



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended by The Tenancy Deposit Schemes (Scotland) Amendment Regulations 2019. (“the Regulations”).**

**Chamber Ref: FTS/HPC/PR/21/0921**

**Re: Property at 219/8 High Street, Edinburgh, EH1 1PE (“the Property”)**

**Parties:**

**Mr Peter Bills-Brown, 4/6 Paisley Close, 101 High Street, Edinburgh, EH1 1SP and Mr Charlie Barnett, 6 Nicolton Court, Maddiston, Falkirk, FK2 0LB (“the Applicants”)**

**Mr Adam Geoffrey Shaw, 32 Inverleith Terrace, Edinburgh, EH3 5NU (“the First Respondent”) and Mr Kaddeer Aslam, address unknown (“the Second Respondent”)**

**Tribunal Members:**

**Mr Martin McAllister (Legal Member) and Mrs Helen Barclay (Ordinary Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the First Respondent pay the sum of TWO THOUSAND SEVEN HUNDRED POUNDS (£2,700) to the Applicant.**

**Background**

- 1. This is an application in respect of the alleged failure of the Landlord of the Property to comply with the Tenancy Deposit Regulations (“the Regulations”). The Application was received by the Tribunal on 19<sup>th</sup> April 2021.**
- 2. Case management discussions have been held. The Second Respondent’s address is unknown and he has never participated in the Tribunal process relating to the application.**
- 3. Service on the First Respondent was made by Sheriff Officers and the tribunal had the relevant certificate of citation.**

4. Service on the Second Respondent was achieved by advertisement and the tribunal had the relevant certificate of advertisement which showed that the advertised period was 21<sup>st</sup> February 2022 to 29<sup>th</sup> March 2022.

### **The Hearing**

5. The Hearing was held by audio conference on 29<sup>th</sup> March 2022 and the Applicants and First Respondent participated. There was no appearance by the Second Respondent.

### **Introduction**

6. The Property is owned by the First Respondent and he is the registered landlord. The Applicants entered into a private residential tenancy on 15<sup>th</sup> May 2020 and the tenancy was terminated on 13<sup>th</sup> March 2021. They paid the sum of £1200 as a tenancy deposit on or around 15<sup>th</sup> May 2021. The tenancy deposit was paid into an approved tenancy deposit scheme on or around 5<sup>th</sup> March 2021. The First Respondent did not challenge the existence of the tenancy or details regarding the tenancy deposit. The consistent position which was maintained by him during the tribunal process was that he had sublet the Property to the Second Respondent in 2012 and that it was he who had entered into the Private Residential Tenancy Agreement with the Applicants. The First Respondent's position was that he knew nothing about the particulars of the tenancy since he was not a party to the agreement. The tenancy deposit was returned to the Applicants on the termination of the tenancy.

7. The Tribunal had regard to the following documents:

- i) The Application received by the Tribunal on 19<sup>th</sup> April 2021;
- ii) Private Residential Tenancy Agreement for the Property dated 15<sup>th</sup> May 2020;
- iii) Unsigned Short Assured Tenancy Agreement between Adam Shaw and Kadeer Aslam stating commencement of the tenancy to be 20<sup>th</sup> June 2012
- iv) Emails between the Applicants and the Second Respondent dated 8<sup>th</sup> June 2020.
- v) Email from My Deposits Scotland dated 13<sup>th</sup> March 2022 regarding return of the tenancy deposit.
- vi) Email submissions by the First Respondent

### **Evidence**

#### **The Private Rented Tenancy Agreement**

8. This is entitled "Private Residential Tenancy" and the parties are stated to be "I.K. Aslam hereinafter referred to as 'the Landlord's agents'" and "Charlie Barnett and Peter Bill Brown." It states that the lease will

commence on 15<sup>th</sup> May 2020 and “from month to month thereafter.” The monthly rental is stated to be £900 and it states that a tenancy deposit of £1200 requires to be paid. It appears to be dated 14<sup>th</sup> May 2020. Mr Peter Bills- Brown said that the tenancy agreement was signed by him at the Property and was witnessed by his partner Iona Halliday.

## The Tenancy

9. The Applicants said that they understood the owner of the Property to be the Second Respondent. They said that he never said he was the owner but gave the impression that he was. They said that they thought that Mr Aslam owned a number of properties in the area and that they became aware of other students who were in properties which he dealt with. They said that, towards the end of the tenancy, they checked the landlord registration website and discovered that that the owner of the Property was Adam Shaw. The Applicants said that, when challenged, Mr Aslam agreed that Mr Shaw was the owner.
10. The Applicants stated that they did not receive a gas safety certificate or an electrical installation condition report at the commencement of the tenancy or at any time during it.
11. The Applicants said that the deposit of £1200 was paid to the Second Respondent and that they became concerned when they realised that it had not been paid into an approved tenancy deposit scheme. They referred to an email exchange which Mr Bills-Brown had with the Second Respondent dated 8<sup>th</sup> June 2020. The Second Respondent had been asked about the tenancy deposit and had responded: *“I’ve not registered safe deposit I’ve never used it- If you prefer I can set it up don’t think it be that difficult- and I suppose I ping the deposit over- makes no difference to me in all honesty.”*
12. The Applicants detailed a number of defects with the Property which had been reported to the Second Respondent and which had not been attended to. They said that the lack of attention by the Second Respondent to necessary repairs caused them a considerable amount of concern as far as the tenancy deposit was concerned. They said that they had a real fear that the deposit would not be returned to them because they thought that a landlord who did not attend to repairs to his/her property would be the kind of person who may hold on to a deposit.
13. The Applicants said that, because the condition of the Property was so poor and repairs were not being carried out, they determined to leave the Property and they put pressure on the Second Respondent to lodge the deposit with a tenancy deposit scheme. They said that the deposit was lodged eight days before the end of the tenancy and that it was repaid to them by My Deposits Scotland after they had left the Property. They referred to the email from the tenancy deposit company dated 13<sup>th</sup> March 2021 which stated that the deposit was to be returned.

## The 2012 Lease Document

14. Mr Adam had lodged a copy of a document entitled Short Assured Tenancy Agreement. It is unsigned. He said that he did not have a copy of the signed document and that his agents, Umega Lettings, had obtained a copy of the unsigned document from its system. He said that a signed copy had not been found. He said that this reflected the terms of the signed tenancy agreement which he had with Mr Aslam.

15. The document bears to be a short assured tenancy agreement for the Property and the parties are described as follows: Mr Adam Shaw as Landlord with his agents given as Umega Lettings and Kadeer Aslam as Tenant with no address provided. The commencement of the tenancy is stated to be 20<sup>th</sup> June 2012 and the term is five years with it continuing on a month to month basis at the end of the term. The rent is stated to be £750 per month. The lease reflects the relevant clauses from the Housing (Scotland) Act 2006 relating to a landlord's obligation to maintain a tenanted property to the repairing standard.

16. It is useful to set out some of the provisions of the document:

### **Clause 9**

#### ***"Absences***

*The Tenant agrees to tell the Landlord if he is to be absent from the accommodation for any reason for a period of more than fourteen days. The Tenant agrees to take such measures to secure the accommodation prior to such absence as the Landlord may reasonably require and take appropriate measures to prevent frost or flood damage."*

### **Clause 13**

#### ***"Repairing Standard***

*The Landlord must ensure that the accommodation meets the Repairing Standard at the start of the tenancy and at all times during the tenancy. During the tenancy this duty applies only when the Tenant informs the Landlord of work required or the Landlord becomes aware of it in some other way (inspection visit)."*

#### **"GAS SAFETY**

*The tenant must ensure that there is an annual Gas safety check on all pipework and appliances. The check must be carried out by a Gas Safe Registered installer. The Tenant must hold a copy of the Landlords gas safety certificate and provide a copy to the landlord. The Landlord must keep certificates for at least two years. The Gas Safety (Installation and use) Regulations 1998 places*

***duties on Tenants to report any defects with gas pipework or gas appliances that they are aware of to the Landlord or letting agent. Tenants are forbidden to use appliances that have been deemed unsafe by a gas contractor. It is agreed that the tenant will arrange this annual gas safety check and that the landlord will reimburse the tenant, within a reasonable time period, for any reasonable costs incurred by this check.***

- 17. Mr Shaw said that he left matters to his agents, Umega Lettings, and that they would have drafted the lease. Mr Shaw was asked if Mr Aslam had lived in the Property and said that he had not. When pressed on the matter, Mr Shaw said that he wanted to change his evidence and that it may have been around the end of the five year period that he knew that Mr Aslam was not living in the Property. Mr Shaw's attention was drawn to clause 9 relating to absences from the Property and he said that he had no knowledge of whether or not Mr Aslam had been absent and that he left such matters to Umega Lettings.**
  
- 18. Mr Shaw said that the lease did not prohibit sub letting by Mr Aslam. He said that he entered into a verbal arrangement whereby Mr Aslam could grant leases for the Property. He said that the arrangement was that Mr Aslam would be responsible for repairs to the Property. Mr Shaw said that the arrangement avoided him having to deal with agents and tenants. He said that Mr Aslam had a number of properties and that he would just add the Property to these and deal with letting it "with his own." Mr Shaw's evidence was not clear if this arrangement pre dated 2017 but said that it certainly existed after that date. It was not clear, from Mr Shaw's evidence, if this arrangement existed prior to 2017. Mr Shaw said that the 2012 lease continued on a month to month basis from the end of its term.**
  
- 19. Mr Shaw, when asked if he thought some of the terms of the lease were unusual, said that he left all that to his agent. It was put to him that a term of five years in a short assured tenancy might be considered to be unusual and his response was "is it?"**
  
- 20. Mr Shaw was asked if he thought the clause relating to gas safety was unusual in that it was relying on the tenant to ensure that there is an annual gas safety check on all pipework and appliances. He said that he did not draft the lease and that it was his letting agents.**
  
- 21. Mr Shaw said that he did not inspect the Property between 2012 and he was asked about his obligations to ensure it met the repairing standard. He said that he left all that to Mr Aslam but that no matters requiring repairs had been reported to him.**
  
- 22. Mr Shaw was asked about gas safety certificates and electrical installation condition reports for the Property and he said that he knew nothing about them and left such matters to his agents. He was asked who he thought would be held responsible if there had been a catastrophic accident**

caused by an electrical failure and his answer was that “we all would.” When asked for clarification of his answer, he said that he, Mr Aslam and the agents would be responsible. Mr Shaw said that he had not seen any gas or electrical certificates.

23. It was put to Mr Shaw that, if it were accepted that the Property was let to Mr Aslam on a commercial basis for him to then sub-let, it might have been appropriate for the current landlord registration to be surrendered and for Mr Aslam to be registered as landlord for the Property. He responded very emphatically that it would not have been because “I am the landlord.”

24. Mr Shaw confirmed that Mr Aslam paid him rent until he handed the keys of the Property back to him which was sometime after the Applicants left it. He said that he had no knowledge of the whereabouts of Mr Aslam.

25. Mr Shaw accepted that, since 2012, he had renewed his landlord registration on a number of occasions and, in the course of such applications, would have answered questions with regard to the Property meeting the repairing standard. He said that he could answer these positively because he had not been advised of any repairs requiring to be done to the Property. When asked about his obligations in respect of gas and electrical certification, which form part of the obligation to maintain the Property to the repairing standard, Mr Shaw was unable to respond other than say that he assumed that his agents dealt with them.

## 26. The Law

### The Tenancy Deposit Schemes (Scotland) Regulations 2011

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3. (1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

(a) pay the deposit to the scheme administrator of an approved scheme; and

(b) provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

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unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

9. (1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

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## Submissions

27. In the application, the Applicants state that they were seeking compensation at a level of £3,600. At the Hearing, they re-stated this position and said that they had been treated badly and that the period where the deposit was not protected was worrying for them because they did not know whether or not they would get it back.

28. The First Respondent had made various email submissions to the Tribunal. In his email, of 3<sup>rd</sup> December 2021, he described having to deal with the application as “a bit time consuming if not a little irritating” and stated that “It was agreed verbally that he (Mr Kadeer Aslam) would occupy the premises on the terms of the original lease which was documented some years before. The email goes on to state “I was not required to comply with the Tenancy Deposit Scheme because I had no idea who the tenant was and had no dealings with them and was not party to any deposit. As stated previously the only dealings I had were with my tenant Kadeer Aslam. I am not sure how much clearer I can be.”

In his email of 31<sup>st</sup> January 2022, the First Respondent stated “Again to reiterate, Mr Aslam paid me rent and sublet to tenants of his choosing, he was liable for fulfilling his obligations. I had no involvement at all and there was no obligation to obtain Landlord’s consent. I had no idea who, when or what he chose to do.”

In his email of 21<sup>st</sup> February 2022, the First Respondent stated that “Verbal agreement was reached between the Landlord (AS) and the tenant (KA) that the tenant maintain and upgrade the premises at his cost whilst subletting to tenants identified by him as part of his business.....this was our verbal contract under the head lease.....therefore I had no responsibility or indeed opportunity to comply with regulations as I was not party to any rental negotiation, discussion, agreement or deposit payment.”

29. In oral submissions, the First Respondent said that the tenancy deposit had been returned and that the Applicants sustained no loss. He said that he understood the concern which the Applicants must have had when the deposit had not been lodged with a tenancy deposit scheme but that it was nothing to do with him and was the responsibility of the Second Respondent.

### ***Findings in Fact***

- a. *The Applicants and the First Respondent were parties to a Private Residential Tenancy Agreement for the Property.*
- b. *The Second Respondent acted as agent of the First Respondent in respect of the private residential tenancy.*
- c. *The First Respondent is the registered landlord of the Property.*
- d. *The tenancy commenced on 15<sup>th</sup> May 2020 and came to an end on 13<sup>th</sup> March 2021.*
- e. *The Applicants paid a tenancy deposit of £1,200 to the Second Respondent.*
- f. *The tenancy deposit was lodged with an approved tenancy deposit scheme on or around 5<sup>th</sup> March 2021.*
- g. *The tenancy deposit was repaid to the Applicants upon the termination of the tenancy.*

### ***Finding in Fact and Law***

*The tenancy deposit required to be paid to an approved tenancy deposit scheme by 26<sup>th</sup> June 2020 which was thirty working days from commencement of the tenancy.*

### **Reasons**

30. Some matters were not in dispute: a private residential tenancy for the Property commenced on 15<sup>th</sup> May 2020 and terminated on 13<sup>th</sup> March 2021. A tenancy deposit of £1,200 was paid to the Second Respondent by the Applicants. The tenancy deposit was paid to My Deposits Scotland on 5<sup>th</sup> March 2021. The tenancy deposit was repaid to the Applicants.



- 31. The identity of the landlord was a matter which required to be established. The First Respondent is the owner of the Property and has been since December 1999. The First Respondent is shown in the Scottish Register of Landlords as the registered landlord. In most cases, the two preceding facts would be sufficient to establish who the landlord is but, in this case, the Registered Landlord did not sign the Private Rented Tenancy Agreement. It was signed by Mr Aslam, the Second Respondent who was described as the “Landlord’s Agents.” Such an arrangement is not uncommon where a letting agent may sign a tenancy agreement as agent of a landlord but normally the landlord would be shown on the tenancy agreement so that the agent was signing on behalf of a disclosed principal.**
- 32. The tribunal accepted the evidence of the Applicants who were found to be credible. They thought, when entering the lease, that the landlord was Mr Aslam and that he only acknowledged that Mr Shaw was the owner of the Property when challenged by them towards the end of the lease.**
- 33. The First Respondent acknowledged that he was aware that Mr Aslam was entering into tenancy agreements for the Property but he did not know the details of them. His position was that there was a lease between Mr Aslam and him which had started in 2012. He could not provide the lease but submitted an unsigned copy which he said mirrored the terms of a signed document. He said that his agent had dealt with this lease. Presumably he could have led evidence in support of this but chose not to do so.**
- 34. The tribunal did not find the First Respondent to be a credible and reliable witness. He was evasive and appeared to change his evidence to suit what he was asking the tribunal to believe. He clearly said that Mr Aslam had not lived in the Property at the start of the tenancy in 2012 and then said that he may have lived in it from around 2017 but the tribunal considered that the First Respondent was not clear in the matter and was evasive.**
- 35. The First Respondent showed a complete disregard for his obligations as a registered landlord in relation to the repairing standard including gas and electrical safety. The matter before the tribunal related to the Tenancy Deposit Regulations, not the repairing standard but his cavalier attitude in these matters did not enhance his credibility.**
- 36. The tribunal considered that the terms of the First Respondent’s email submissions and his oral evidence demonstrated that he had little understanding of the consequences to a landlord if the Regulations were not complied with.**
- 37. The tribunal did not accept that a tenancy existed between Mr Aslam and Mr Shaw. It did not have a signed contract. The evidence of the First Respondent was that the unsigned copy reflected what had been agreed**

but the tribunal had to set this against the term of the signed 2020 agreement where the Second Respondent is designed as the landlord's agent. The tribunal also required to have regard to the fact that the First Respondent is the registered landlord of the Property.

38. Even if the tribunal had sight of a signed copy of a short assured tenancy from 2012, its terms seemed unusual particularly in two regards. It was not common for short assured tenancies to be for a period of five years. If there had been particular reasons for this to be the case, it was to be expected that the First Respondent would have been aware of what these were rather than it being all down to his agents to arrange without apparent input from him. The First Respondent could give no reason why a tenant should assume responsibility for gas safety. The terms of such a document might give rise to a question of whether or not it did reflect a short assured tenancy or was something else entirely. This was something which the tribunal did not require to determine.
39. The First Respondent saw no reason why he should have surrendered his landlord registration if, as he stated, he was no longer entitled to grant leases since he had entered into a tenancy agreement with Mr Aslam. He vehemently stated that he was the landlord. As landlord, he had an obligation to comply not only with such matters as maintaining the Property to the repairing standard but also the tenancy deposit regulations. He may not have known the details of the individual tenancy agreements but he should have and he should have ensured that there was compliance with the regulations.
40. There is nothing wrong with an owner of a property entering into a commercial lease whereby a tenant is empowered to assume the role of landlord and grant residential tenancies. Such an arrangement would be subject to that commercial tenant seeking registration as a landlord with the relevant authority and would obviously require to be a fit and proper person. This is not the course of action which was pursued by the First Respondent.
41. The tribunal considered whether the Second Respondent bore responsibility if, in signing the Short Assured Tenancy Agreement, he was acting for an undisclosed principal. The tribunal determined that the register of Scottish landlords is a public document and that the Second Respondent was not acting for an undisclosed principal even if the Applicants had been unaware of the identity of the landlord when signing the tenancy agreement. They could readily find out who the landlord was and did so.
42. The tribunal determined, on the balance of probabilities, that the Second Respondent was acting as the agent of the First Respondent. Mr Shaw may have delegated authority to Mr Aslam but he could not delegate responsibility. He remained the registered landlord.

**43. The tenancy deposit was protected for eight days and the tenancy lasted for three hundred and one days.**

### **The Sanction**

**44. The creation of regulations to cover tenancy deposits was to protect tenants' funds and provide a structured process of dispute resolution. The First Respondent's agent received £1,200 as a tenancy deposit but did not lodge it with an approved deposit scheme within thirty working days of the beginning of the tenancy.**

**45. The Regulations are clear in stating that, where there is a breach such as this, the Tribunal must make an order requiring a Landlord to pay a Tenant a sum not exceeding three times the amount of the tenancy deposit. The amount is a matter of judicial discretion and must reflect what is a fair, proportionate and just sanction, having regard to the purpose of the Regulations and the gravity of the breach. It is a balancing act.**

**46. In this particular case, the Tribunal had regard to the fact that the deposit was unprotected for two hundred and ninety three days of a tenancy which lasted three hundred and one days.**

**47. The Tribunal had regard to and adopted the approach of the Court in Russell-Smith and Others v Uchegbu (2016) SC EDIN 64 where the Sheriff had effectively stated there to be two broad aspects to the sanction. The first was consideration of the period of time the deposit was unprotected and the second is a sum to reflect a weighting taking into account the particular circumstances of the case including the landlord's experience etc.**

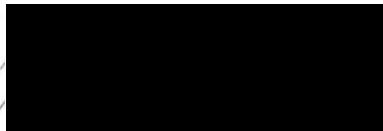
**48. The deposit was unprotected for a period of two hundred and ninety three days which was almost all of the tenancy. It is considered that the appropriate starting point for the sanction should be £1,200.**

**49. The exchange of emails of 8<sup>th</sup> June 2021 show that the First Respondent's agent did not intend to lodge the tenancy deposit with an approved scheme. Despite his undertaking on that date to lodge the deposit with a tenancy deposit scheme, this was not done until March 2021. This was not an oversight and it was only in response to pressure from the applicants that he lodged the tenancy deposit. The deposit was, however, returned to the Applicants. It is considered that, in the particular circumstances of the case, an award to reflect the appropriate weighting would be £1,500.**

**50. The Tribunal determined to make an Order requiring the First Respondent to pay the sum of £2,700 to the Applicants.**

## **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.**



**Martin J. McAllister, Legal Member**  
**4<sup>th</sup> April 2022**