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 Regulations 3 and 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/2570

Re: Property at 26 Glenshee Street, Glasgow, G31 4RU ("the Property")

Parties:

Miss Gift Nwanna, 20/203 Balbeggie Street, Glasgow, G32 9HH ("the Applicant")

Mrs Searaphine Mordi, 26 Glenshee Street, Glasgow, G31 4RU ("the Respondent")

Tribunal Members:

Alison Kelly (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment should be made.

Background

1. On 5th June 2024 the Applicant lodged under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") seeking a sum under the Tenancy Deposit (Scotland) Regulations 2011.

2. Lodged in support of the application were several documents including:

a. WhatsApp chat dated 30th March 2024 detailing the terms agreed
b. Bank of Scotland slip dated 30th March 2024 proving the sum was paid
c. Evidence from each of the three tenancy deposit schemes confirming that the deposit had not been lodged with them

3. On 4th September 2024 the Respondent lodged a Written Submission outlining her position.

Case Management Discussion

4. A Case Management Discussion ("CMD") took place by teleconference on 18th September 2024. The parties both dialled in and represented themselves.

5. The Chairperson made clear that the case was that the tenancy deposit paid b should have been placed in a tenancy deposit scheme in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. There was no application by the Applicant seeking return of the deposit, and there was no application by the Respondent seeking to retain the deposit.

6. The Chairperson established from the parties that they agreed that the occupation of the property by the Applicant commenced on 1st April 2024 and ended on 31st May 2024, the property is a three bedroomed house, terms were agreed in a WhatsApp chat but there was no written agreement, a sum of £900 was paid by the Applicant to the Respondent being rent of £500 and deposit of £400, and the deposit had not been placed in to a tenancy deposit scheme.

7. It was noted that the issues to be resolved were:

- Is the let a relevant tenancy and does the Respondent have the duties referred to in the Regulations?
- If so, has there been a breach of the regulations?
- If so, what factors are relevant?
- If there has been a breach, what Sanction should be applied?

8. It was decided that a Hearing was required.

Subsequent to CMD

9. On 11th April 2025 the Respondent lodged a further Written Submission.

10. On 15th May 2025 the Applicant lodged a further Written Submission.

11. Due to extenuating factors it took some time for the case to come to a final Hearing.

Hearing

12. A Hearing took place by teleconference on 29th September 2026. The parties both dialled in and represented themselves.

13. The Chairperson went over the CMD Note, issued after the CMD on 18th September 2024, to ensure that both parties understood what the case was about, and what it was not about. Both parties confirmed that they understood.

14. The Chairperson explained that the Applicant's case was set out in her application. She believed that she had entered in to a Private Residential Tenancy, and that accordingly the deposit she paid should have been placed in to an approved tenancy deposit scheme in accordance with The Tenancy Deposit (Scotland) Regulations 2011.

15. The Chairperson explained that it was for the Respondent to counter that by establishing why she did not require to place the deposit in a scheme.

16. The Respondent said that it was her understanding that as the property is her main or only residence she was exempted from The Tenancy Deposit (Scotland) Regulations 2011. She said that when she rented out the rooms she was abroad, but it was a temporary thing, the property was still her main residence. She said that everything she owned was at the property and remained there throughout. She said that she ran a business from the property, and she continued to pay part of the bills. She considered that those facts meant that she satisfied the aspect of main residence. She said that she stayed in the USA longer than intended because she was dealing with family illness. It was not planned and the point of renting out rooms was to relieve the financial burden and was not meant to be long term.

17. The Tribunal sought clarity on some issues. The Respondent said that she bought the property in 2019 and moved in with her six year old son. She owns no other properties. She did not rent out any rooms until after she went to the USA.

18. The Respondent said that she travelled to the USA in December 2022. She went there to take care of a family member who had health issues. She said that it became a bit of a rollercoaster of traumatic events. Her relative continued to experience medical issues, and then her son became ill and required surgery. She was unable to return to live in Scotland during this time.

19. The Respondent said that at some point during 2023 she decided that she needed to rent out rooms as she had been away for over a year and was suffering financially. She was living with her family member but still had bills to pay. She eventually returned to Scotland at some point in 2025.

20. The Respondent said that she rented out two rooms in the property. The third bedroom was occupied at time by two friends. She considered them to be family. On friend would stay every weekend and would take care of the property. The other lived a nomadic lifestyle and would stay for periods of time. The friends did not pay the Respondent any rent.

21. The Respondent confirmed that her belongings were locked in the living room, which was not part of the rental, and the shed.

22. The Respondent confirmed that she had not sought any legal advice about whether she needed to register as a landlord or place deposits in to tenancy deposit schemed. She had spoken to people and done some research online.

23. The Applicant was given the opportunity to comment on what the Respondent had said. The Applicant said that the Respondent's nomadic friend actually lived in the living room, and that there was a bed there which he used. She confirmed that she did have access to the kitchen and was able to cook meals.

Findings In Fact

i. The Respondent owns the property;
ii. The parties entered in to an agreement through WhatsApp messages for the Applicant to occupy a room in the Respondent's property with shared use of the kitchen and bathroom;
iii. There was no written agreement;
iv. The period of occupation was from 1st April 2024 until 31st May 2024;
v. The Applicant paid the Respondent a deposit of £400;
vi. The deposit was not returned to the Applicant when she vacated the property;
vii. The Respondent bought the property in 2019 and moved in to it with her son;
viii. The Respondent travelled to the USA in December 2022 to care for a sick relative;
ix. The Respondent required to stay longer in the USA than she had planned:
x. In 2023 the Respondent decided to rent out rooms at the property;
xi. The Respondent retuned to Scotland in 2025;
xii. The Respondent did not occupy the property at the time that the Applicant's occupation of the property began;
xiii. The Respondent did not occupy the property at all during the time that the Applicant occupied the property;
xiv. Prior to entering in to the Agreement the Respondent did not occupy the property on a full time basis;

Reasons For Decision

24. The decision in this case is a straightforward matter of applying the law to the facts. The Tribunal had no reason to doubt anything which the Respondent said but intentions, no matter how well founded, do not influence the facts or the application of the law to those facts.

25. Section 1 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the Act") defines a private residential tenancy as follows:

1. Meaning of private residential tenancy

(1)A tenancy is a private residential tenancy where—

(a)the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b)the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c)the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2)A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

26. Paragraphs 7 to 10 of Schedule 1 to the Act provide exceptions, and deal with resident landlords in paragraphs 7 to 10 as follows:

Resident landlord

7 A tenancy cannot be a private residential tenancy if paragraph 8 or 9 applies to it.

8 This paragraph applies to a tenancy if—

(a)the let property would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the tenant to use property in common with another person ("shared accommodation"), and

(b)from the time the tenancy was granted, the person (or one of the persons) in common with whom the tenant has a right to use the shared accommodation is a person who—

(i)has the interest of the landlord under the tenancy, and

(ii)has a right to use the shared accommodation in the course of occupying that person's home.

9(1)This paragraph applies to a tenancy if sub-paragraphs (2) and (3) apply to it.

(2)This sub-paragraph applies to a tenancy if, from the time it was granted, a dwelling within the same building as the let property has been occupied as the only or principal home of a person who, at the time of occupying it, has the interest of the landlord under the tenancy.

(3)This sub-paragraph applies to a tenancy if, at the time it was granted, there was an ordinary means of access—

(a)through the let property to the dwelling occupied by the person who is, or is to be, the landlord, or

(b)through the dwelling occupied by the person who is, or is to be, the landlord to the let property (whether or not that access was available to the tenant as of right).

(4)For the purpose of this paragraph, in determining whether a dwelling is occupied as the only or principal home of the person having the interest of the landlord, no account is to be taken of—

(a)any period beginning with the date on which the interest of the landlord is transferred (other than on death) and ending—

(i)28 days later, or

(ii)6 months later if, within 28 days of the period beginning, the person to whom the interest is transferred notifies the tenant of the person's intention to occupy a dwelling within the same building as the let property,

(b)any period of up to 24 months beginning with the date of the person's death and ending with the person's interest in the tenancy being vested in another person (otherwise than as the person's executor).

10 If, at any time, the landlord holds the landlord's interest as a trustee under a trust, a reference in paragraph 8 or 9 to a landlord or the person having the interest of the landlord includes a person who is a beneficiary under the trust.

11 In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in paragraphs 8 to 10 are to any one of those persons.

27. The Respondent did not occupy the property at any time that the Applicant lived there, and the tenancy does not therefore fall within this exemption. This is in terms of Paragraph 9(2) above.

28. In terms of the Act writing is not required to constitute a tenancy and, if there is nothing in writing, in terms of section 7 of the Act the statutory terms of a Private Residential Tenancy in are implied.

29. It follows that as the Agreement between the parties is a Private Residential Tenancy agreement, the Tenancy Deposit Scheme (Scotland) Regulations 2011 apply.

    Regulation 3 states:

    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.

30. The Respondent should have complied with the Regulation and place the deposit in an approved scheme.

    Regulation 10 states that

    10. If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal—

    (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 First-tier Tribunal 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.

31. The Tribunal has discretion in deciding what the Respondent should be ordered to pay. 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.

32. 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.

33. Serial offenders, i.e. landlords with multiple properties who do not place deposits in schemes are at the upper end of the scale. The current case is not at the upper end of the scale. However, there is still a breach of the Regulations. Renting out a property is a commercial decision and there are laws and regulations in place to protect parties who enter in to tenancy agreements. These must be complied with.

34. The Tribunal had no reason to doubt the Respondent's credibility or reliability, and was satisfied from what the Respondent said that she genuinely believed that she was exempt from the regulations. She only has one property and the circumstances she described led her to rent out rooms to provide her with some income while she was abroad caring for a relative. However, she entered in to a commercial arrangement and it was for her to ensure that she abided by the law. She said that she runs a business, and she should therefore be aware that there are rules and regulations in relation to running businesses.

35. The reasons for the Regulations are to protect the tenant's deposit, as the money belongs to the tenant, and also to provide a fair and impartial mechanism for adjudicating on whether a deposit should be returned to a tenant or some or all be retained by the landlord. The Respondent did not return the deposit to the Applicant at the end of the term and has not done so. The Applicant has been denied use of the adjudication mechanism provided by the tenancy deposit schemes.

36. Considering all the circumstances the Tribunal considers that an award of £500 is fair and reasonable.

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.

	29/09/26
_____	_____
Legal Member/Chair	**Date**