



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The Regulations”)**

**Chamber Ref: FTS/HPC/PR/24/5418**

**Re: Property at 94 Chandlers Rise, Elgin, IV30 4JE (“the Property”)**

**Parties:**

**Miss Naomi Lee, 4 Whitley Crescent, Forres, IV36 2AN (“the Applicant”)**

**Dr Jacqueline McAlpine, Villa 3/20, Meydan South, Nad Al Shibai, Dubai UAE, United Arab Emirates (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision**

**[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) made an award in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ordering that the Respondent pay the Applicant the sum of £475.00, being an amount equal to half the value of the relevant tenancy deposit.**

**Background**

**[2] The Applicant seeks an award under the Regulations in respect of the failure of the Respondent to place a tenancy deposit in an approved scheme as required by Regulation 3. The Respondent has submitted representations acknowledging the breach and putting forward some background information which they wished the Tribunal to consider. The Application had called for a Case Management Discussion and then been continued to an evidential Hearing for evidence to be heard and a final decision made.**

## The Hearing

[3] The Application called for a Hearing by video conference at 10 am on 3 February 2026. The Applicant was personally present. The Respondent was also personally present. Neither party had any preliminary matters to raise and both were happy to commence the Hearing. The Tribunal began hearing evidence from the Applicant. The Tribunal then heard evidence from the Respondent. Each party had the right to cross-examine the other and following on from the conclusion of evidence, each party had the opportunity to make closing submissions addressing the Tribunal on how it ought to decide the Application.

[4] The Tribunal comments on the evidence heard as follows.

*Ms Naomi Lee*

[5] Ms Lee's tenancy at the Property commenced on 17 July 2023. The contractual monthly rent was £950.00 a month. She paid a deposit of £950.00 on 12 July 2023. On 2 October 2024, Ms Lee emailed the Respondent to provide notice of her intention to end her tenancy. On 7 October 2024, Ms Lee emailed the Respondent about the return of her deposit.

[6] Ms Lee's evidence was that it was on 6 October 2024 that she first realised that her deposit had not been placed in a relevant deposit protection scheme. There were some emails exchanged before ultimately the Respondent returned the Applicant's deposit to her in full by bank transfer on 20 October 2024. Ms Lee then moved out of the Property on 1 November 2024. Ms Lee then lodged this Application on 14 November 2024. She explained that she suffers from PTSD and has a son with complex health issues and the deposit not being protected caused her significant anxiety and an exacerbation of her symptoms. She submitted that the breach ought to be treated at the highest end of the scale and an award of three times the value of the deposit ought to be made.

[7] Having heard from the Applicant, the Tribunal then heard from the Respondent.

*Dr Jacqueline McAlpine*

[8] Dr McAlpine explained that she had thought she had lodged the deposit in an approved scheme but must not have completed the transaction. She knew about the Regulations and it was a simple clerical error. She explained that the deposit was paid into a joint account which was used by her and her husband for day-to-day banking. The Tribunal suggested that this made it somewhat harder to accept that she could have reasonably just "*forgetten*" given that the money would have remained in her account.

Dr McAlpine explained that she operated many bank accounts as she lived in Dubai. She explained that she was not well organised. Dr McAlpine accepted breaching the Regulations. The Property is the only property owned by her which is let out for rent. It used to be her own family home before she moved to Dubai. She hopes to return there at some point in the future. Dr McAlpine explained that she had returned the deposit in full promptly when this was brought to her attention. She explained that the deposit was actually paid back before the end of the tenancy. Dr McAlpine pointed out that the Applicant actually then received the deposit back far quicker than she would have had the deposit been placed into an approved scheme.

[9] Both parties were clearly wanting to discuss the condition of the Property at the commencement and the end of the tenancy but the Tribunal was not willing to let the evidence flow in that direction. It appeared irrelevant to the Tribunal and to the issue of what, if any, award ought to be made under the Regulations.

[10] The Respondent concluded by suggesting that the breach ought to be treated with leniency.

### **Assessment of evidence**

[11] Both parties came across as relatively credible and reliable. There were not many facts in dispute in this case. The issue was one of competing submissions regarding the severity with which the Tribunal ought to treat the breach.

[12] Having heard from parties, the Tribunal made the following findings in fact.

### **Findings in Fact**

- 1. On 12 July 2023, The Applicant paid the Respondent a deposit of £950.00 as a relevant tenancy deposit within the meaning of the Regulations.*
- 2. On 17 July 2023, the parties then entered into a tenancy agreement by which the Respondent let the Property to the Applicant by virtue of a Private Residential Tenancy.*
- 3. The deposit was not registered by the Respondent in an approved scheme. The deposit was returned directly to the Applicant in full on 20 October 2024. The tenancy agreement did not end until 1 November 2024 when the Applicant vacated the property. The Applicant discovered that the deposit was not protected on 6 October 2024. She then brought this matter to the Respondent's attention.*

4. *The Respondent failed to comply with Regulation 3 to pay the deposit paid by the Applicant into an approved tenancy deposit scheme within 30 working days of the commencement of the tenancy.*

## **Decision**

[13] Having made the above findings in fact, the Tribunal had to determine what, if any, award ought to be made under Regulation 10. The Tribunal proceeded on the basis that the determination of the award required the Tribunal to exercise its judicial discretion to consider what would be fair, proportionate and just.

[14] In forming its approach to where this particular breach sat on the scale of sanctions open to the Tribunal, The Tribunal considered that were certain factors that weighed towards both leniency and severity. The Tribunal considered that the fact that the Respondent had paid the deposit back immediately in full and even before the end of the tenancy weighed in favour of leniency. There was also the fact that the Respondent returned the deposit promptly after the issue was raised by the Applicant. There was therefore only a period of around two weeks between the Applicant becoming aware that her deposit was not protected and the deposit being returned to her in full. There was also evidence that the Respondent had emailed the Applicant during this period to reassure her that the deposit would be returned to her in full.

[15] However, this had to be balanced with factors which weighed in favour of a more serious sanction. These factors were the length of time the deposit was left unprotected, which was from the commencement of the tenancy. The Applicant also described the issue causing her acute stress and exacerbating her PTSD and that she had to take time off work. The Tribunal did not agree that objectively this response seems rational, but the Tribunal did not doubt it as being the Applicant's subjective experience.

[16] After considering all of the competing issues, the Tribunal decided that the breach ought to be treated at the lower end of the scale of options open to the Tribunal. The inconvenience caused to the Applicant was objectively somewhat minor and indeed she ultimately received her money faster than she would have had the deposit been registered. The Respondent had apologised and accepted that she had made a simple mistake. The Tribunal had no cause to doubt the sincerity of that account. While the Tribunal took the view that the award to be made should be at the lower end of the scale, the Tribunal did not consider that it should be a negligible award. The subjective effect on the Applicant and the fact that the deposit was unregistered for the entire duration of the tenancy did mean that a meaningful, rather than a trivial award, should be made.

[17] The Tribunal considered that the sum to be awarded in terms of Regulation 10 ought to be a sum equal to half the value of the sum of the deposit, being the sum of £475.00.

### **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.**

# A McLaughlin

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Legal Member/Chair

Date: 3 February 2025