



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 and under The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The Regulations”)**

**Chamber Ref: FTS/HPC/PR/25/0747 and FTS/HPC/CV/25/0740**

**Re: Property at 11/01 Westfield Road, Edinburgh, EH11 2QS (“the Property”)**

**Parties:**

**Mr Ka Yu Yip, 1F3 10 Wardlaw Street, Edinburgh, EH11 1TS (“the Applicant”)**

**Malma Property Limited, 13/06 Simpson Loan, Edinburgh, EH3 9GN (“the Respondent”)**

**Tribunal Member:**

**Andrew McLaughlin (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Background.**

[1] In Application with reference FTS/HPC/CV/25/0740, the Applicant seeks a Payment Order for the return of a deposit they claim to have paid to the Respondent under a tenancy agreement between the parties. In Application with reference FTS/HPC/PR/25/0747, the Applicant seeks an award under the Regulations for the non-registration of that deposit into an approved scheme.

[2] The Respondent’s representative Letslet Property Limited has submitted representations defending the Application on the basis that the tenancy in question was a “*private licence agreement*” between the parties and as such was outwith the scope of the Regulations. It also suggests that the sum is now legitimately retained by the Respondent on account of end of tenancy restoration charges.

[3] The Application called for a Case Management Discussion (CMD) previously.

[4] The Tribunal noted at the CMD that the Applicant moved into the Property in May 2023 and had paid the Respondent a deposit of £650.00. He moved out in February 2025. The Respondent continues to retain the deposit. Mr Akinosho argued that the deposit did not require to be registered. His logic appeared to be that the document was a “*private licence agreement*” and made no mention of the Regulations. Mr Akinosho contrasted this with other tenancy documents which would evoke the Regulations. Mr Akinosho also stated that the Applicant then refused to sign a PRT later on in his period of occupation of the Property. The Applicant explained that the Respondent asked him to sign a new tenancy agreement 10 days before he was scheduled to move out. Naturally, he was not inclined to sign such a new agreement at that stage.

[5] The Tribunal did not understand the legal basis of the Respondent’s defence to the Application. The Tribunal informed Mr Akinosho that his argument about why the Regulations might not apply did not appear to have any solid foundation in law. No basis was being put forward as to why the Regulations did not apply as a matter of law. It was explained that in the absence of a legitimate legal defence to the Application, both Applications may be granted.

[6] The Tribunal decided to adjourn the Applications to a Hearing to take place in person for evidence to be heard and a final decision to be made. The parties were directed to submit any documentation and legal submissions to be relied on within 2 months of today’s date.

### **The Hearing**

[7] The Applications then called for a Hearing by conference call at 10 am on 27 January 2026. The Applicant was personally present. The Respondent was represented by Mr Akinosho of LetsletProperty. The Respondent was also personally present. The Respondent also had a witness from Letslet Property, Mr Jason Gourdie.

[8] Neither party had any preliminary matters to raise. The Tribunal explained that the Hearing appeared to have been assigned to take place by conference call in error. All parties confirmed though that they were content for the Hearing to take place by conference call. The Tribunal began by ensuring that each party had the relevant documentation and was familiar with the materials described above which set out the Application. All parties understood this and were happy to start.

[9] The Tribunal thereafter began hearing evidence. After each witness gave evidence, the other party had the right to cross-examine. The Tribunal also asked questions throughout to ensure that it understood the evidence. At the conclusion of evidence, each party also had the right to make closing submissions.

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

### **The Applicant- Mr Ka Yu Yip**

[11] Applicant moved into the Property in May 2023 and had paid the Respondent a deposit of £650.00. He ended his tenancy and moved out in February 2025. He explained that the Respondent continues to retain his deposit which has not been returned. The Applicant explained that the Respondent asked him to sign a new tenancy agreement 10 days before he was scheduled to move out. Naturally, he was not inclined to sign such a new agreement at that stage as he was just about to leave the Property.

[12] Mr Yip was confused about the Respondent's position which he suggested was self-contradictory. He pointed out that his tenancy agreement explicitly referred to a deposit being payable and that the Respondent certainly did not live in the Property. There was no reason at all that somehow the Respondent would not be required to register his deposit.

[13] He also pointed out that the Respondent had no legitimate basis to justify retaining the deposit on account of issues with the condition of the Property in any event. He pointed out that the Respondent had not produced any form of credible and reliable check-in report or check-out report. Certain information had been produced by the Respondent but this related to a separate tenant with a separate tenancy agreement in the Property. Even if they had, that didn't mean they could keep his deposit. In any event he denied that any restorations costs might have been due.

[14] Mr Yip also explained that he had been expressly asked to make the £650.00 deposit payment directly into a personal bank account of the Respondent. It was directly put to him by Mr Akinosho that this didn't happen and that no deposit had ever been paid, but Mr Yip could clearly show the Tribunal the WhatsApp messages sent by the Respondent telling him to do this and then the bank statement showing the transfer from the relevant accounts referred to in the messages.

### **Respondent's evidence**

[15] Mr Akinosho gave evidence as did the Respondent. Mr Gourdie also gave evidence briefly. The Respondents' evidence about both Applications appeared highly confused and was often contradictory. It was as if Mr Akinosho and the Respondent had not consulted with each other about key aspects of the case. Mr Akinosho's position was that the Applicant had absolutely not paid a deposit. But then it seemed to dawn on them both that there were messages before the Tribunal clearly showing the Respondent asking the Applicant to make the payment directly into the Respondent's personal account. The Respondent and Mr Akinosho appeared to be taken by surprise by this although the Respondent certainly didn't then deny the allegations. It all made the Respondent's position that no deposit had been paid seem very surprising.

[16] The Respondent also gave evidence that directly contradicted herself. She had made comments that suggested that after the Applicant's tenancy she had to renovate a shower room and replace a ventilation fan. However, she later contradicted herself and acknowledged that there hadn't been a ventilation fan in the Property before and that

this would have been a substantial upgrade. The Respondent appeared to have based her case for restoration costs at least in part, on this shower room renovation. This admission in her evidence then immediately served to undermine her position in this regard as well. It all served to highlight the lack of any valid check-in and check-out report that might add professional and objective analysis of the matter. The Respondent also appeared to focus on an allegation that the Applicant had not paid his relevant council tax charges. The Tribunal considered that even if this was true (it was denied by the Applicant), it was not relevant. The Respondents also made reference to issues with the Applicant's rental payments. The Applicant however explained that he had taken the place of a previous tenant who had made a substantial advance payment of his rent. The rent had therefore already been paid and the Applicant then reimbursed the previous tenant. The way the Applicant explained this made sense. Again, the Respondent and her representative appeared somewhat unfamiliar with these issues and confused and unsure what to say. They certainly couldn't suggest any legitimate reason as to why this was not correct.

[17] The evidence on behalf of the Respondent was inconsistent and unreliable. Mr Gourdie's evidence was restricted to an account of an occasion when he inspected the Property pursuant to another tenant's occupation of the Property under a separate tenancy. It was of little relevance.

### **Comment on the evidence**

[18] The Applicant's evidence was straightforward and easy to understand. He had submitted documentation which backed up his position. The Tribunal found his evidence to be credible and reliable. He answered the questions posed to him in a sensible and believable manner.

[19] In contrast the positions taken by the Respondent appeared completely removed from the evidence and lacking in any substance. The argument that no deposit was paid appeared to be fatally undermined by the evidence. The argument that the deposit did not in any event require to be protected was never addressed. There clearly was a tenancy agreement between the parties which was a Private Residential Tenancy within the meaning of the Act. The Tenancy was not exempt from the Regulations and the Respondent could say nothing meaningful to support that line of defence. The allegations that somehow the Applicant had damaged the Property and that the sums ought to be retained by the Respondent were again never substantiated by any reliable evidence.

[20] Having heard from parties and having considered the documentation, the Tribunal made the following findings in fact.

## **Findings in fact**

1. *The Applicant moved into the Property in May 2023.*
2. *The Applicant paid the Respondent a deposit of £650.00.*
3. *The Applicant entered into a written tenancy agreement which documented that the deposit of £650.00 required to be paid.*
4. *The tenancy agreement was a Private Residential Tenancy agreement.*
5. *The Applicant paid the deposit of £650.00 in full to a bank account of the Respondent's personal choosing.*
6. *The Applicant vacated the Property in February 2025.*
7. *The Respondent failed to register the deposit into an approved scheme.*
8. *The Respondent has retained the deposit and refused to return it to the Applicant.*

## **Decision**

[21] The Respondent has not shown how or why the tenancy might possibly have been exempt from the Regulations. The Respondent has failed to demonstrate that there is any legitimate basis for the deposit not to be returned.

[22] The Tribunal therefore grants Application with reference FTS/HPC/CV/25/0740 and makes a Payment Order in the sum of £650.00 in favour of the Applicant against the Respondent.

[23] The Tribunal thereafter 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 taking in all the circumstances of the case.

[24] In forming its approach to where this particular breach sat on the scale of sanctions open to the Tribunal, the Tribunal considered that were factors that weighed towards severity but no obvious factors that weighed in favour of treating the breach with leniency. The Tribunal noted that the Respondent had taken the position that no deposit had been paid, an allegation that quickly unravelled at the Hearing. The Respondent's position was therefore to try and mislead the Tribunal rather to accept any error. The argument that the tenancy deposit did not require to be registered also revealed a lack of understanding of the Regulations. The fact that the Respondent also attempted to use documentation in relation to another tenancy agreement also appeared amateurish.

[25] The Tribunal could not see there as being any particularly mitigating factors of note. In contrast, the Tribunal noted that the Applicant had still to this day been deprived of his funds and suffered considerable inconvenience in having to raise these proceedings to secure its return.

[26] Those factors precluded an award at anything other than the highest end of the scale. The Tribunal therefore decided that the breach ought to be treated at the highest end of the scale.

[27] The Tribunal notes that the calculation of such sums requires a high degree of judicial discretion. The Tribunal considered that £1,950.00 would be an appropriate sum being a sum equivalent to three times the value of the deposit paid. The Tribunal therefore also orders that the Respondent pay the Applicant an additional sum of £1,950.00.

[28] The Tribunal also amends the postcodes of the address of the Property and the Respondent's address in the Application, on account of written submissions received from the Applicant pointing out that they were previously incorrect.

### **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.**

**NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.**

**Andrew McLaughlin**

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**Legal Member**

**9 March 2026**

**Date**