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 Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011/176 and under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/PR/22/4405

Re: Property at 10 Abbotswell Drive, Aberdeen, AB12 5QN ("the Property")

Parties:

Arinola Yusuf, c/o AICM Ltd Dunesk, Marykirk, AB30 1UT ("the Applicant")

Yemisi Felicia Ottu, 31 Carrikdale Gardens, Portadown, Craigavon, BT62 3BN ("the Respondent")

Tribunal Members:

Joel Conn (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

1. This was an application by the Applicant for an order for payment where landlord has not complied with the obligations regarding payment of a deposit into an approved scheme, or provision of prescribed information, under regulation 9 (court orders) of the *Tenancy Deposit Schemes (Scotland) Regulations 2011/176* in terms of rule 103 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended ("the Rules").

2. The tenancy in question was a Private Residential Tenancy of the Property by the Respondent to the Applicant dated 1 October 2020 and commencing on that date. (Though both the date of signing of the Tenancy Agreement and the date of the Tenancy's commencement were in dispute, the only document lodged by either side bore these dates and neither side claimed the Tenancy commenced earlier than mid-September 2020. The Applicant said that the document lodged was the only Tenancy Agreement signed. The Respondent

said it was the final Tenancy Agreement signed. We state our findings on this point below.)

3. The application was dated 13 December 2022 and lodged with the Tribunal on that date. The application relied upon evidence that a deposit of £500 was due in terms of the Tenancy, that the £500 deposit had been paid to the Respondent, but that it was never paid into an approved scheme. The application stated that the Applicant was "seeking compensation" but did not state the amount sought. The Applicant did not, at any time, make any submission (in the application papers nor orally) seeking return of the deposit itself under contract law. In any case, it was clear that return of the deposit was disputed by the Respondent in regard to the potential arrears issues that will be discussed further below.

4. Prior to the case management discussion, both parties lodged further written submissions and documents, such as a copy of the 22 February 2023 email and various text exchanges and photographs.

5. The application did not express the specific order sought, but relied on the failure to protect the deposit.

The Hearing

6. Evidence was heard across two days, by remote conference call, on 24 April and 7 June 2023. There was appearance by both parties personally and they each represented themselves. Further to a Notice of Direction following the case management discussion, witness statements were lodged (though one witness's statement was lodged late, further to a subsequent set of Directions). Three witnesses (the Applicant's two children, and one daughter of the Respondent) had statements lodged, but never gave oral evidence. As their statements were not agreed between the parties, their witness statements were not considered as part of the evidence due to their non-appearance.

7. For the benefit of the parties understanding of this Decision, we acknowledge that we heard significant evidence on a number of additional points such as: whether rent payments were regular after October 2020; discussions on increases and decreases in the rent due; an attempted visit by the Respondent to the Property in late 2022, and her contact with the Police regarding access; the level of rent arrears that may be due arising from the manner in which the Applicant left the Property; and when the Respondent regained access to the Property. We do not record in detail all the evidence on these points as we have not found those issues as directly relevant to our Decision, beyond brief comments.

The Applicant

8. The Applicant's witness statement incorporated a number of documents (mostly text communications) between herself and the Respondent, and between herself and friends. She provided her evidence with reference to these

documents so as to illustrate dates or to seek to corroborate her version of events.

9. The Applicant's evidence was that she and the Respondent had been neighbours when they had lived in neighbouring flats elsewhere in Aberdeen. The Respondent had moved away and bought the Property. In or around Spring 2020, the Respondent approached her to offer to rent the Property to her, as the Respondent and her family were moving to Northern Ireland. She referred to a text message lodged dated 8 May 2020 where the Applicant wrote to the Respondent about her attempts to locate a home through a housing association and included the comment: "But I am happy to take up your offer of taking your place as discussed".

10. The Applicant's evidence was that the Respondent had offered to rent the Property to her for £450 a month which she was told to be the level of the mortgage. The Applicant was thus being offered the chance of a property that was both bigger than her then rented home and at a lower rent. She told a number of friends of this, or of aspects of this. A text to "Reza" dated 2 July 2020 contained the following: "my former neighbour bought the 3 bed house, refurbished it and she's moving back to Ireland. She's giving us the mortgage price of 450. She's leaving in September, so we'll move in then" (all *sic*).

11. The Applicant said that she and the Respondent discussed the moving in date and it was agreed that rent would start from 1 October 2020 but that the Respondent would both allow the Applicant to move belongings in beforehand for storage, and then the Applicant would have occupation of the Property rent-free for around a week before 1 October 2020. Again, the Applicant told a number of friends of this, or of aspects of this. A text to "Ann" (whom we were told was Ann Smith, another of the witnesses) dated 25 August 2020 contained the following: "She's giving us a whole week rent free to move, so the rent starts 1st October and this [that is, the Applicant's then tenancy] ends 2nd of Oct but we will start moving around 25th or so".

12. In regard to leaving belongings, the Applicant's evidence was that she stored items in the Property's basement on or about 12 September 2020. A friend from church, Kenneth Sutherland, had a van and was able to help her. A text to Mr Sutherland dated 10 September 2020 contained the following: "i can actually keep things in the basement of the house,I spoke with the landlady and she's happy with that. So might move some cupboards/drawers, with the bed to drop at the house and then pick up the bed from Ann's. Thanks and see you on Saturday." (all *sic*) (We noted that 10 September 2020 was a Thursday and that 12 September 2020 was a Saturday.)

13. In regard to the date of obtaining keys, the Applicant's evidence was that she was given short notice that the Respondent wished to hand over keys on 22 September 2020 and attended there at night to obtain them. A text from her to "Ann" dated 22 September 2020 and time-stamped 21:59 read: "I'm just at the house to collect the keys as they are moving to Ireland tonight." She moved in

her belongings in the days following, again with the assistance with Mr Sutherland and use of his van.

14. The Applicant's evidence was that matters were not all straight-forward however, and she gave evidence on two issues with the start of the Tenancy: agreement of the rent due, and the condition of the Property.

15. In regard to the agreement of the rent due, the Applicant's evidence was that she did not see the Tenancy Agreement for signing until she arrived at the Property late on 22 September 2020. She said that the document stated a rent of £550 per month, instead of the £450 that she was expecting, but she felt she had to accept the increased rent due to the pressure she was then in – having already started to move her belongings into the Property and with a leaving date for her current flat set for 2 October 2020 (on which she referred to an email from her then landlord dated 6 September 2020, which did refer to that date).

16. The Applicant's evidence was that the Tenancy Agreement lodged by her was the only one ever signed. We noted that it was not a standard Private Residential Tenancy style though it clearly was intended to be a PRT lease given its terminology and no specified duration. It was 10 pages in length and was mostly pre-printed but there were blank spaces for completion (which were completed in handwritten additions). Of these the significant completed blanks were:
    a. Page 1 – "(the "Tenants"): This was completed with "ARINOLA YUSUF".
    b. Page 2 (clause 9) – "the rent for the Property is £_____ per month (the "Rent")": This was completed with "550:00".
    c. Page 2 (clause 10) – "The Tenant will pay the Rent in advance, on or before the _____ of each and every month…": This was completed with "1st".
    d. Page 2 (clause 12) – "On the execution of this Agreement, the Tenant will pay the Landlord a security deposit of £_____ (the "Security Deposit"): This was completed with "500:00".

    The final page had signatures said to be by both parties (which signatures the parties did not dispute). The Respondent's signature was dated "1/10/2020". There was no date completed in the equivalent space for the Applicant's signature. No witness had signed to witness the signatures and those spaces were also left blank. The document concluded with a docket saying:

    > "The Tenant acknowledges receiving a duplicate copy of this Agreement signed by the Tenant and the Landlord on the ____ day of _____, 20__"

    which was completed to say "1st day of October, 2020". Despite these dates, the Applicant's evidence was that she in fact signed the Tenancy Agreement around midnight on 22/23 September 2020 at the Property, prior to the Respondent and her family finally leaving the Property, having provided her with the keys. (Neither party gave a clear explanation as to why 1 October 2020 was the date in the Tenancy Agreement nor on which of them was said to have written the dates in the signing section.)

17. In regard to the issue in dispute in this application, the Applicant gave evidence of making two payments to the Respondent's bank account of £500 on 22 September, with a further £50 made on 23 September 2020. (These payments were not in dispute and the Respondent had lodged her own bank statements showing the payments to have been made.) She said she paid these three amounts, rather than making a single payment, due to limits on her on-line banking's single payment limits and daily payment limits. The Applicant's evidence was that the payments of 22 and 23 September constituted the £500 deposit and first month's rent of £550 (covering 1 to 31 October 2020). The deposit was thus paid and fell to be lodged with a tenancy deposit scheme, and the Applicant – during cross-examination – insisted that she had asked the Respondent about where the deposit was lodged during conversations with her, starting within a few months of the commencement of the Tenancy. (No material evidence was given as to the nature of these discussions. We heard only the Applicant's brief evidence that she had asked about the deposit. The Respondent's evidence was that the deposit was never asked about (as she held none had been paid) and conversely the Respondent said she had frequently asked the Applicant, after commencement of the Tenancy, about when the Applicant would pay the deposit.)

18. In regard to the condition of the Property at the time of obtaining the keys, the Applicant described how the Respondent and her family were still packing up towards midnight on 22 September 2020, not leaving "until almost 1am on the morning of the 23rd of September 2020". In her oral evidence, she said she attempted to assist them in moving out, and that around midnight the Respondent "tried to start sweeping" the Property and was apologetic about the condition it was in. In response to cross-examination, she said the Property as left "was a mess". She said the Respondent asked the Applicant to take meter readings and send these to her, and the Applicant lodged evidence of photographs taken (though not of any texts sent) showing an electricity meter (date and time stamped 23 September 2020 at 00:27) and a gas meter (23 September 2020 at 16:32).

19. The Applicant described requiring to tidy and clean the Property for a week, finding items left by the Respondent and her family throughout the Property and food items left in the kitchen. Her written statement said that "I had to take bags of garden waste and trash from the property to the skip". She said there was mould to clean off walls (lodging two photographs said to show this, date and time stamped 26 September 2020 at 15:46 and 15:57 – though we found it difficult to ascertain whether the photographs did show mould). The Applicant's position was that she did not enjoy a rent-free week and instead had to spend the time returning to the Property to clean, so as to be able to move in before her then lease expired on 2 October 2020.

20. As for evidence of items having been left, the Applicant produced photographs of assorted items (date and time stamped 7 October 2020 at 14:03), shoes (4 October 2020 at 10:57), and a pile of clothes (4 October 2022 at 17:22), and text messages with the Respondent where the Respondent asked her to look for items that she had suspected were left. These included:

a. A text exchange of 23 to 24 September 2020 with the Respondent mentioning “the jacket is there with some other clothes in the wardrobe but I didn’t see the duvet”.
b. A text of 2 October 2020 to the Respondent saying: I have checked again, there’s no box in either room”.
c. A text exchange of 28 November 2020 where the Respondent requested: “Please can you help me check all the baking stuffs in the kitchen my son want them not reasoning” (all *sic*) to which the Applicant responded “I threw some out when I was tidying up the kitchen cupboards when we moved in but will put together the ones that are still there.”
d. A text (but the recipient information was not included) of 17 November (year not included) saying: “I checked and didn’t see the biscuits. If it was there, it has probably been thrown out or it wasn’t there as we didn’t eat any biscuits that we didn’t buy. The wardrobes have been emptied, cleaned before we started arranging out things since before we moved in. I have checked the kitchen cupboard if one of us put it there but can’t find it. I can bring out everything and check again by the weekend.”

The Applicant’s evidence was that these were all texts with the Respondent, responding to requests from the Respondent for the Applicant to locate items that the Respondent and her family had left at the Property. Along with requests to locate items left in the Property, the Applicant said that the Respondent and her family kept the Property as their postal address, so their post was collected and retained by her so the Respondent could then make arrangements for someone to come and uplift it.

21. The Applicant further complained that during the Tenancy the Respondent made her pay for repairs, and then asked her to deduct the costs from the rent due. The Applicant also complained that the Respondent sought to increase the rent during the period of the statutory freeze on rent. This was shortly before she left the Property. Text exchanges appearing to show conversations on both topics were lodged.

22. The Applicant gave evidence that the Respondent communicated with her and gave her until 12 January 2023 to leave (we did not note the medium or date of this communication). Thereafter, the Respondent then emailed a Notice to Leave (referred to further below) stating that she wanted possession by 5 January 2023. The Applicant said she paid rent to 31 December 2022 and then moved out on 12 January 2023, putting the keys through the letterbox. She accepted that a pro-rated rent of £201.29 through to 12 January 2023 could be deducted from the deposit to cover those days.

23. In response to the Respondent’s position on the contract terms and documents, and factual background:
a. The Applicant said she was not and never had been in a romantic relationship with Mr Sutherland. Mr Sutherland’s involvement was solely as a friend, and he helped many people move items given that he had access to a van.
b. The Applicant disputed signing an Inventory which the Respondent relied upon. She said her signature was forged on the document but no handwriting expert was led as a witness, and the Applicant did not give

any specific evidence as to any differences we should note between the signature on the document and her signature on other documents (such as the Tenancy Agreement which both parties agreed was signed by her). The Respondent's main evidence on the Inventory appeared to be regarding a typed note next to the signatures mentioning the deposit not yet having been paid as at the time of signing of the Inventory. In regard to the contents of the Inventory itself, the Applicant accepted that some of the items on it were left in the Property at commencement of the Tenancy but some were not. In regard to the Lounge, she mentioned that sub-woofer speakers had been removed, and that the lounge only had one lamp (but the Inventory referred to "lamps"). In the Kitchen, she said not all items listed in the Inventory had been left but in any case she mostly used her own kitchen items.

c. The Applicant denied that there had been any agreement that a freezer was to have been bought for the Property for £50 and paid for by her. She said that she had her own fridge freezer that she brought with her and did not need another, but that the Respondent did arrange for an additional chest freezer for the Property in any case. She said that she left the freezer when she vacated, and stated the rhetorical question as to why she would have done that if she had paid for it.

d. The Applicant denied any further agreement for rent to cover the period in September. Her evidence was that the Tenancy Agreement lodged was the only agreement on rent, with rent starting from 1 October 2020. She referred to the text where she referred to a "whole week rent free to move" (text to "Ann" dated 25 August 2020) but also the notice and covering email sent by the Respondent to her on 5 December 2021. The email stated "I want you to know that when you moved into my property two years ago you were also given 2 weeks rent free". The Notice to Leave (which we note was not in the appropriate style nor contained all the statutorily required information) contained a sentence: "After adjusting any repair expenditures for any damages to the property, your security deposit will be reimbursed". Between these documents, the Applicant made clear that she was satisfied that no rent was due prior to 1 October 2020, and the payments she made on 22 and 23 September 2020 were to cover the first month's rent and the deposit, that the payments did cover those sums fully, and that those were the only sums due at that time.

e. The videos of the Property lodged by the Respondent did not show the condition of the Property when the Applicant took possession. The Applicant suspected the videos were of the Property since she left, as she said it showed the Property in the good condition as she had left it but she accepted that the videos showed family photos of the Respondent's family which were not in the Property when she was living there.

f. There was no return visit by the Respondent to the Property on 23 September 2020 to have a further copy of the Tenancy Agreement signed. The Applicant said that she thought the Respondent's first visit back to the Property after handing over keys was around 17 November 2020 (based on the text around then about looking for further items that had been left). In regard to the Respondent's claim that possession was given on 12 September 2020 and that the Respondent then returned on 23 September 2020, the Applicant referred to the text messages that

supported her evidence as to the date she obtained the keys, as well as the texts of 23 and 24 September 2020 to the Respondent about items left. They read:

i. 23 September 2020 15:18: "I may go there earlier than 5pm once I pick the girls now I will go to collect it".

ii. 24 September 2020 18:44: "The jacket is there with some other clothes in the wardrobe but I didn't see the duvet."

The Applicant noted that these texts (and the request for meter readings to be sent on 23 September 2020) were not consistent with the Respondent having visited the Property on 23 September 2020.

Kenneth Sutherland

24. Mr Sutherland gave relatively brief evidence, of knowing the Applicant from church and helping her, as he has helped many people, move items. He said that he had access to a works van and frequently volunteered to help people in this way. He estimated that he helped someone in this way around once a month. He said he had helped the Applicant move "a couple of times". He never charged for his time or outlays in doing so. His evidence was that he had never been romantically involved with the Applicant.

25. He described two visits to the Property, the dates of which he could specify more precisely from reviewing his own text messages. The first visit was to place items in the basement of the Property and he said this was the "weekend of 13 September 2020". He did not recall speaking with the Respondent on that occasion, but thought she may have "taken the end of a box". He recalled that he took items out of the main rooms of the Property and into the basement, as well as taking items of the Applicant's into the basement. He did not recall seeing the Respondent videoing or photographing the Property while he was there.

26. The second visit was during the "weekend of 26th September 2020" when he and the Applicant moved other items into the Property and he took the Applicant's furniture out of the basement and back into the Property. He described in his witness statement that the Property "was untidy when I helped the Applicant move in". In his oral evidence he described it "as if when moving out a house, there are bits lying around, bags and things needing cleaned. The big things were out but it needed cleaned." He said that he was a landlord himself and it "was not as I would have left it" for a new tenant.

27. His witness statement made reference to the same text of 10 September 2020 that the Applicant had relied upon, along with a text of 2 October 2020 from the Applicant which said: "We finally moved in last night".

Ann Smith

28. Mrs Smith's evidence was also relatively short. She said she first knew the Applicant through volunteering at an agency and they became friends. Mrs Smith said that she met or spoke with the Applicant at least once a week,

sometimes in person at church. Therefore, there was further information that the Applicant had told her that was not seen in the lodged text messages.

29. Mrs Smith said she never visited the Property during the period of moving in. She had offered to help the Applicant move but, due to the Covid restrictions at the time, the Applicant had declined this.

30. Mrs Smith's evidence was thus limited to giving evidence that, contemporaneously, she had been told of the Applicant's progress (either speaking to the same text messages that the Applicant had spoken to, or referring to further conversations they had had):
    a. From conversations, that she had been told that the Respondent (whom she thought she had met once when she was the Applicant's neighbour) had offered to rent the Property at £450 a month. Mrs Smith said she was "sceptical that the property was on offer at the mortgage price of £450".
    b. Per the text message of 25 August 2020, that one week rent free was being provided, with the Applicant starting to move in "around 25th or so" of September 2020.
    c. From conversations, that the Respondent had agreed to let the Applicant store items in the basement of the Property prior to moving in.
    d. Per the text message of 22 September 2020, that the Applicant had collected keys that night.
    e. From conversations, that the Tenancy Agreement, when signed was for an initial £550 per month with a £500 deposit, which the Applicant did agree to.
    f. From conversations, between obtaining the keys on or about 22 September 2020 and moving in, that the Applicant had to clean the flat because it was "that dirty".
    g. Per a text message of 2 October 2020, that the Applicant's first night at the Property was 1 October 2020.

31. Mrs Smith also knew Mr Sutherland through volunteering and knew that he helped people move home or move items, using his van. Mrs Smith knew that Mr Sutherland had assisted the Applicant but she had not spoken to Mr Sutherland about his views of the condition of the Property.

The Respondent

32. The Respondent, whose full name is Oluwayemisi Felicia Ottu, produced initial written submissions in advance of the case management discussion, which we agreed should be treated as her principal written statement. She also provided further written documents, and evidence, at the same time as the witness statements and which we treated as supplementary witness statements. In oral evidence she confirmed that they remained accurate but we note that our understanding of her position was materially from her oral evidence. There were points where, at best, the witness statements did not provide a full understanding to us of her evidence-in-chief and, at worst, was inconsistent with her position.

33. The Respondent gave evidence that she knew the Applicant as a former neighbour and that she chose to offer her the Tenancy of the Property at a rent close to her mortgage costs. The Respondent's evidence was that the Applicant had approached her when the Applicant became aware that the Respondent's family were moving. Further the Respondent gave evidence that her mortgage was £575 a month and insurance £400 a year so the rent she was offering was less than her basic outgoings. She did not explain why she offered to let the Property at a loss, though gave evidence at one point where she said she wanted to help out the Applicant because of her children for whom she very much cared.

34. The Respondent's initial witness statement said:

> "On the 13th of September 2020, I handed the property key over to Arinola so she could be able to move in by the 14th of September. I signed the official lease agreement on the 1st of October 2020 as per her request."

After repeated requests for clarification as to the documents signed and the dates, we understood the Respondent's full timeline to be as follows however:

a. In anticipation of meeting with the Applicant to sign a lease, on 7 September 2020 the Respondent printed a copy of the lease agreement (in the form that the Applicant relied on, but with the blanks we refer to a paragraph 16). She completed the blanks so that the lease stated that the rent was £550 a month, a deposit of £500 was due, and the lease commenced on 13 September 2020.
b. The parties met at the Property on 8 September 2020 and the completed lease agreement was signed with copies retained by both parties. The Applicant, however, requested that the Respondent also provide her with a copy of the lease but stating that the rent was to be £650 a month. The Respondent refused to be involved in producing a false document but, at that meeting, printed a further copy of the lease with all the blanks in place and gave that to the Applicant for her to use as she wished.
c. At some point on 8 September 2020 or 13 September 2020 (or between those dates): Though not mentioned in the written document, the parties agreed that the Applicant would also pay £450 for rent for 13 to 30 September 2020 and £50 for a chest freezer.
    i. In regard to the former, the reason for the figure being more than £550 pro-rated (which would have been around £312) was because the rent figure was so low already.
    ii. In regard to the latter, the reason for the freezer purchase was that at some point (the timing of which was not clear to us) the Respondent said that she discussed her existing chest freezer with the Applicant, and the Applicant had said she did not want it. The Respondent had donated the freezer to a friend but the Applicant then said she did want a further freezer after all, so the Respondent agreed to source a second-hand one for £50.

(The date or dates that the Respondent said these discussions occurred was not clear. As we note below, Mr Odumade was clear all discussions on the terms of the Tenancy occurred at the meeting of 8 September 2020, but this would have meant – at least regarding the alleged £50 payment – that the freezer had already been discussed and the freezer already donated by 8 September 2020. Also, it would have meant that the

parties were discussing rent of £450 for 13 to 30 September 2020 despite having just signed a lease commencing on 13 September 2020 with rent at £550 per month. If the start date of the tenancy was 13 September 2020, then logically, the rent start date would also be 13 September 2020.)

d. On 13 September 2020, the Respondent took photographs and three short videos (two of them very short) of the condition of the Property prior to her completing their packing. The videos show a living room, part of another room, a toilet, and a hallway, and the photographs principally show bedrooms and the kitchen. (Our assessment of the videos and photographs were that they showed a well-furnished property that seems reasonably tidy but clearly with some personal items still within it, such as: photographs out; kitchen utensils sitting at the sink; items sitting on tables, chairs, and side tables; and bathroom items lying out. The photographs and videos were lodged in a way that we could not read the original metadata and no evidence was provided to show what this data had been.)

e. Also on 13 September 2020, after the photographs and videos were taken, the Applicant came to the Property and put items into the basement but also collected the keys and took possession. The parties signed an Inventory of the Property that day, with the Respondent's daughter Natasha Odumade as a witness. The signing section of the Inventory said the following, typed and in manuscript (recreated below: all *sic*):

		Landlord (s) Signature(s)	**Tenant(s) Signature (s)**	**Witness Signature**
Deposit Amount £500	**Not paid /expected on 01/10/2020**	*[Manuscript signature]*	*[Manuscript signature]*	*[Manuscript signature]*
Inventory and Condition report Agreed	**13/10/2020**	YEMISI-OTTU *[in manuscript]*	ARINOLA.Y *[in manuscript]*	Natasha Odumade *[in manuscript]*

The Respondent and her family (with the help of a friend) then concluded their packing up and left to move to Belfast. The Tenancy commenced at that time.

f. It was agreed between the parties that the Applicant made payments of £500 and £500 on 22 September 2020 and £50 on 23 September to the Respondent but the Respondent said that this covered to rent from 13 to 30 September and 1 to 31 October 2020 plus the £50 for the freezer.

g. At some point prior to 23 September 2020, the Applicant called the Respondent to say that she had misplaced her copy of the Tenancy Agreement and needed to send it to the local authority. The Respondent said that she could not locate her copy either, due to the move, and also due to the move she could not print a new one (as her printer was not set up). The Applicant said that she still held the blank agreement. The Respondent agreed that she would fly back to Aberdeen and they would sign that as a replacement.

h. On the morning of 23 September 2020, the Respondent left her night shift (as a mental health nurse) in Belfast, did not return home, went straight to Aberdeen by plane, and met with the Applicant at the Property to sign the replacement Agreement. She read through it and noticed that the

Applicant had completed the blanks herself and it now said that the Tenancy and rent started on 1 October 2020. Nonetheless, she signed it and allowed it to be dated 1 October 2020, even though that was not the date of signing. She then flew back to Belfast and went straight to start her night-shift.

i. The deposit was never paid despite the Respondent chasing the Applicant about it in conversations after 23 September 2020.

j. The Applicant was in significant arrears as at the time of the Hearing, as she had never told the Respondent that she had left, and possession of the Property was only regained during the time between the first and second days of the Hearing. The Respondent sought rent for the period up to the Applicant confirming (in her evidence-in-chief) that she had moved out of the Property.

35. The Respondent was pressed, by the Tribunal members and in cross-examination, on a number of the inconsistencies in her chronology and issues regarding her conduct as a landlord. These included:

a. She was asked why the Applicant came with Mr Sutherland to place boxes in the basement on the weekend of 12 or 13 September 2020 if that was the date that she moved in. We did not note a material response, other than that she held that the Applicant was moving her belongings into the Property on that visit.

b. She was asked why the Inventory said it was signed on “13/10/2020” when she says it was signed on 13 September 2020. She said that was a typographical error. She stated that she had noticed at the time but that a new copy could not be printed as the printer was packed. The Respondent did not provide a clear answer as to why a handwritten correction was not made.

c. The Respondent was adamant that the signature purporting to be the Applicant’s signature on the Inventory was not a forgery and that she would never be involved in forgery. She made a point of again repeating her position that the Applicant had sought the Respondent to make a false copy of the lease at £650 per month but that the Respondent had refused to do so.

d. She was asked why the Notice of 5 December 2022 (referred to at paragraph 23)d)) referred to a deposit. We did not find her answer clear but she appeared to suggest that was included to cover the situation if the deposit was subsequently paid.

e. She was asked why the email of 5 December 2022 (also referred to at paragraph 23)d)) referred to a two week rent-free period. We did not find her answer clear.

f. She was asked about when the photographs and videos were taken, as the Applicant said that a computer table seen in the video was not purchased until after she took entry. The Respondent replied that she had such a computer table which she then packed after the video was taken but, on the request of the Applicant for a computer table, she had then sourced an identical computer table second-hand online and given the Applicant the money to purchase it.

g. Regarding items, including food, that had been left, the Respondent said that items were left at the Applicant’s request (such as clothing for her

children and items in the fridge) or, in the case of biscuits left in the basement, had been left for her children to have.

h. Regarding post still arriving at the Property, and the Applicant being contacted by the Respondent so that someone could collect it for her, the Respondent said that the Property remained her "principal place of residence", so that was why she did not change her address. She said "it was not like [the Applicant had] a 5 year lease".

i. In evidence, the Respondent said that she recalled the date that the Applicant moved in to be a Tuesday. It was put to her that 13 September 2020 was a Sunday but 23 September was a Tuesday. She did not accept that she may have been in error as to the date.

j. As to why she would fly straight from night-shift to Aberdeen to have a replacement lease signed, she said it was because she was keen to ensure the rent was paid.

k. As to where the earlier signed lease was, she said she had never located her copy.

l. The Respondent said that she was registered as a landlord, despite the Applicant pressing her in cross-examination about her failed attempts to locate a registration. The Applicant asked the Respondent for her registration number but did not have it. (We have checked the Register and the Respondent is registered in regard to the Property as at the time of issuing this Decision. We have not investigated further as to the date of registration being applied for or uploaded. No evidence was led by either side as to when the registration application was first lodged.)

36. The Respondent's witness statements also stated that Mr Sutherland was the boyfriend or partner of the Applicant. Her evidence was that the Applicant had given a number of conflicting statements to her as to her relationship with the father of her children. (There were also text messages lodged suggesting that the Respondent held the Applicant not to have been accurate in statements regarding where one of her children had been born.) She gave evidence that the Applicant had then told her that she was in a relationship with Mr Sutherland. The Respondent said that though she did not make any judgements as to the Applicant's relationships, the Respondent thought this showed the Applicant could be dishonest in her statements.

Olesegun Odumade

37. Mr Odumade's evidence was, in general, the evidence that the Respondent provided in regard to the events of 8, 13 and 23 September 2020. In regard to 8 and 23 September, he reported what he had been told by the Respondent:

a. That there was £450 to be paid for the rent to 30 September.

b. That there was £50 to be paid for a freezer as they had given away their freezer but then the Applicant had said she wanted one.

c. That the Tenancy commenced on 13 September 2020, when his family vacated.

d. On 13 September 2020, he and his family were assisted in moving out by one of the Respondent's friends.

e. That on 23 September 2020, the Respondent left straight from night-shift to fly to Aberdeen to have a new agreement signed and then returned to Belfast straight to night-shift.

In regard to 8 September 2020, he said he had seen the Applicant at the Property but was fitting a CCTV camera at the front door, so did not witness any of the conversation or signing of documents. Everything was reported to him by the Respondent straight after the Applicant left. In regard to 23 September 2020, he did not see his wife on that day as she never returned home between her shifts, travelling direct to Aberdeen and back.

38. In regard to evidence that he gave which developed on the Respondent's evidence Mr Odumade said:
    a. He recalled being told by the Respondent around July 2020 that their former neighbour was interested in renting the Property from them.
    b. He saw his wife print the Tenancy Agreement and was told that this was because the Applicant was coming to the Property on 8 September 2020.
    c. On 13 September 2020 he saw the Lease and Inventory already signed and told the Respondent to make sure they were kept safe. He did not read the contents of the Inventory in detail.
    d. The Respondent had called him to say that she needed to go to Aberdeen to have the Tenancy Agreement signed again. He thought she was away sometime around 22 or 23 September 2020. He remained in Belfast during that time.
    e. He recalled that the Respondent wished to show all their mortgage details to the Applicant to "be transparent" about how she was only charging enough to cover the mortgage. He said to her that he did not think she needed to show that information. He described them as arguing about that.
    f. He agreed with the Respondent that the Applicant's children "are lovely" and that the Respondent's intention was to help out the Applicant and her children through the Tenancy.
    g. He believed that they were originally intending to rent out the Property, prior to the Applicant's interest, at £750 a month.
    h. His family left the Property around 19:30 to 20:00 on 13 September 2020 and drove straight to Glasgow and then onwards to the Stena Line "night ferry". He did not retain any vouching for their booking.

39. In response to cross-examination, he said that he and the Respondent had only recently taken entry to the Property, and the freezer that had been purchased was broken. He thought this was why the Applicant had not taken it with her. In regard to the letters coming to the Property, he said he had changed contact addresses after he left the Property, but he knew from experience (such as at his current rental address) that it is common for post for former occupants to continue to arrive at a property.

Findings in Fact

40. The Respondent, as landlord, let the Property to the Applicant under a Private Residential Tenancy ("PRT") dated 1 October 2020 but actually signed on or

about the night of 22 September or very early hours of 23 September 2020 ("the Tenancy").

41. The PRT commenced on 1 October 2020 but, for reasons of mutual convenience, the Respondent provided keys and sole occupation of the Property to the Applicant on or about 23 September 2020.

42. As a courtesy by the Respondent to the Applicant, the Respondent allowed the Applicant to store some belongings at the Property in advance of the signing of the Tenancy Agreement.

43. The Applicant and Kenneth Sutherland attended at the Property to store belongings in the basement to the Property on or about 12 September 2020.

44. The Property required significant cleaning and tidying after the Applicant received the keys on 23 September 2020.

45. On vacating the Property on or around 23 September 2020, the Respondent and her family left belongings at the Property. She requested that the Applicant send her meter readings. She did not immediately redivert her post. In the months following the Applicant obtaining keys, the Respondent contacted the Applicant on a number of occasions asking whether certain belongings were left at the Property, and to make arrangement to have someone collect post.

46. In terms of clause 12 of the Tenancy Agreement, the Applicant was obligated to pay a deposit of £500 "on execution of this Agreement".

47. In terms of clause 9 of the Tenancy Agreement, "the rent for the Property is £550 per month".

48. In terms of clause 10 of the Tenancy Agreement, the rent was to be paid "in advance, on or before the 1st of each and every month".

49. The Tenancy Agreement contained reference at clause 13 to the *Tenancy Deposit Schemes (Scotland) Regulations 2011*, that any deposit would be "lodged… with a tenancy deposit scheme", and that she was to "issue a receipt for the Security Deposit to the Tenant".

50. The Applicant paid £500 to the Respondent on 22 September 2020, along with a further £500 on that day and £50 on 23 September 2020. The payments represented the Applicant's payment of the deposit due on execution of the Tenancy Agreement (that is on or about 23 September 2020) and the first month of rent due on or before 1 October 2020.

51. The Respondent failed to place the deposit into an approved Tenancy Deposit Scheme.

52. The Respondent provided no note of the prescribed information on the tenancy deposit to the Applicant.

53. On or about 5 December 2020, the Respondent provided a letter to the Applicant by email stating that it was “NOTICE TO VACATE MY PROPERTY” and asking for the Respondent to vacate “within 30 days from the date” of the email. The notice further stated: “After adjusting any repair expenditures for any damages to the property, your security deposit will be reimbursed”.

54. The Notice of 5 December 2020 was not in the standard form of a Notice to Leave under section 62 of the *Private Housing (Tenancies) (Scotland) Act 2016* and the *Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017/297*. In particular, it failed to provide clear details of the grounds for seeking termination, or the date upon which an application to this Tribunal could be sought. In regard to service of the Notice, it was sent by email but the Tenancy Agreement did not provide for email service.

55. The Applicant left the Property on or around 12 January 2023, but did not confirm to the Respondent the date that she left, nor did she return the keys to the Respondent or any nominee. The Applicant left the keys in the Property.

56. The Applicant last paid rent on or about 31 December 2022.

57. The Respondent is the landlord of no other rental property other than the Property.

58. The Applicant was the Respondent’s first tenant at the Property.

Reasons for Decision

Assessment of evidence

59. In short, we preferred the evidence of the Applicant and her witnesses over that of the Respondent and her husband.

60. Dealing first with Mr Odumade, the majority of his evidence was based on what he stated his wife had said to him. He had not been in attendance at any of the material discussions between the parties. Though he said his knowledge of the material discussions came from being told straight after the Applicant had departed the Property on 8 September 2020, he included in that being told of the alleged agreement that £450 would be paid for the rent from 13 to 30 September 2020 and £50 for freezer, but it was never clear from the Respondent’s evidence that she claimed that such discussions took place on 8 September 2020 (as she said the freezer was discussed only after the Applicant had said that she did not wish the freezer, it was given to a friend, and then the Applicant came to the house and said that she wanted a freezer after all).

61. The only points that Mr Odumade gave evidence on that were from his own knowledge, were:

a. That the whole family packed up and left the Property on 13 September 2020 around 19:30 to 20:00 and drove straight to their Stena Line ferry to Northern Ireland for a "night ferry". This drive of over 220 miles seems implausible, though it is just conceivable that a ferry leaving at 23:00 might have been met with moments to spare (if one ran that night). Mr Odumade's evidence was matter of fact, however, and he gave no suggestion that this was a break-neck journey.
b. That his wife travelled from Belfast to Aberdeen and back on 23 September 2020 (leaving direct from work after a night-shift and returning straight to work that evening to start the next night-shift). He said that he did not know how she had booked any tickets, and he did not accompany her. At best, he could only have verified that the Respondent was not at home between her shifts on 23 September 2020, so this evidence was at best repetition of what he was told by his wife.

62. In consideration of all matters, we did not find Mr Odumade to be a reliable witness, and we had significant concerns as to his credibility. Unlike Mrs Smith, whose evidence was also materially second-hand reports from a party, none of Mr Odumade's evidence was supported by clear contemporaneous documents and it all suffered from the same inconsistencies and lack of plausibility that we find (below) in the Respondent's evidence. The reasons for doubting the reliability and credibility of the Respondent's evidence lead us to lean towards regarding Mr Odumade as incredible as well.

63. The Respondent's evidence was lacking in credibility. It contained multiple inconsistencies with contemporaneous evidence (such as the text exchanges between the Applicant and Mr Sutherland and with Mrs Smith which were consistent with the Applicant's dates of moving in). It contained four points which strained plausibility:
    a. That the Respondent and her family packed up on 13 September 2020, left the house, and went straight to Northern Ireland. We think it implausible for the reasons stated above regarding Mr Odumade's more detailed explanation of the journey.
    b. That the Respondent flew from Belfast back to Aberdeen after ending night-shift on 23 September 2020, met with the Applicant to re-sign a copy of the Tenancy Agreement, and flew back to Belfast that evening to start her next shift, all because she wanted to ensure the rent would be paid. It is possible that someone was so committed to having a document signed would do this (even where it was already signed but said to have been lost by them <u>and</u> their tenant). It does seem, however, that it could have as easily been attended to through couriers or Special Delivery. We just do not find the story plausible. Further, though it is possible that the journey could be done – though we saw no evidence of the times of the flights - the Respondent's evidence did not give any suggestion that this extraordinary journey (where she must have missed a day's sleep) was unusual to her. We were not satisfied that it occurred, especially given:
        i. The evidence from the Applicant and her witnesses that showed she only obtained keys on or about 22 to 23 September 2020.
        ii. The texts from the Applicant to the Respondent of 23 and 24 September 2020 where the Applicant responded to requests by the

Respondent to look for items at the Property. The Respondent gave no evidence to explain why, having allegedly attended at the Property on 23 September 2020, she needed to ask the Applicant to look in the Property for items she had left.

iii. The meter photographs on 23 September 2020. We accepted the Applicant's evidence that these readings were taken, at least in part, further to the Respondent's request. (The Respondent did not give evidence disputing this.) The Respondent gave no evidence to explain why, having allegedly attended at the Property on 23 September 2020, she needed to ask for meter readings to be sent to her from that day.

c. That there were two leases prepared, the first lost by both parties and not even a draft ever recovered on the Respondent's own computer.

d. That the Inventory was prepared with a curious comment that the deposit was "Not paid/ expected on 01/10/2020" and with a typed date of "13/10/2020" which date was said to be a typographical error. The Respondent insisted the Inventory was signed on 13 September 2020 by her and Applicant with the Respondent's daughter Natasha Odumade as witness. (Ms Odumade was not able to give evidence, so we cannot consider what her position was on the document.)

64. This is before we turn to those points that were possible but, at best, unusual:

a. That there was a separate oral agreement that the Applicant would pay £450 for rent for the period 13 to 30 September 2020, when the monthly rent was £550, and that this agreement was entered into alongside a written lease that allegedly said that rent started on 13 September 2020 and ran monthly.

b. That there was a separate oral agreement that the Applicant would pay £50 for a freezer to be put in a Property. Leaving aside that the Applicant stated she had a fridge/freezer, why would a tenant pay for the landlord to supply a freezer?

On these two points, we thought it too convenient for the Respondent that the amounts of £450 and £50 (for which no written evidence existed) added up to the amount of the deposit that the Respondent denied receiving. We further noted that her email of 5 December 2022 referred to giving two weeks' rent free when the Applicant moved in, and that the "Notice" of that date also referring to the Respondent holding a deposit. Both were inconsistent with the Respondent's explanation for what the £500 was supposed to cover.

65. The Respondent supported her version of the chronology with only one piece of written documentation: the Inventory which was dated "13/10/2020" and where the Applicant was alleged to have signed to accept the docket next to a comment saying "Not paid/ expected on 01/10/2020". The Applicant denied signing and the alleged witness, Natasha Odumade, did not give oral evidence (so we are not considering her witness statement further). We did not, however, hear from a handwriting expert and nor did the Applicant explain why she was so sure (other than from her recollection) why the signature must be a forgery, such as by drawing our attention to discrepancies in the signature compared to other writing samples.

66. We decline to make a decision on whether or not the signature is a forgery, and whether the Inventory was signed as it purports to have been signed, on 13 September 2020 as neither side has satisfied us on the balance of probabilities as to their position. This does not trouble us, however, as it is not necessary for to make a decision on the Inventory in order to reach our decision. The Respondent's position is that the Inventory was signed on 13 September 2020 (not 13 October 2020). The Applicant says she paid the deposit and first month's rent across three payments on 22 and 23 September 2020. We are satisfied, such as from the text message evidence along with the Applicant and her witnesses, that the Applicant did not receive keys until 22/23 September 2020. Therefore the Inventory, if a true document signed on 13 September 2020, is still entirely consistent with the Applicant's time-line. The Inventory then becomes only an issue of the competing credibility and reliability of the parties, given the Respondent's insistence it was signed and the Applicant's insistence that it is a forgery. Given neither party has satisfied us of the factual position, we have regarded it as neutral in our assessment of the parties' credibility and reliability.

67. In conclusion, at best, we hold that the Respondent was unable to recall the events of September 2020 accurately and was seeking to restate the position to assist her, even when confronted with inconsistencies. Her evidence was not reliable. It appeared to us also to be incredible.

68. We were satisfied that the evidence of the Applicant, Mr Sutherland, and Mrs Smith was credible and reliable. It was all internally consistent, consistent with external written evidence, consistent with each other, and plausible.

Consideration of the law

69. Much of the evidence provided was entirely irrelevant to our core consideration. For the Respondent to succeed, she required to satisfy us that there were separate oral agreements that the Applicant was to pay the Respondent £450 for rent for September and £50 for a freezer. If she was to satisfy us of this, then the payments of 22 and 23 September 2020 of £1,050 did not represent payment of the £500 deposit and £550 rent from 1 October 2020, but instead paid the £450, the £50 and the £550 rent from 1 October 2020.

70. It cannot be disputed that, in law, there was a Tenancy Agreement which stated that rent commenced on 1 October 2020 (at £550 a month) and that a deposit of £500 was due in terms of it. Even if we were to believe the Respondent (which we do not) that there was an original Tenancy Agreement which stated a different start date for the rent, she accepts that she signed the "second" Tenancy Agreement (the only agreement in the evidence of the Applicant). Therefore, even if the document lodged is the "second" Tenancy Agreement and that its terms differed from the original, the Tenancy Agreement that was lodged and relied upon by the Applicant was the final agreement signed by the parties and it is binding on them (as no one was seeking to reduce it or otherwise explain why it was not a binding contractual document).

71. Therefore, for the Respondent to avoid an order, she needs to satisfy us that there was in addition both an oral agreement that the Applicant was to pay the £450 rent for the period to 30 September 2020, plus an oral agreement to pay £50 for the freezer. We were not satisfied that there was. There was no evidence for such agreements except the evidence of the Respondent (as we are discounting Mr Odumade's hearsay evidence as having no weight for the reasons given above). Such agreements would, in any case, be inconsistent with the Respondent's other evidence that on 8 September 2020 the "first" agreement was signed saying rent was £550 a month but the lease started on 13 September 2020. If it is true that there was such an earlier agreement (which we do not accept), there was no period from 13 to 30 September 2020 which fell to be dealt with differently as rent just started on 13 September 2020 at £550/m. Further, when could the agreement have been made on the freezer for £50? Only after some point when the Applicant allegedly said she did not wish a standalone freezer, it was donated to a friend by the Respondent, the Applicant then changed her mind, and the parties discussed that the Respondent would need to source a new one for £50. Did this all happen on 8 September or 13 September? It seems unlikely to have occurred on the alleged whirlwind trip of 23 September 2020, as the Applicant had already paid £1000 on 22 September 2020 and paid a further £50 thereafter on 23 September 2020 (and no evidence was led that this payment only occurred after the whirlwind trip, and further both the Respondent and her husband suggested the agreement on the freezer was made before they moved to Belfast).

72. There was no credible scenario when both these oral agreements could be agreed and remain be consistent with the other evidence. We did not accept either oral agreement was made. The terms of the email and Notice of 5 December 2022 fortify us in our view. The Respondent refers to a rent-free period for two weeks at the start of the Tenancy, and refers to a deposit being held.

73. Therefore, if these oral agreements did not occur, the Applicant's payments of 22 and 23 September 2020 fall to be treated as payment of the deposit and first month's rent. The failure to lodge the deposit or provide the prescribed information under the *Tenancy Deposit Schemes (Scotland) Regulations 2011/176* was thus a breach of the said Regulations in regard to the lodging and the provision of prescribed information. (This was despite the Respondent's own Tenancy Agreement making reference to the 2011 Regulations.) We thus find that an award must be made against the Respondent.

74. In coming to a decision as to the level of award, we reviewed decisions from the Upper Tribunal for Scotland. In *Rollett v Mackie, [2019] UT 45*, Sheriff Ross notes that "the decision under regulation 10 is highly fact-specific to each case" and that "[e]ach case has to be examined on its own facts, upon which a discretionary decision requires to be made by the FtT. Assessment of what amounts to a 'serious' breach will vary from case to case – it is the factual matrix, not the description, which is relevant." (paragraph 9)

75. In regard to that "factual matrix", (then) Sheriff Ross reviews with approval the reasoning of the Tribunal at first instance in that case (at paragraph 10). Generalised for our purposes, the Tribunal made consideration of:
    a. the purpose of the 2011 Regulations;
    b. the fact that the tenant had been deprived of the protection of the 2011 Regulations;
    c. whether the landlord admitted the failure and the landlord's awareness of the requirements of the Regulations;
    d. the reasons given for the failure to comply with the 2011 Regulations;
    e. whether or not those reasons effected the landlord's personal responsibility and ability to ensure compliance;
    f. whether the failure was intentional or not; and
    g. whether the breach was serious.

    Applying that reasoning, the Tribunal held – and the Upper Tribunal upheld – an award of two times the deposit. In analysing the "factual matrix" in that case, Sheriff Ross noted:

> *In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer* [of the letting agent in *Rollett*] *also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.*
>
> *Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present.* (paragraphs 13 and 14)

76. The Upper Tribunal considered a case where the Tribunal regarded a low level of culpability in *Wood v Johnston, [2019] UT 39*. The Tribunal at first instance had awarded £50 (though it is not possible from the UT's opinion to determine what this was as a multiplier of the original deposit). Sheriff Bickett noted that parties to the appeal were agreed that "the award is a penalty for breach of Regulations, not compensation for a damage inflicted" (paragraph 6) and, like Sheriff Ross in *Rollett*, analysed the nature of the breach, though in briefer terms. In *Wood*, it was noted that the Tribunal at first instance had made the award in consideration that "the respondent owned the property rented, and had no other property, and was an amateur landlord, unaware of the Regulations. The deposit had been repaid in full on the date of the end of the tenancy." Sheriff Bickett refused permission to appeal and thus left the Tribunal's decision standing.

77. Applying Sheriff Ross's reasoning to the current case, the purposes of the 2011 Regulations are to ensure that a tenant's deposit is insulated from the risk of insolvency of the landlord or letting agent, and to provide a clear adjudication process for disputes at the end. In the case before us, these issues all remained and are unresolved. The Applicant has not received return of her deposit (though has not actively sought it) and it is tied up with the unresolved questions as to whether there are arrears outstanding. The tenant will not have access to the tenancy deposit scheme's Adjudication procedures.

78. There was a clear failure to lodge the funds (or supply any of the required information), despite the Respondent – at least based on the terms of the Tenancy Agreement - a knowledge of the 2011 Regulations being in place. There are aggravating factors: a reckless failure to observe responsibilities; and a denial of fault.

79. In considering Sheriff Bickett's reasoning (and that of the Tribunal at first instance in that appeal), there are a few of the mitigating factors. The Respondent owned no other properties for rent, and this was her first tenant. The Property was purchased as a family home and only rented when she and her family relocated into rented accommodation in Belfast.

80. There is a further factor which does not comfortably sit in either category: the Respondent's complete amateurishness as a landlord. Her family's exit seemed chaotic, and we accept that the Property was not left in good order. She relied on the Applicant to locate items she may have left at the Property, and continued to use it as a postal address. She said she still regarded it still as her "principal place of residence" and said it was "not like it was a 5 year lease" whereas, as a PRT, it was in fact an indefinite lease. We do accept that she charged a below market rent, but she provided a non-professional experience for the Applicant, the most concerning aspect of which (other than the deposit not being lodged) was the 5 December 2022 "Notice" which was entirely non-compliant with the 2016 Act.

81. We thus think that that this is a case that would fall in the high range of possible disposals, but with a mitigation that we do think the Respondent entered into the situation believing she was doing a favour to the Applicant but then badly mismanaging the Tenancy due to inexperience. We are awarding £1,000 under regulation 10 of the 2011 Regulations, being 2 times the deposit. We hold this as an appropriate award in consideration of the law and all the facts. We shall apply interest on the sum under Procedure Rule 41A at 8% per annum from the date of Decision as an appropriate rate.

82. As we say at the outset, the Applicant did not seek return of the £500 itself so no order is made in regard to return of the deposit. Further, she conceded £201.29 of unpaid rent (to the date that she said she vacated) that could be applied against the deposit. The Respondent's position was that there were many thousands of pounds of further unpaid rent, as she was entitled to charge rent up to the date she was aware that the Applicant vacated. That date was disputed, as was the question of whether the Applicant was entitled to have

simply put the keys through the letterbox without informing the Respondent that she had done so.

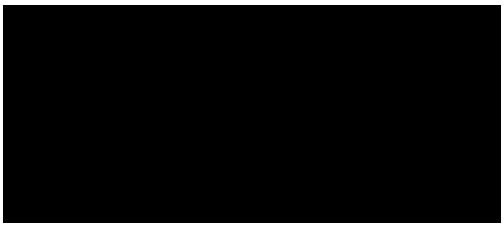
83. In the circumstances, the question of whether the deposit may be retained by the Respondent remains a live one in regard to £298.71 of the deposit (being the balance not conceded by the Applicant in regard to arrears). This, and the question as to whether there is a further claim for arrears, are matters that remain for the parties to resolve or to seek resolution on in separate applications.

Decision

84. We are satisfied to grant an order against the Respondent for payment of the sum of £1,000 to the Applicant with interest at 8% per annum running from today's date.

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.



16 June 2023

Legal Member/Chair **Date**