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 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/0317

Re: Property at 3/2, 6 Barrington Drive, Glasgow, G4 9DT ("the Property")

Parties:

Mr Krzysztof Dulba, Polna 19, 05-220 Zielonka, Poland ("the Applicant")

Mr Javed Ali, 74 Fergus Drive, Glasgow, G20 6AP ("the Respondent")

Tribunal Members:

Sarah O'Neill (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the respondent received a tenancy deposit from the applicant and that he failed to comply with his duties under Regulation 3 (1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 regulations"). The tribunal therefore makes an order requiring the respondent to pay to the applicant the sum of £500.

Background

1. By application received on 2 February 2022, the applicant submitted an application form under rule 103 of Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 rules"). The applicant was seeking an order for payment in respect of the respondent's alleged failure to lodge the deposit paid by the applicant with an approved tenancy deposit scheme, as required by regulation 3 of the 2011 regulations. The applicant sought an order for £750, three times the amount of the alleged tenancy deposit.

2. Attached to the application form were:

i. copy tenancy agreement between the parties in relation to the property which commenced on 1 June 2021.
ii. copy Notice to Leave dated 12 October 2021 sent to the applicant and Shaun Turner, his co-tenant, by the respondent.
iii. written confirmation from each of the three approved tenancy deposit schemes that the applicant's deposit was not registered with them.

3. In response to correspondence from the tribunal administration, an email was received from the applicant on 23 February 2022, confirming that he had left the property on 23 December 2021, and providing evidence that he had paid the sum of £380 into the account of the previous tenant of the room he had moved into on 28 April 2020. Also attached to the email was various email correspondence between the applicant and the respondent relating to his tenancy and alleged tenancy deposit.

4. The application was accepted on 25 February 2022. Brief written representations were received from the respondent by email on 4 April 2022.

5. The tribunal issued a direction to the applicant on 29 March 2022, directing him to provide certain further information relating to the alleged deposit by 26 April 2022. A response to the direction was received from the applicant by email, together with various attachments, on 26 April 2022.

6. The applicant also made a related application (reference no: FTS/HPC/CV/0495) seeking a payment order for repayment of his tenancy deposit. That application was conjoined with the present application and a separate decision and order are issued alongside the decision and order in relation to this application.

The case management discussion

7. A case management discussion (CMD) was held by remote teleconference call on 10 May 2022. The applicant was present on the teleconference call. The respondent was not present or represented on the call. The tribunal was satisfied that the respondent had been given reasonable notice of the date and time of the CMD, and therefore proceeded with the CMD in his absence.

8. The tribunal heard evidence from the applicant relating to his application. Having considered all of the evidence before it, the tribunal did not consider that it was able to make sufficient findings to determine the applications at the CMD. The tribunal took the view that it may be contrary to the interests of the parties to make a decision without a hearing. The respondent had, albeit briefly, indicated in his written representations of 4 April 2022 that he disputed that the applicant had paid a tenancy deposit in relation to the property. The tribunal therefore considered that a hearing should be fixed to hear further evidence from both parties in relation to both applications.

9. The tribunal issued a further direction to the parties on 13 May 2022, requiring the respondent to provide various further information by 8 June 2022. Both parties were also invited to submit any further written representations or documents which they wished the tribunal to consider and to provide details of any witnesses they wished to call to give evidence at the hearing.

10. Responses to the direction were received from the respondent on 10 and 26 May 2022. A response was received from the applicant on 13 June 2022. On 9 June 2022, an email was received from the respondent confirming that as he would be on holiday at the date of the hearing, his brother Mr Nahid Ali ("Mr Ali") would represent him at the hearing. On 13 June 2022, an email was received from Mr Ali stating that he wished to call the previous landlord, Mrs Robeena Khalid, as a witness at the hearing.

The hearing

11. A hearing was held by remote teleconference call on 15 June 2022. The applicant was present on the teleconference call. The respondent was represented on the call by Mr Ali.

The evidence

12. The following evidence was considered by the tribunal:

- The application form, together with a copy of the tenancy agreement between the parties and other attached documents.
- Further information received from the applicant on 23 February 2022.
- Registers Direct copy of Land Register title GLA137151, which confirmed that the house is owned by the respondent.
- Copy Scottish Landlord Register registration details for the property, confirming that the respondent is the registered landlord.
- Written representations received from the respondent on 4 April 2021.
- Response from the applicant to the tribunal's first direction received on 26 April 2022
- Responses to the tribunal's second direction received from the respondent on 10 and 26 May 2021.
- Further written representations received from the applicant on 13 June 2021.
- The oral representations of the applicant at the CMD.
- The oral representations of the parties at the hearing.

Summary of the issues

13. The issues to be determined were:

1. Whether the £250 paid by the applicant to the previous tenant was a tenancy deposit.
2. If that sum was a tenancy deposit, whether it was received by the respondent as landlord.
3. If the tenancy deposit was received by the respondent as landlord, what sum should be awarded under regulation 10 of the 2011 regulations.

Findings in fact

14. The tribunal made the following findings in fact:

- The applicant entered into a tenancy agreement in relation to the property commencing on 1 June 2020. The landlord was named in the tenancy agreement as "Khalid/Ali" and the agreement was signed "R.Khalid."
- The respondent has been the owner of the property since 20 December 2018. The previous owner and landlord of the property was his sister, Mrs Robeena Khalid.
- The respondent is the registered landlord of the property.
- The respondent was the landlord in relation to the tenancy agreement.
- Mr Ali acted as agent for both Mrs Khalid and the respondent in relation to the management and letting of the property.
- The tenancy agreement named the applicant only as the tenant. It stated that it related to "ALL and WHOLE FLAT presently occupied by the Tenants forming part of the flatted dwellinghouse at 6 Barrington Drive, Glasgow G4 9DT".
- At the start of the applicant's tenancy, there were two other tenants in the property. Each tenant had a separate tenancy agreement. Each had their own bedroom, and they all shared the kitchen and bathroom.
- The tenancy agreement provided that "The Tenants" were to pay rent for at the rate of £780 per calendar month on the first of each month and that a tenancy deposit of £675 was to be paid to the landlord by "the Tenants", which was *"returnable within 14 days of the termination of the tenancy subject to deduction for any repairs or replacements other than ordinary fair wear and tear occasioned by the Tenants use of the subjects during the tenancy or in respect of any other sums owing to the Landlord as a result of the tenancy".*
- The applicant paid £250 in rent each month for the first year of his tenancy. His rent later rose to £265 per month when another tenant, Ms Ema Dauksaite, moved out and he moved into her room, which was larger.
- The applicant paid the monthly rent into a bank account under the name "R. Khalid".
- The tenancy agreement provided that the rent was to be paid in advance on the 1st of each month, but the parties had agreed that the applicant would pay it on the 5th of each month.

- The applicant paid the sum of £380 to Ms Borbola Varga on 28 April 2020. Ms Varga was the previous tenant who occupied the room which the applicant moved into. The reference for the payment was “Deposit for room.”
- No tenancy deposit had been paid into an approved tenancy deposit scheme in relation to the applicant’s tenancy.
- A notice to leave dated 12 October 2021 was sent by Ivy Property on behalf of the respondent to the applicant and his fellow tenant, Shaun Turner. The notice cited ground 5, stating that the respondent intended to move his brother into the property. It said that an application for eviction would not be made to the tribunal before 15 January 2022
- The third tenant, Ms Dauksaite, who had lived in the property since June 2018, had moved out on or around 5 June 2021.
- The applicant moved out of the property on or around 23 December 2021.
- The parties exchanged a number of emails between 29 December 2021 and 14 February 2022 regarding the return of his deposit and finalising various bills following the end of the tenancy.
- On 24 March 2022, a payment of £220 was made into the applicant’s bank account from the same account in the name of “R. Khalid” into which he had paid the rent for the property.

Preliminary issues

15. It became apparent at the start of the hearing that Mr Ali had not seen the note of the CMD of 10 May 2022. The tribunal also noted that neither the written representations from the applicant or Mr Ali’s request to call a witness, which were both received on 13 June 2022, had been lodged at least 7 days prior to the hearing in accordance with rule 22 of the 2017 rules.

16. The applicant apologised, saying that he had not been aware that written representations were required to be submitted at least 7 days before a hearing. He also said that he had no objection to Mr Ali calling Mrs Khalid as a witness.

17. Mr Ali said that he had not had the opportunity to read the written representations submitted by the applicant. He said that he understood that he had not notified the tribunal of his intention to call a witness within the required timescale. He indicated that he was not overly concerned about calling her as a witness if the tribunal did not agree to this. He said that he had just wanted to offer her evidence should the tribunal think it would be useful.

18. The tribunal therefore adjourned the hearing for around 20 minutes, in order to give Mr Ali the opportunity to read the CMD note and to give the tribunal the opportunity to consider whether to agree to 1) the late lodging of the

applicant's representations and 2) Mr Ali's request to call Mrs Khalid as a witness.

19. Following the adjournment, the tribunal confirmed that it considered it would be helpful to hear from Mrs Khalid about what any arrangements for tenancy deposits in the property had been prior to the applicant's tenancy. In the end, however, when the tribunal sought to hear from Mrs Khalid, it was not possible to contact her. The tribunal adjourned the proceedings twice to allow time for this, but neither the tribunal clerk nor Mr Ali were unable to contact her on the telephone.

20. Both Mr Ali and the applicant indicated that they were happy for the tribunal to proceed without her witness evidence. By that point in the proceedings, having heard Mr Ali's evidence - and noting in particular that he appeared to have acted as Mrs Khalid's agent throughout the period when the property had been let out- the tribunal considered that it had enough information to enable it to make a decision without hearing from the witness.

21. The tribunal also decided to accept the written representations submitted by the applicant on 13 June 2022. These were fairly brief and much of the information included had already been submitted by the applicant or raised by him at the CMD.

The applicant's submissions

22. The applicant told the tribunal at the CMD that he had signed the tenancy agreement when he moved into the property on 1 June 2020. Mr Ali had taken the only copy of the agreement with him, and the applicant had not received a copy of it until December 2020. It was only at that point that he realised the amounts stated in the agreement for the rent and tenancy deposit differed from those which he had discussed with Mr Ali. The tenancy agreement included reference to a deposit, albeit for an incorrect amount.

23. The applicant said that he had paid a tenancy deposit of £250 at the start of his tenancy. He had paid this money to Ms Varga, the previous tenant, who was moving out of the room which he was moving into. He had been told by Ms Varga that this was the usual practice in the flat i.e. that each new tenant would pay their deposit to the previous tenant, who had in turn paid a deposit to their predecessor. This was later confirmed by Mr Ali, who had told him to pay the deposit to Ms. Varga. The applicant had produced a written confirmation from his bank that he had transferred the sum of £380 into Ms Varga's bank account on 28 April 2020. The reference for the payment was 'Deposit for room'.

24. The applicant said that when he paid this money to Ms Varga, it had been his understanding that £250 of this sum was a tenancy deposit. The additional

£130 comprised payment for a mattress which he had agreed to buy from Ms Varga and payment for access to the room to move his belongings in after she had moved out but was still paying rent, and before he moved in.

25. The applicant had produced a number of emails between himself and the respondent regarding the tenancy deposit. He had first asked for his deposit to be returned on 29 December 2021. He again sent an email to the respondent on 1 February 2022, asking when his deposit would be returned to him. In his response of 2 February 2022, the respondent said: *"I think firstly, we need to make sure that the gas, electricity and council tax are all sorted out."* and went on to ask whether meter readings had been taken, what arrangement the applicant had with Mr Turner regarding the payments of bills and whether the applicant had been in touch with the council tax department.

26. Following a response of 10 February 2022 from the applicant on these issues, the respondent replied the same day saying: *"Last thing I need before proceeding is a forwarding address from you, which you have not provided. Sorry for the delay in this I still need to finalise things with Shaun as well. Once received I will try and complete everything."*

27. The applicant argued that the respondent had never disputed in any of the email exchanges that a deposit had been paid to him by the applicant, or that this should be returned to him. His emails had in fact suggested that the money would be repaid once the information requested from the applicant had been provided. His deposit had not been returned to him as at the date when he made the tribunal applications, and it was not registered with any of the three approved tenancy deposit schemes.

28. He had produced evidence prior to the CMD confirming that the sum of £220 had been paid into his bank account on 24 March 2022 from an account in the name of "R. Khalid." This was the same bank account into which he had paid rent during his tenancy. He assumed that this payment was in respect of part repayment of his deposit. He said that he was not owed money for anything else by the respondent. He had paid the rent for December 2021 on 5 December and moved out on 23 December. He said that there had been no discussion with the respondent or Mr Ali regarding any reimbursement of rent. He had never pursued any reimbursement in respect of rent from the respondent, as he believed that he had paid the correct amount.

29. It was the applicant's position that although the £250 was not paid by him directly to the respondent, it was nevertheless a tenancy deposit and should therefore have been paid into an approved scheme. The respondent must have kept the deposit from a previous tenant, which in turn accounted for his own deposit. He felt that he was playing a game of 'musical chairs' which had

stopped when no-one had moved into his old room because the respondent had asked him to leave. He had not therefore received his deposit back from the next tenant. The respondent must therefore be liable to pay him his deposit back.

30. At the hearing, the applicant pointed out that both Ms Varga and Ms Dauksaite (in her email of 30 April 2022) had referred to the money paid as a deposit and had never called it anything else. He said that Ms Dauksaite had eventually received her deposit back from the respondent around 6 months after leaving the property, having pursued Mr Ali about this for some time. He told the tribunal at the CMD that he was unsure as to whether Mr Turner had received his deposit back, as they were no longer in touch.

31. The applicant confirmed that he sought an order for three times the deposit from the repondent under regulation 10 of the 2011 regulations. He said that the whole point of the requirement to pay a deposit into a scheme was to address a situation like this. He should not have had to apply to the tribunal to get his deposit back. Regardless of whether the rent was cheap for the location, as Mr Ali argued, £250 was not a small amount to him.

The respondent's submissions

32. Mr Ali said that Mrs Khalid had previously owned the property and later sold it to the respondent, her brother. Mr Ali had acted as agent for both Mrs Khalid and the respondent, in relation to the letting out and maintenance of the property. The reason the tenancy agreement named "Khalid/Ali" as the landlord was that Mrs Khalid wanted to keep her name on the agreement. The rent had been paid by the applicant every month into Mrs Khalid's account.

33. Mr Ali said that he believed Mrs Khalid had let out the property for more than 10 years. Up until a few years ago, there had been one tenancy agreement in relation to the whole flat. A group of several tenants, including Ms Dauksaite, had moved in together. One of those tenants had decided to move out early, and rather than asking the other tenants to leave, Mrs Khalid had decided that if the tenant who was leaving could find another suitable tenant to move in, the others could remain. After this, it had been assumed that if a tenant moved out, they would find another tenant to replace them. After he became the owner of the property, the respondent had continued to use the same standard tenancy agreement for the whole flat in relation to each new individual tenant who moved into it.

34. While the tenancy agreement referred to a deposit, this was because it was a standard tenancy agreement which Mrs Khalid had always used. No deposit had ever been paid, even at the beginning of the first tenancy. The standard arrangement had been that Mrs Khalid had taken two months' rent from each

new tenant at the start of their tenancy, in respect of the first and the last months' rent. The purpose of this payment was to safeguard Mrs Khalid from any issues which might arise during the tenancy, such as damage caused to the property by the tenant. When a tenant left, the "last month's rent" which they had paid at the start of the tenancy was returned to them by Mrs Khalid. This arrangement had continued when the respondent took over as owner and landlord of the property.

35. Mr Ali said that as no tenancy deposit had ever been paid to either Mrs Khalid or the respondent, no deposit had been paid into an approved tenancy deposits scheme in relation to the property. He told the tribunal that he believed that the requirement to pay a tenancy deposit into a scheme had only come into being around 4 years previously. The tribunal pointed out that there had in fact been such a requirement since 2012.

36. Mr Ali said that he was well aware of the requirements to pay a deposit into a scheme. The respondent had said the same in his written representations of 26 May 2022, stating that he had other properties which he managed and that the deposits were all secured in a deposit scheme.

37. Mr Ali said that the applicant had paid his deposit directly to the previous tenant, Ms Varga. This was an arrangement they had made between themselves. As the money was paid to the previous tenant, it was not a deposit, but was a repayment of the money previously paid by them as advance rent.

38. The respondent had provided the tribunal with an email from Ms Dauksaite dated 30 April 2022 stating "*I would like to confirm that during my tenancy time (05/06/2018-05/06/2021) at 3/2 6 Barrington Drive, the deposit was managed between the previous and the new tenant. The landlord of the property was not involved in the process of collecting and managing the deposit".*

39. Mr Ali said that when Ms Dauksaite moved out, the applicant moved into her room and he was therefore responsible for paying back her deposit. The applicant had not paid her, however, so Ms Dauksaite asked the respondent to pay her, which he eventually did. When the tribunal pointed out that the applicant had already paid money to Ms Varga when he moved into the first room, Mr Ali responded that the applicant would have got this money back when someone else moved into that room. While the applicant had found someone new to take the room, at that point the respondent was not taking on a new tenant, having served the notice to leave.

40. When asked why £220 had been paid back to the applicant on 24 March 2022 from the account he had paid rent into, Mr Ali said that payment had been made to return the one month's extra rent which the applicant had paid. The

amount returned was not a full month's rent because the applicant left before the end of the month, on 23 December 2021. The repayment of this money had been delayed pending confirmation of the situation regarding liability for council tax and fuel bills at the property.

41. Mr Ali told the tribunal that the rent for the property was below market rates for the area, and that repairs always carried out right away. He said that if the money paid by the applicant to Ms Varga had been a deposit, the respondent would have paid it into a deposit scheme. As the rent was very cheap, the tenant had not suffered any loss.

The relevant law

42. Rule 3(1) of the 2011 regulations provides that *"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.*

43. A tenancy deposit is defined in the 2011 regulations as having the meaning conferred by section 120 (1) of the Housing (Scotland) Act 2006 ('the 2006 Act). That section states:

"A tenancy deposit is 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."

44. In terms of regulation 2 of the 2011 regulations, 'landlord' refers to a landlord, within the meaning of the 2006 Act' of a relevant tenancy. "Landlord" is defined in section 194 (1) of the 2006 Act as follows – *"landlord means any person who lets a house under a tenancy, and includes the landlord's successors in title"*.

Reasons for the decision

45. The tribunal determined firstly that the tenancy was a 'relevant tenancy' in terms of the 2011 regulations.

46. The tribunal then considered whether the £250 paid by the applicant to the previous tenant, Ms Varga, was a tenancy deposit. It accepted the applicant's evidence that he had paid the sum of £250 to Ms Varga as advised by both her and Mr Ali, and that he had understood this sum to be a tenancy deposit. Mr Ali himself referred to the sum as a 'deposit' several times during the hearing.

47. The tribunal also noted that the tenancy agreement stated that a deposit was to be paid. While the amount given in the agreement was £780, it was clear that the agreement was originally intended to relate to the whole flat, which was let to 3 tenants. Given that the rent for the various bedrooms differed slightly, a deposit of £250 for one room was roughly proportionate to the overall deposit total. The tenancy agreement made no reference to the deposit being paid into an approved tenancy deposit scheme.

48. It was clear from Mr Ali's evidence that the practice within the flat for several years had been to take a "last month's rent" from each new tenant as security against damage, which would be returned at the end of their tenancy. This clearly falls within the definition of a tenancy deposit under section 120(1) of the 2006 Act as set out above. The payment was taken as security in respect of the tenant's obligations or liabilities and was clearly intended to be returned to the tenant at the end of the tenancy. It was therefore not advance rent. The tribunal therefore determined that the £250 paid by the applicant to Ms Varga was a tenancy deposit.

49. The next question was whether the tenancy deposit was received by the landlord and therefore whether the 2011 regulations applied. While the definition of a tenancy deposit, as discussed above, does not require that the deposit is paid to the landlord, it is difficult to see what advantage there could be to the previous tenant in holding a tenancy deposit on their own behalf. None of the tenants owned the property and they were not the landlord. The reason why they were holding the deposit was that they had in turn paid a deposit to the previous tenant of their room, which they expected to have returned to them by their successor as tenant when they moved out.

50. When asked why the previous tenant would want to take a deposit, Mr Ali could not provide a satisfactory answer, but simply repeated that the arrangements had been made between the tenants themselves.

51. It was clear from the evidence before the tribunal that at some point in the past, previous tenants in the property had each paid a tenancy deposit, albeit it was referred to as a "last month's rent", to the previous landlord, Mrs Khalid. Mr Ali told the tribunal that no deposit had ever been paid into an approved scheme. Even if the initial deposit had been paid prior to 2012, there would have been a requirement to pay this into an approved scheme at a later date under the transitional provisions in the 2011 regulations.

52. The respondent had taken over ownership of the property from his sister in December 2018 with the tenants in situ. In his own words (in his email of 26 May 2022), he *"inherited the tenants and property from"* the previous landlord. The respondent was Mrs Khalid's successor in title, and the 2011 regulations

therefore applied to him in relation to any deposit paid prior to - or after - the date when he took over as landlord.

53. The applicant's tenancy began after the respondent took over as landlord of the property. The applicant was however told by Mr Ali to pay the deposit to the previous tenant and he did so. This was therefore clearly a continuation of the arrangement which stemmed from the original deposit paid by previous tenants to Mrs Khalid.

54. The applicant had produced a number of emails between himself and the respondent in which he had asked for his deposit to be returned. At no point in these email exchanges did the respondent dispute that a deposit had been paid to him, or that this would be returned once the outstanding issues he referred to in terms of the various bills had been resolved. He had also repaid the deposit paid by Ms Dauksaite to her following the end of her tenancy. This suggested that regardless of whether there had been a physical transfer of money between Mrs Khalid and the respondent, her deposit had been acquired by the respondent.

55. The respondent paid £220 to the applicant after the end of his tenancy. The tribunal did not follow the logic of Mr Ali's explanation as to the reasons why this money was paid back to the applicant. The applicant was clear that there was no rent due to be paid back to him. Mr Ali himself told the tribunal that this money was paid back to the applicant in respect of the last month's rent, which he had paid in advance. Yet this appeared to contradict his submission that the £250 had been paid to the previous tenant under an arrangement which did not involve the respondent. Even if the respondent had decided to repay to the applicant the rent paid for the month of December, the applicant had moved out on 23 December and the rent was £265 per month. The proportion of the monthly rent due back would therefore have been much less than £220.

56. The tribunal did not find Mr Ali's explanation of what had happened to be credible. It appeared that the arrangement which had been put in place by Mrs Khalid and continued by the respondent, under which each new tenant had to pay a deposit to the previous tenant, was intended as a means of avoiding the requirements of the 2011 regulations. The regulations were introduced to protect tenants by ensuring that landlords were required to pay tenancy deposits into an approved scheme. It cannot therefore have been intended that a landlord should be able to escape their responsibility to do so by arranging for the deposit to be paid directly to another tenant rather than to the landlord him/herself.

57. Mr Ali appeared to argue before the tribunal that the applicant had nothing to complain about in relation to the deposit because the respondent had charged

a low rent for the area and carried out repairs when necessary. Regardless of whether that was the case, it is not relevant to whether the respondent failed in his duties under the 2011 regulations. Those duties apply to all landlords who receive a deposit regardless of the amount of the rent or anything else.

58. For the above reasons, the tribunal determines on the basis of all the evidence before it that the respondent received a tenancy deposit in connection with the applicant's tenancy.

59. The respondent had stated that no tenancy deposit was paid into a scheme in relation to the applicant's tenancy, as confirmed by Mr Ali at the hearing. The applicant had also provided evidence that none of the three tenancy deposit schemes held his deposit. The tribunal determined that the respondent failed to comply with his duties under Regulation 3 (1) of the 2011 regulations. The tribunal was therefore obliged to make an order requiring the respondent to make payment to the applicant, in terms of rule 10 of the 2011 regulations. The tribunal then considered what amount the respondent should be ordered to pay to the applicant, which could be up to three times the amount of the tenancy deposit.

60. The tribunal considered the need to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach (Sheriff Welsh *in Jenson v Fappiano* 2015 GWD 4-89).

61. The applicant's tenancy deposit had been left unprotected for the duration of his tenancy, which lasted for almost 7 months. He had therefore been denied the opportunity to dispute any issues relating to repayment of the deposit through an approved tenancy deposit scheme. He had to make an application to the tribunal in order to do so. This was unfortunate as there was clearly a dispute between the parties over the return of the deposit.

62. The tribunal noted the view expressed by Sheriff Ross in *Rollet v Mackie* ([2019] UT 45) that the level of penalty should reflect the level of culpability involved. It noted in particular his view, as set out at para 13 of the decision that: *"The admission of failure tends to lessen fault: a denial would increase culpability."* There was no admission of failure here as the respondent strongly denied that any deposit had been received by him.

63. Some of the aggravating factors noted by Sheriff Ross in that case which might result in an award at the more serious end of the scale were present in this case. In addition to a denial of fault, there appeared to have been at the very least a deliberate or reckless failure by the respondent and the previous landlord to observe their responsibilities, if not also a fraudulent intention. There also seemed to have been repeated breaches in relation to a number of other tenants who had previously lived in the property.

64. On the other hand, the tribunal noted that the deposit sum involved was relatively low and that the actual loss caused to the applicant was also fairly low, given that most of his deposit had been returned. The respondent, however, had a responsibility as a landlord to ensure that he complied with the relevant law. He said that he was aware of the requirements to put the tenancy deposit into an approved scheme, but if so, he had clearly not done so in this case.

65. Taking all of the above considerations into account, the tribunal determined that an order for £500, twice the amount of the tenancy deposit paid, would be appropriate in this case.

Decision

The tribunal determined that the respondent received a tenancy deposit from the applicant and that he failed to comply with his duties under Regulation 3 (1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 regulations"). The tribunal therefore made an order requiring the respondent to pay to the applicant the sum of £500.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

29 June 2022

Sarah O'Neil

Legal Member/Chair **Date**