Housing and Property Chamber
First-tier Tribunal for Scotland

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") and Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("The Act")

Chamber Ref: FTS/HPC/PR/24/4028 and FTS/HPC/CV/24/4546

Re: Property at Flat 1/6, 90 Great Western Road, Glasgow, G4 9AD ("the Property")

Parties:

Mr Christopher Curry, Ystadsgatan 47F, Malmo, 21444, Sweden ("the Applicant")

Mrs Manjit Gill, 20 Carrington Street, Glasgow, G4 9AL ("the Respondent")

Tribunal Members:

Mr A. McLaughlin (Legal Member) and Mr G. Darroch (Ordinary Member)

Decision

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") in Application with reference FTS/HPC/CV/24/4546 makes a Payment Order against the Respondent in favour of the Applicant in the sum of £937.50. In Application with reference FTS/HPC/PR/24/4028, the Tribunal makes 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 £2,812.50 being a sum equal to three times the relevant tenancy deposit.

Background

[2] In Application with reference FTS/HPC/PR/24/4028, The Applicant seeks an award under the Regulations for the non-registration of a relevant tenancy deposit paid by the Applicant to the Respondent into an approved scheme. In Application with reference FTS/HPC/CV/24/4546, the Applicant seeks a Payment Order for the return of the deposit

itself which is said to have been retained by the Respondent following on from the ending of the tenancy.

[3] The Respondent is defending both claims. The Applications had called for a Case Management Discussion (CMD) which had made case management orders setting out the procedural steps alongwhich the case would progress.The Application was continued to an evidential Hearing for evidence to be heard and a final decision to be made.

The Hearing

[4] The Application then called for a Hearing by video call at 10 am on 21 May 2026. The Applicant was perosnally present. The Respondent was represented by their letting agent, Ms Sandra Adams. Neither party had any preliminary matters to raise or any other witnesses to give evidence on their behalf. The Tribunal began hearing evidence. After each party gave evidence, the other had the right to cross-examine the evidence given. After all evidence was heard each party had the opportunity to make closing submissions. The Tribunal comments on the evidence heard as follows:

The Applicant Mr Christopher Curry

[5] The Applicant's evidence is as follows. The Applicant moved into the Property in June 2014 with his friend Mr John Stewart. They collectively paid a depsoit of £937.50. The tenancy documentation reflected this. This fact was not disputed by the Respondent. The funds were paid to the Respondent in a single payment.The tenancy was a short assured tenancy ("SAT") with a date of entry of 30 June 2014. In around December 2015, Mr Stewart decided to move out and the Applicant was to take over the tenancy in his sole name.

[6] What appears to have then happened is that the Respondent presented the Applicant with a series of six month lease extension documents and then issued notices to quit and section 33 notices at the start of each period. This cycle continued for several years until a Private Residential Tenancy ("PRT") was created and signed by the Applicant and on behalf of the Respondent on 1 February 2018. Each of the SATs was in the Applicant's sole name and referred to the previous deposit and stated that it was acknowledged that it had been paid by the tenant, which in all the tenancy documentation subsequent to the intial tenancy, was solely the Applicant. The PRT was initially also in the Applicant's sole name, but he explained that his partner moved in with him and the Applicant and his partner asked the Respondent to amend the PRT to include her details.

[7] The intial PRT stated at condition 11 that: "*At the start date of the tenancy or before, a deposit of £937.50 will be paid by the tenant to the Landlord*".

The Applicant pointed out that at no point was he ever asked to make a further payment and it was very much understood that his deposit had carried on through the various tenancy arrangements and was still being held exclusively on his behalf. When he signed the amended PRT with his partner as co-tenant, the deposit wording was changed to read " *At the start date of your orginal tenancy, a deposit of £937.50 was received and paid by the Tenant to the Agent".*

[8] In July 2024, the Applicant informed the Respondent's agents that he would be moving out. He contacted the agents and asked about getting his deposit back. He received no reply. He then contacted the schemes and was told that no deposit had been registered.

[9] On 7 August 2024 he received a phone call from the agents asking if the original deposit had been split between himself and Mr Stewart. He confirmed this and later received an email from one of the approved schemes saying that half of his original deposit had now been placed into an approved scheme on 7 August 2024. There was then some correspondence between the Applicant and Ms Adams. Ms Adams now argued that no deposit had been paid by the Applicant stating that she would now "*recall the deposit placed*".

[10] The Applicant has since supplied Ms Adams with a signed letter from Mr Stewart stating that the deposit should be treated as the sole porperty of the Applicant but that does not appear to have softened Ms Adams' position.

[11] The Tribunal found the Applicant's evidence to be credible and reliable. What he said made sense and it was measured in tone and content. It was also corroborated by the paperwork produced in the bundle.

Ms Sandra Adams

[12] Ms Adams works for G&S Lettings who manage the Property for the Respondent. The Tribunal found her evidence somewhat hard to follow.Her position appeared to be that she shouldn't give the deposit back to the Applicant because only half of it was his and the other half belonged to Mr Stewart. She appeared to ignore the fact there was written confirmation from Mr Stewart himself stating that he unequivocaly wished the Applicant to retain the deposit in full.

[13] Ms Adams also said that it must have been a mistake when the PRT documentation was completed and signed and expressly explained that the deposit had already been paid *"by the tenant".*

[14] Ms Adams was asked why the deposit hadn't ever been registered in an approved scheme until the Application was raised. She said she couldn't explain why this deposit was not lodged. Her evidence was somewhat defensive in tone and Ms Adams was not

expansive in her answers. Ms Adams gave the impression that she was being subject to an unfairness but the Tribunal could not understand what might explain that.

[15] It was hard for the Tribunal to understand how the Respondent could reasonably continue to deny that the Applicant ought not to be refunded his deposit. There also seemed little mitigation for the non-registration of the deposit.

[16] Having heard from parties the Tribunal made the following findings in fact:

Findings in Fact

1. The Applicant moved into the Property in June 2014 with his friend, Mr John Stewart.
2. They collectively paid a deposit of £937.50. The tenancy documentation reflected this. The funds were paid to the Respondent in a single payment.
3. The tenancy was a short assured tenancy ("SAT") with a date of entry of 30 June 2014. In around December 2015, Mr Stewart decided to move out and the Applicant was to take over the tenancy in his sole name.
4. The Respondent presented the Applicant with a series of six month lease extension documents and then issued notices to quit and section 33 notices at the start of each new tenancy period.
5. This cycle continued for several years until a Private Residential Tenancy ("PRT") was created and signed by the Applicant and on behalf of the Respondent on 1 February 2018.
6. Each of the SATs was in the Applicant's sole name and referred to the previous deposit and stated that it was acknowledged that it had been paid by the tenant, which in all the tenancy documentation subsequent to the initial tenancy, was solely in the name of the Applicant. The PRT was initially also in the Applicant's sole name, but his partner moved in with him and the Applicant and his partner asked the Respondent to amend the PRT to include her details. The PRT was accordingly amended.
7. The intial PRT stated at condition 11 that: "*At the start date of the tenancy or before, a deposit of £937.50 will be paid by the tenant to the Landlord*".
8. At the time nothing was said by the Respondent to indicate that there was any issue with the deposit and the conduct of the parties very clearly indicated that the deposit was being treated as having been carried over.
9. When he signed the amended PRT with his partner as co-tenant, the deposit wording was changed to read " *At the start date of your orginal tenancy, a deposit of £937.50 was received and paid by the Tenant to the Agent*".
10. In July 2024, the Applicant informed the Respondent's agents that he would be moving out.

11. He contacted the agents and asked about getting his deposit back. He received no reply. He then contacted the relevant deposit schemes and was told that no deposit had been registered.
12. The deposit was then registered on behalf of the Respondent on 7 August 2024.
13. The Respondent breached their obligations under the Regulations by failing to register the deposit into an approved scheme in the prescribed time scales of within 30 working days.
14. The deposit belongs to the Applicant, Mr Stewart having assigned his interest in the deposit to the Applicant.

Decision

[17] It is clear that the deposit belongs solely to Mr Curry and ought to be returned to him. If there was any doubt about that, the matter was made clear by the signed formal declaration by Mr Stewart confirming that the deposit belongs to the Applicant. It seems very odd that the Respondent would hold onto a deposit for someone they knew to have moved out of the Property over ten years ago and then attempt to register into an approved scheme 10 years after that person left the Property. The tenancy documentation also corroborates that and states unequivocally that the deposit was considered as having been paid by the Applicant. It is quite hard to understand why Ms Adams would not consider this to be self-evidence.

[18] Mrs Adam's argument about the amount of the deposit contributed by the Applicant also has another difficulty. Sheriff Welsh has ruled that even if a tenant only contributed a portion of the deposit, any single joint tenant is entitled to make an application and claim a penalty of up to three times the total deposit amount if the landlord fails to protect that deposit. (*Smith & Others vs Uchegbu* [2016] SC EDIN 64*)* In that regard even if the Applicant initially only did contribute a proportion of the deposit, he is entitled to ask the Tribunal to award him three times the total value of the deposit rendering that concern of Ms Adam's somewhat redundant.

[19] The deposit ought to be returned to the Applicant. The Respondent will have to try and liaise with the schemes and seek the return of the two separate payments they have made. But the Applicant should not have to concern himself with that and is entitled to payment directly from the Respondent without reference to the schemes.

[20] The Tribunal makes this order on the understanding that the sums currently held in the scheme should then be returned to the Respondent. If the Applicant were then to compete for payment of those sums, then the terms of this Decision should hopefully be sufficient to satisfy the relevant scheme as to why the funds should be repaid to the Respondent.

[21] The Tribunal then 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.

[22] In forming its approach to where this particular breach sat on the scale of sanctions open to the Tribunal, The Tribunal considered whether there were any mitigating circumstances. The Tribunal concluded that there was effectively no mitigation before the Tribunal. The Tribunal took account of the casual approach to the deposit shown by the letting agent and the fact that the deposit was unregistered for so long. Ms Adams's position about the return of the deposit was not reasonable. She had not been fair with the Applicant.

[23] The Tribunal therefore concluded that the breach ought to be treated at the higher end of the scale of options open to the Tribunal.

[24] The Tribunal considered that the sum to be awarded in terms of Regulation 10 ought to be the sum of £2,812.50 being a sum equal to three time the relevant tenancy deposit.

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

Legal Member/Chair **Date: 21 May 2026**