Applicant's bedroom or the other shared facilities. Nor were any other services provided that may be associated with guest house accommodation.

20. In his written submission to the Tribunal of 14th August 2025, the Respondent wrote,

> "With regards to a complaint brought to you by one of our previous customers Michael Humphries, claiming that we had not registered with a Tenancy Deposit Scheme. Our business does not require us to register with such schemes as our business does not deal with Private Residential Tenancies. We do not offer any accommodation under the basis of our customers being Tenants, as this is a particular type of business that has to adhere to tenancy legislations and this does not pertain to our type of business. Our business is guest accommodation. This is clearly stated on our check-in forms that our guests read, understand and sign and agree to our terms and conditions of stay. This is a very simple and clear single-page document, stating the type of business that we operate and it gives no illusion that we are offering any kind of tenancy agreements. These check in forms are for our internal use only."

21. The Tribunal does not accept this argument. In the leading case on leases and licences, *Street v Mountford 1985, AC 809 (HL)* in the oft-quoted passage, Lord Templeman noted,

> *"If the agreement satisfied all the requirements of a tenancy, then the agreement produced a tenancy and the parties cannot alter the effect of the agreement by insisting that they only created a licence. The manufacture of a five-pronged implement for manual digging results in a fork even if the manufacturer, unfamiliar with the English language, insists that he intended to make and has made a spade."*

22. Having decided that a tenancy was created, the Tribunal then had to decide if a deposit was taken. The Tribunal considered the Applicant's evidence to be consistent and credible. At the outset of the tenancy, he had paid £1272.50, of which £630 was taken as a deposit. Throughout the lengthy history of this case, the Respondent has at no time offered an alternative explanation for taking this payment.

23. Having decided that the Respondent had failed to comply with the duty under Regulation 3(1) of the 2011 Regulations to pay the tenancy deposit into an approved tenancy deposit scheme within 30 working days of the start of the tenancy, the Tribunal was therefore obliged to make an order requiring the Respondent to make payment to the Applicant, in terms of regulation 10 of the 2011 Regulations.

24. The Tribunal is required to consider the sum which the Respondent should be ordered to pay to the Applicant, which could be any amount up to three times the amount of the tenancy deposit. The amount of any award is the subject of judicial discretion after careful consideration of the circumstances of the case, as per the

decision of the Inner House of the Court of Session in the case of *Tenzin v Russell 2015 Hous. LR. 11*.

25. In considering the appropriate level of payment order to be made in the circumstances, the Tribunal considered the need to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach (Sheriff Welsh *in Jenson v Fappiano* 2015 GWD 4-89).

26. The Tribunal noted the view expressed by Sheriff Ross in *Rollet v Mackie* ([2019] UT 45) that the level of penalty should reflect the level of culpability involved. And as Sheriff Ross noted, at para 13 of his decision: *"The admission of failure tends to lessen fault: a denial would increase culpability".*

27. The Respondent has failed to admit liability or, despite advising the Tribunal that a solicitor had been instructed, to have that solicitor contact the Tribunal and lodge authorities or arguments in support of his position.

28. Tribunal considered the various factors to be considered as set out in *Rollet v Mackie.* The Respondent had another property, with several tenants in both, so could be regarded as an experienced landlord. There is evidence that Glasgow City Council has been in contact with the Respondent regarding the status of these leases. The available evidence did not support a finding that there had been fraudulent intention by the Respondent. The Tribunal, however, feels that the failure to take appropriate legal advice on the status of these guest agreements amounts to a reckless, if not deliberate, failure to observe the responsibilities of a landlord.

29. The Tribunal notes that the Respondent was in the property for only a short period of time and did not pay a portion of his final rent. The requirement to pay a tenancy deposit into an approved scheme is intended to protect the deposit and offers protection for both parties in the event of any dispute at the end of the tenancy.

30. Taking all of the above considerations into account, the Tribunal considered that an award above the middle of the possible penalty scale would be appropriate. It therefore determined that an order for £1260, two times the amount of the tenancy deposit paid, would be fair, proportionate and just, having regard to the seriousness of the breach.

Decision

31. The Tribunal determines that the Respondent has failed to comply with the duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to pay a tenancy deposit to the scheme administrator of an approved scheme within the prescribed timescale. The Tribunal therefore makes an order requiring the Respondent to pay to the Applicant the sum of

£1260.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Mark Thorley **09.10.25**

Legal Member/Chair **Date**