



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for an order for payment where the landlord has failed to carry out duties in relation to tenancy deposits.**

**Chamber Ref: FTS/HPC/PR/22/1214**

**1, The Old Waterhouse, Old Largs Road, Greenock, PA16 9AR being the subjects registered in the Land Register of Scotland under Title number REN121846 ("the Property")**

**The Parties:-**

**Michelle Brandt residing at 1, The Old Waterhouse, Old Largs Road, Greenock, PA16 ("The Applicant")**

**Mrs Maura Ewing residing at 12 Caddlehill Street, Greenock, PA16 8TU ("The Respondent")**

**Tribunal Members:**

**Jacqui Taylor (Chairman) and Donald Wooley (Ordinary Member)**

### **1. Background**

The Applicant submitted an application to the Tribunal for in terms of Rule 103 of the Procedure Rules, being an application for an order for payment where the landlord has failed to carry out duties in relation to tenancy deposits, which application was dated 26<sup>th</sup> April 2022.

### **2. Documents lodged with the Tribunal.**

Documents lodged with the Tribunal by the Applicant were:

- 2.1 Letter from the Applicant's solicitor to the Respondent dated 20<sup>th</sup> January 2022.
- 2.2 Letter from the Applicant's solicitor to the Respondent dated 28<sup>th</sup> March 2022, sent by first class recorded delivery post and email to the Alexander Ewing's email address.
- 2.3 Undated letter from the Respondent regarding the 'deposit to reserve the Property'.

### **3. Notice of Acceptance.**

By Notice of Acceptance by Alan Strain, Convener of the Tribunal, dated 31<sup>st</sup> May 2022, he intimated that he had decided to refer the application (which application paperwork comprised documents received between 26 April 2022 and 24 May 2022) to a Tribunal.

#### **4. Case Management Discussion.**

This case called for a Case Management Discussion (CMD) Conference call at 14.00 on 5<sup>th</sup> August 2022.

The Applicant attended. The Respondent also attended, together with her husband Alexander Ewing.

##### **4.1 Preliminary matter**

Mrs Taylor referred the Applicant to :

(1) the email from the Tribunal administration dated 28<sup>th</sup> July 2022, which stated:

*'We have received an email from Alex Ewing asking to be added as a party to application numbers 1214 and 1648. We attach a copy of the landlord registration entry in respect of the above property which confirms that Alex Ewing is the landlord. We also attach a copy of the title deeds which also confirm that Alexander Ewing is the proprietor. Please confirm if you wish to add Alex Ewing as an additional respondent to these applications.'*

And

(2) the email from the Applicant to the Tribunal administration dated 28<sup>th</sup> July 2022 which stated, *inter alia* :

*'I do not understand why Maura Ewing is to be a part of the hearing or wishes to be acknowledged as part of case pertaining to reference no 1214/1648 /1503 . I am happy for Alex Ewing to be present but not Maura Ewing. I would also like to place on record I contacted my landlords wife asking that my last name be put on the tenancy agreement as she did not include it on the deposit receipt. I acknowledge the attached evidence as emailed from the tribunal that Alex Ewing is the sole proprietorship owner and landlord. My Ewing even highlights in previously submitted evidence that I did not pay a deposit (to him) but paid a sum of £800.00 into his wife's private bank account as a "holding fee" he further states she Mrs Ewing has nothing to do with the property.'*

Mrs Taylor suggested that there may be some confusion as the Respondent named in the application, submitted to the Tribunal by the Applicant's solicitor is Maura Ewing. Mrs Taylor asked the Applicant if she would wish an adjournment to enable her to consult the solicitor who lodged the application on her behalf as to whether Alexander Ewing should be added as a Respondent. The Applicant confirmed that she wished the opportunity to take advice on this point.

##### **4.2 Oral Representations made by the Applicant.**

4.2.1 The Property 1, The Old Waterhouse, Old Largs Road, Greenock is her main residence and she has resided in the Property since 10<sup>th</sup> January 2022.

4.2.2 It was agreed with the Respondent and her husband Alexander Ewing that the lease would commence on 3<sup>rd</sup> January 2022 but she first occupied the Property on 10<sup>th</sup> January 2022.

4.2.3 She has paid rent payments of £850 to the Respondent's Bank of Scotland Account, account number ending 907 on 3<sup>rd</sup> January, 3<sup>rd</sup> February, 3<sup>rd</sup> March, 3<sup>rd</sup> April, 3<sup>rd</sup> May, 3<sup>rd</sup> June, 3<sup>rd</sup> July and 3<sup>rd</sup> August all dates of 2022.

4.2.4 She heard about the Property being available to lease through a mutual friend.

4.2.5 She had a meeting with the Respondent on 8<sup>th</sup> November 2021 and at that meeting she was advised that if she wanted to secure the Property she would have to pay a deposit. She transferred the sum of £800 to the Respondent during that meeting. Anne Lochhead was also present at the meeting. She is no longer friends with Anne Lochhead.

4.2.6 The Property is a five bedroom property and it was clearly understood by the Respondent and Alexander Ewing that she would be residing in the Property with other people.

4.2.7 At the initial meeting with the Respondent she had explained that she had a cat and the cat would live in the Property with her.

4.2.8 On 3<sup>rd</sup> January 2022 she took her belongings out of storage and moved her belongings into the Property. She had assumed that the lease agreement would be available for signature but it was not.

4.2.9 On 6<sup>th</sup> January 2022 she had arrived home and found a letter addressed to her from the Respondent and Alexander Ewing, which advised that they had called at the Property and waited patiently for her to enable the lease to be signed but she was not in the Property and she did not arrive home whilst they were waiting. They wished to take the opportunity to outline some criteria, which included the fact that no multiple occupancy of the Property was permitted, no pets were allowed and credit check would be required. As the tenancy terms could not be agreed they invited her to vacate the Property on 3<sup>rd</sup> February 2022.

4.2.10 She did not vacate the Property on 3<sup>rd</sup> February 2022, as invited by the Respondent.

4.2.11 During March 2022 she had gone to the Local Authority Council Tax offices to advise them that she was leasing the Property as she was fretting about her council tax liability and did not want to run up arrears.

4.2.12 She has not yet received the tenancy agreement.

### **4.3 Oral Representations by The Respondent and Alexander Ewing.**

4.3.1 The rent payments made by the Applicant were paid into their joint account which is held in the names of Mr and Mrs Ewing.

4.3.1 Each rent payment made was received into their account on the 4<sup>th</sup> of each month.

4.3.2 Alexander Ewing is the landlord as he owns the Property.

4.3.3 Alexander Ewing is the registered landlord.

4.3.4 The Applicant knew that Alexander Ewing was landlord of the Property.

4.3.5 The Property had been leased previously but it had been vacant for approximately 6 months before the Applicant took occupancy.

4.3.6 They will provide evidence to the Tribunal of the deposit paid, the rent payments made and the names on the account the rent payments were credited to.

4.3.7 They will provide the Tribunal with a copy of the draft lease that they had prepared that has never been signed.

4.3.8 The holding deposit paid by the Applicant was never a deposit as such. It was a payment made by the Applicant to hold the Property for her between November and January. The arrangement was that they would hold the Property for the Applicant until January if she paid the holding deposit of £800. However, if the Property was sold or rented to somebody else the £800 holding deposit would be returned to the Applicant. If the Property was not sold or let before January they would keep the sum of £800.

4.3.9 They had intended to sell the Property but a mutual friend introduced the Applicant to them and they agreed to lease the Property to the Applicant.

4.3.10 Whenever they lease out properties they never allow pets or sub letting.

4.3.11 They had prepared the draft lease which they took to the Property on five occasions in early January 2022 but the Applicant was never available to sign it. Alexander Ewing advised that he will provide the Tribunal with a copy.

4.3.12 Anne Lochhead was present at the meeting on 8<sup>th</sup> November 2021 and she will be able to attend a hearing as a witness.

4.3.13 Alexander Ewing provided a copy of the draft lease to the Local Authority council tax department in June 2022.

#### **4.4 Outcome**

The Case Management Discussion was continued to enable:

4.4.1 The Applicant to take advice as to whether or not Alexander Ewing should be added as a party to the application.

4.4.2 To allow time for the parties to lodge the following documents with the Tribunal:

1. A copy of the draft lease that had been prepared by Alexander Ewing.
2. A copy of the statement for the account that the rent payments and holding deposit were credited to, showing the payments made and the account name.
3. A copy of the letter dated 6<sup>th</sup> January 2022 sent by the Respondent and Alexander Ewing to the Applicant

4.4.3 To enable Anne Lochhead to attend the hearing as a witness.

## **5. Direction.**

The Tribunal issued a Direction to the parties dated 7<sup>th</sup> August 2022.

### **5.1 The Respondent was required to provide the Tribunal with:**

5.1.1 A copy of the draft lease that had been prepared by Alexander Ewing.

5.1.2 A copy of the statement for the account that the rent payments and holding deposit were credited to, showing the payments made and the account name.

### **5.2 The Applicant was required to provide the Tribunal with:**

5.2.1 A copy of the letter dated 6<sup>th</sup> January 2022 sent by the Respondent and Alexander Ewing to the Applicant.

The required documents were provided but the copy bank statement did not disclose the account name. However, Mrs Ewing confirmed that the account was a joint account in the names of herself and her husband.

## **6. Hearing**

This case called for a Hearing at 10am on 13<sup>th</sup> October 2022 at the Glasgow Tribunal Centre.

The Applicant was present. She was accompanied by her supporter Agnieszka McCall.

The Respondent was present.

### **6.1 Preliminary Matter.**

Mrs Brandt confirmed that she had taken advice as to whether or not Alexander Ewing should be added as a party to the application and explained that she did not wish to add Alexander Ewing as a party to the application.

### **6.2 The Tribunal identified with the Applicant and the Respondent the following agreed facts, which were accepted by the Tribunal:**

6.2.1 The Applicant is Tenant of the Property 1, The Old Waterhouse, Old Largs Road, Greenock, PA16 9AR.

6.2.2 The start date of the tenancy was 3<sup>rd</sup> January 2022.

6.2.3 The Applicant paid the sum of £800 to Mrs Ewing on 8<sup>th</sup> November 2021.

6.2.4 The Applicant paid rent to Mr and Mrs Ewing amounting to £850 per month.

6.2.5 The first rent payment was paid on 4<sup>th</sup> January 2022.

6.2.6 The Property 1, The Old Waterhouse, Old Largs Road, Greenock, PA16 9AR was Mrs Brandt's sole and principal residence.

6.2.7 The parties had not signed a lease agreement.

The parties acknowledged that the Tribunal had made a determination under application **FTS/HPC/RP/22/1503** that both Mr and Mrs Ewing are joint landlords of the Property.

### **6.3 Oral Representations made by the Applicant.**

6.3.1 At the beginning of November 2021 she was looking accommodation.

6.3.2 Mr and Mrs Ewing agreed to show her the Property 1, The Old Waterhouse, Old Largs Road, Greenock, PA16 9AR.

6.3.3 She was happy with the location of the Property.

6.3.4 She had a lot of furniture and she was pleased that the Property was big enough.

6.3.5 She had been shown the Property on Saturday 6<sup>th</sup> November 2021 and had to return to work in England on the Monday 8<sup>th</sup> November 2021.

6.3.6 She needed the Property from February 2022 but Mr and Mrs Ewing advised her that they could not guarantee that the Property would still be available in February. However, if she paid a deposit it would be available in January.

6.3.7 She paid Mrs Ewing the sum of £800 on 8<sup>th</sup> November 2021 and Mrs Ewing gave her a letter in the following terms:

*'Landlord*

*Maura Ewing*

*12 Caddlehill street*

*Greenock*

*PA168TU*

*Deposit for holding:*

*Accommodation: 1, The Water House, Old Largs Road, Greenock, PA15 9GR*

*Tenant: Miss Michelle Tanjia, 10/12 The Harbourside, Inverkip*

*Received from Michelle Tanjia the sum of £800 in respect of a deposit to reserve the property at 1 The Waterhouse, Old Largs Road, Greenock on today 10<sup>th</sup> November 2021 and until 3<sup>rd</sup> January 2022. If within this time period either party retracts from the contract set the other party will hold the £800. Having reviewed on January 3<sup>rd</sup> 2022*

*rent will be set at £850 per month and council tax will start commencing on this date or whenever the tenant receives the keys and takes residence if this being earlier than 3<sup>rd</sup> January 2022. When tenant takes residence a further contract will be set between landlord and tenant.*

*Regards*

*Maura Ewing'*

6.3.8 She explained that Michelle Tanja referred to in the letter is herself.

6.3.9 She expected to receive the sum of £800 back at the end of the tenancy.

6.3.10 She has rented properties before and has always paid deposits.

6.3.11 Through her solicitors she had offered to settle the dispute with Mrs Ewing by accepting one and a half times the deposit amounting to £1275. Mrs Ewing did not accept this offer and now the applicant considers that a payment of three times the deposit is reasonable.

#### **6.4 Oral Representations by The Respondent.**

6.4.1 She had been introduced to Mrs Brandt by a friend Mrs Lochhead.

6.4.2 Herself and her husband took Mrs Brandt to the Property and showed her around.

6.4.3 Mrs Brandt was very interested in the Property.

6.4.4 As Mrs Brandt did not want to take the Property until January/February 2022 it was agreed that they would take a holding deposit of £800.

6.4.5 The agreement reached was that if Mrs Ewing and her husband sold the Property or rented it to someone else before January 2022 the sum of £800 would be repaid to Mrs Brandt.

6.4.6 Her and her husband never take deposits from tenants.

6.4.7 She explained that her husband prepared the draft tenancy agreement that had been provided to the Tribunal. She acknowledged that the agreement states that Mrs Brandt should pay two months rent of £1700 up front. The payment of £1700 was due on 3<sup>rd</sup> January 2022 and the next payment of £850 was due on 3<sup>rd</sup> February 2022.

6.4.8 It was always the intention of Mrs Ewing to refund the payment of £800 to Mrs Brandt once she took entry. The reason the payment was not refunded to her was that they did not have her bank details and communications broke down with Mrs Brandt from 6<sup>th</sup> January 2022.

6.4.9 The tenancy agreement was not signed. On 3<sup>rd</sup> January 2022 Mrs Brandt received the keys and was very stressed and asked for Mr and Mrs Ewing to come back later regarding finalising the lease document.

6.4.10 Mr Ewing returned on 5<sup>th</sup> January 2022 but there was no reply.

6.4.11 Mr and Mrs Ewing went to the Property on 6<sup>th</sup> January 2022. Mrs Brandt's friend opened the door. He explained that they were in the middle of a meal and asked if any request regarding the lease could be put in writing.

6.4.12 Mr and Mrs Ewing sent Mrs Brandt the letter dated 6<sup>th</sup> January 2022, a copy of which has been produced to the Tribunal.

6.4.13 Mrs Ewing owns one property in her name alone, which she leases.

6.4.14 She never takes deposit from tenants.

6.4.15 They have outstanding utility bills for the Property and the council tax liability has still to be transferred to Mrs Brandt.

6.4.16 They are charging Mrs Brandt a very favourable rent for the Property.

6.4.17 Her and her husband are ordinary working people.

6.4.18 They did Mrs Brandt a favour by leasing the Property to her and this has badly backfired.

6.4.19 They intend to sell the Property as soon as possible.

**6.5** Mrs Ewing called two witnesses Mrs Anne Lochhead and her husband Mr Alexander Ewing:

6.5.1 Mrs Anne Lochhead advised as follows:

6.5.1.1 She arranged for Mrs Brandt to view 1, The Old Waterhouse, Old Largs Road, Greenock, PA16 9AR as she did not have anywhere to stay.

6.5.1.2 Mrs Brandt viewed the Property and she loved it.

6.5.1.3 She didn't know anything about the agreement that had been reached between Mrs Brandt and Mr and Mrs Ewing.

6.5.1.4 Mrs Ewing wrote out a holding receipt for the sum of £800 after Mrs Brandt had viewed the Property on 6<sup>th</sup> November 2021.

6.5.1.5 She did not recall anything being said about the sum of £800 being returned.

6.5.2 Mr Alexander Ewing advised as follows:

6.5.2.1 He is Mrs Ewing's husband.

6.5.2.2 They agreed with Mrs Brandt that if she paid them the sum of £800 they would hold the Property until 3<sup>rd</sup> January 2022. If she didn't move in they would keep the sum of £800. If they sold the Property before 3<sup>rd</sup> January 2022 the sum of £800 would be repaid to Mrs Brandt.

6.5.2.3 Mrs Brandt paid £800 to Mr and Mrs Ewing's joint account.

6.5.2.5 He referred the Tribunal to the copy bank statement that had been provided which shows that the entry against the payment of £800 states 'HOLDINGWATERHOUSE'.

6.5.2.6 When ever he rents out properties he takes two months rent up front.

6.5.2.7 The £800 taken from Mrs Brandt will be rolled into the two months rent that was due at the start of the tenancy.



6.5.2.8 The sum of £800 will be repaid to Mrs Brandt at the end of the tenancy.

## **7. Decision.**

### **7.1 Findings in fact.**

The Tribunal made the following findings in fact:

**7.1** Mrs Brandt paid the sum of £800 to Mr and Mrs Ewing on 8<sup>th</sup> November 2021.

**7.1.2** The sum of £800 has been retained by Mr and Mrs Ewing and has not been repaid to Mrs Brandt.

**7.1.3** The sum of £800 has not been paid into a tenancy deposit scheme.

**7.1.4** The sum of £800 is an extra payment over and above the rent payments of £850 per month which have been paid by Mrs Brandt to Mr and Mrs Ewing since the start of the tenancy.

**7.1.5** At the time the payment of £800 was paid by Mrs Brandt to Mr and Mrs Ewing on 8<sup>th</sup> November 2021 both parties understood the payment to be a holding deposit.

**7.1.6** The terms of the agreement regarding the holding deposit are set out in the letter by Mrs Ewing which is headed 'Deposit for holding'.

**7.1.7** Even although, the payment of £800 was described as a holding deposit in the said letter by Mrs Ewing there was no obligation on Mr and Mrs Ewing to hold the Property for Mrs Brandt. In the event that Mr and Mrs Ewing sold or let the Property to another party before 3<sup>rd</sup> January 2022 the parties understood that the sum of £800 would be repaid to Mrs Brandt. Mrs Brandt therefore derived no material benefit from lodging a holding deposit with Mr and Mrs Ewing.

**7.1.8** Mr Ewing prepared the draft lease documentation.

**7.1.9** The lease was never signed.

**7.2** Regulation 2 of the Tenancy Deposit (Scotland) Regulations 2011 ('2011 Regulations') states that 'tenancy deposit' has the meaning conferred by section 120(1) of the Housing (Scotland) Act 2006.

**7.3** Section 120(1) of the Housing (Scotland) Act 2006 defines 'tenancy deposit' as:  
'A sum of money held as security for:

- (a) The performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or
- (b) The discharge of any of the occupant's liabilities which so arise.'

**7.4** The Tribunal acknowledge that when Mrs Brandt paid the sum of £800 to Mr and Mrs Ewing on 10<sup>th</sup> November 2021 both parties understood the payment to be a

holding deposit, even although there was no contractual restriction on Mr and Mrs Ewing selling or leasing the property before 3<sup>rd</sup> January 2022.

**7.5** The Tribunal recognised that the evidence of Mr Ewing and Mrs Ewing as to their intentions for the £800 differed. It was Mrs Ewing's position that the payment of £800 had not been returned to Mrs Brandt as they did not have her bank details. It was Mr Ewing's position that the payment of £800 was an advance payment of rent and would be returned to Mrs Brandt at the end of the tenancy.

**7.6** The Tribunal do not accept Mrs Ewing's evidence that the reason the sum of £800 was not returned to Mrs Brandt was because they did not have her bank details. No evidence was provided that they had sent an email or letter to Mrs Brandt advising that the deposit had to be returned to her and they required her bank details. Mrs Ewing could have sent Mrs Brandt a cheque to return the sum of £800 to her. Mrs Ewing could also have returned the sum of £800 to Mrs Brandt through Mrs Brandt's solicitors.

**7.7** The Tribunal accept the evidence of Mr Ewing that it was Mr and Mrs Ewing's intention to return the sum of £800 to Mrs Brandt at the end of the tenancy.

**7.8** The Tribunal also accept that Mr Ewing believed the payment of £800 to be an advance payment of rent as he usually required two months rent to be paid at the start of his tenancies and this is reflected in the unsigned draft lease that had been produced.

However, the Tribunal did not accept this position as being correct in law. Mrs Brandt had made rent payments to Mr and Mrs Ewing on 4<sup>th</sup> January 2022, 3<sup>rd</sup> February 2022, 3<sup>rd</sup> March 2022, 4<sup>th</sup> April 2022, 4<sup>th</sup> May 2022, 6<sup>th</sup> June 2022, 4<sup>th</sup> July 2022, 4<sup>th</sup> August 2022, 5<sup>th</sup> September 2022 and 4<sup>th</sup> October 2022. Had the payment of £800 truly been a payment towards the initial two months advance rent, then after Mrs Brandt paid Mr and Mrs Ewing the first rent payment of £850 on 4<sup>th</sup> January 2022 the next monthly rent payment should have been paid on 3<sup>rd</sup> March 2022.

**7.9** Consequently, the Tribunal determine that the payment of £800 was a tenancy deposit as defined by section 120(1) of the Housing (Scotland) Act 2006 as it was being held by Mr and Mrs Ewing for the duration of the tenancy.

**7.10** The relevant sections of the Tenancy Deposit (Scotland) Regulations 2011 ('2011 Regulations'), as amended, provide:

**Regulation 3.**

**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.

**Regulation 10**

10(1) 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 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.

7.11 As the tenancy deposit of £800 has not been lodged with a tenancy deposit scheme the Tribunal must order the Landlord to pay the Tenant an amount not exceeding three times the amount of the tenancy deposit.

7.13 The Respondent, Mrs Ewing is one of the Landlords of the tenancy. It is acknowledged that the parties have not signed a tenancy agreement but the terms of the model private residential tenancy provide that obligations of landlords are joint and several. Both Mr and Mrs Ewing, and either of them were responsible for lodging the deposit in an approved tenancy deposit scheme. Mr Ewing was not added as a respondent to the application but he attended the hearing as a witness, he gave evidence to the Tribunal and he was aware of the application.

7.14 In assessing the level of sanction the Tribunal considered the parties representations.

7.14.1 The Tribunal acknowledged that the 2011 Regulations were intended to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit at the termination of a tenancy.

7.14.2 The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, always having regard to the purpose of the 2011 Regulations and the gravity of the breach.

7.14.3 The obligation is absolute on the landlord to pay the deposit into an Approved Scheme.

7.14.4 The Tribunal were concerned that the deposit has been unprotected for the duration of the tenancy and continues to be unprotected.

7.14.5 The Tribunal acknowledge that Mr and Mrs Ewing agreed to lease the Property to Mrs Brandt as a favour and that relations between the parties broke down shortly after the commencement of the tenancy.

7.14.6 The Landlords believed the deposit to be a Holding Deposit when they accepted the deposit from Mrs Brandt.

7.14.7 Mr and Mrs Ewing both believed that the payment of £800 made by Mrs Brandt was not a tenancy deposit. Mrs Ewing believed it was a holding deposit and was due to be refunded to Mrs Brandt and Mr Ewing believed the payment was an advance payment of rent. Consequently, they both believed incorrectly that the payment of £800 made by Mrs Brandt was not subject to the Tenancy Deposit Regulations.

7.14.8 The Tribunal acknowledge that Mrs Ewing has another property that she leases. She is not a beginner landlord.

7.14.9 The Tribunal further acknowledge that Mrs Brandt has not incurred any loss by the deposit not having been lodged in an approved tenancy deposit scheme.

7.14.10 The Tribunal were surprised that the draft lease that had been prepared by Mr Ewing was a short assured tenancy agreement. The correct lease agreement was a private residential tenancy agreement. The model private residential tenancy agreement details the parties obligations in connection with rent deposits.

7.14.11 In the circumstances the Tribunal considers it to be fair, proportionate and just to sanction the Respondent for non compliance by awarding the Applicant a sum of £800 being the equivalent of one times the deposit of £800.

7.14.12 The Tribunal orders the Respondent to pay the Applicant the sum of £800 by way of sanction under Regulation 10 1(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

7.14.13 The Tribunal also orders the Respondent to lodge the deposit of £800 with an approved tenancy deposit scheme by 30<sup>th</sup> November 2022 and provide the Tribunal and Mrs Brandt with evidence that the deposit has been lodged with an approved tenancy deposit scheme by 30<sup>th</sup> December 2022.

## **8. 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.**

Jacqueline Taylor

..... Legal Member

15<sup>th</sup> October 2022