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/18/2642

Re: Property at 7 Swaledale, East Kilbride, G74 4QP ("the Property")

Parties:

Mr Alasdair Clark, 20 Jedburgh Place, East Kilbride, G74 4EH ("the Applicant")

Mr Ross Calderwood, 11 Corsie Avenue, Perth, PH2 7BS ("the Respondent")

Tribunal Members:

Andrew Upton (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that:- (i) the Respondent failed to comply with Regulations 3(1)(a) and (b) of the Tenancy Deposit Schemes (Scotland) Regulations 2011; (ii) that the sum of £630.00, being a sum equal to one and a half times the tenancy deposit, was an appropriate sanction; and (iii) the Respondent should be required to pay the tenancy deposit into an approved tenancy deposit scheme; THEREFORE the Tribunal orders that the Respondent make payment to the Applicant in the sum of £630.00, and that the Respondent make payment of the sum of £420.00 into an approved tenancy deposit scheme within 28 days of the Tribunal's Order being extracted.

FINDINGS IN FACT

The Tribunal makes the following findings in fact:-

a. The Respondent is the heritable proprietor of 7 Swaledale, East Kilbride, G74 4EH ("the Property");
b. The Applicant was the tenant of the Respondent in respect of the Property under and in terms of a tenancy agreement that commenced on 8 June 2017;

c. In terms of the tenancy agreement, the monthly rent was £420.00 payable in advance;
d. In terms of the tenancy agreement, a tenancy deposit of £420.00 was payable;
e. On 1 June 2015, the Applicant sent a text message to the Respondent to ask whether the Respondent wished the tenancy deposit and first month's rent payment to be made by bank transfer or in cash. The Respondent replied that "Cash would be good if possible";
f. After receiving the Respondent's text message, the Applicant made a cash withdrawal from his bank account in the sum of £840.00;
g. After making the cash withdrawal, the Applicant met the Respondent at the Property for the purposes of signing the tenancy documentation;
h. At that meeting, the Applicant made payment to the Respondent in the total sum of £840.00 in cash, comprising the first month's rent and the tenancy deposit;
i. The Respondent has a process for the granting of residential tenancies to his properties whereby, when taking payment of tenancy deposits in cash, he will issue a paper receipt to the tenant, but he did not implement that process in respect of the Applicant;
j. The Respondent did not bank any of the money given to him by the Applicant;
k. Over time, the Respondent forgot that he had been paid a tenancy deposit by the Applicant;
l. On 8 August 2018, the Respondent discovered that a tenancy deposit had not been lodged in an approved tenancy deposit scheme in respect of the Applicant's tenancy, at which time he wrote an email to the Applicant timed 22:04 in which he indicated that the tenancy deposit would be repaid to the Applicant subject to deductions for outstanding rent. He did so in the belief that he was in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011, and in the hopes that his breach would not be discovered;
m. Having sent that email, the Respondent continued his investigations and found no record of a tenancy deposit having been paid to him by the Applicant. He formed the erroneous but genuinely held belief that a tenancy deposit had not been paid to him by the Applicant;
n. The tenancy deposit has never been paid into an approved tenancy deposit scheme, and was unprotected for the duration of the tenancy;
o. The tenancy terminated on 29 July 2018 by mutual agreement;
p. The Applicant has been deprived of the dispute resolution service offered by approved tenancy deposit schemes;
q. The Respondent is an experienced landlord, who personally lets nine residential properties and owns other properties the letting of which is managed on his behalf by letting agents; and
r. The Respondent is, and in June 2015 was, aware of his obligations under and in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

FINDINGS IN FACT AND LAW

The Tribunal makes the following findings in fact and law:-

a. The Respondent failed to comply with Regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and
b. The Respondent failed to comply with Regulation 3(1)(b) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

STATEMENT OF REASONS

1. In this application, the Applicant seeks an order under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations"). He contends that the Respondent failed to make payment of a tenancy deposit paid by the Applicant to him in cash on 1 June 2015 to the administrator of an approved tenancy deposit scheme within 30 working days of the beginning of the tenancy. He further contends that the Respondent failed to provide him with the information required under Regulation 42 of the Regulations within 30 working days of the beginning of the tenancy.

2. In terms of the Regulations:-

"3.—
(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—
(a) pay the deposit to the scheme administrator of an approved scheme; and
(b) provide the tenant with the information required under regulation 42.
(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.
(3) A *"relevant tenancy"* for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—
(a) in respect of which the landlord is a relevant person; and
(b) by virtue of which a house is occupied by an unconnected person,
unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.
(4) In this regulation, the expressions *"relevant person"* and *"unconnected person"* have the meanings conferred by section 83(8) of the 2004 Act.

...
9.—
(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal 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 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 First-tier Tribunal —
(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to—
(i) pay the tenancy deposit to an approved scheme; or
(ii) provide the tenant with the information required under regulation 42.

...

42.— Landlord's duty to provide information to the tenant

(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).
(2) The information is—
(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;
(b) the date on which the tenancy deposit was paid to the scheme administrator;
(c) the address of the property to which the tenancy deposit relates;
(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;
(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and
(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.
(3) The information in paragraph (2) must be provided—
(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or
(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme."

3. The case called before the Tribunal on 10 January 2019 for a Hearing. The parties were personally present. The Applicant was also represented by Mrs Lorraine Robb. The Respondent conducted his own case. The Tribunal is grateful to all parties for their considered and helpful discussions.

4. The issue in dispute is a short one, yet it is of the most fundamental importance in the context of actions of this type: was a tenancy deposit paid? The Applicant asserts that it was paid, in cash, on 1 June 2015. The Respondent's position is that it was not. The parties agreed that, if the Tribunal found that a tenancy deposit was paid, then both Regulations 3(1)(a) and (b) have been breached by the Respondent and sanction must follow, in terms of Regulations 9 and 10. However, if the Tribunal found that a tenancy deposit was not paid, then there is no breach and accordingly no sanction.

5. In advance of the Hearing, both parties produced various documents to the Tribunal, including email correspondence and text messages passing between them, copy bank statements and correspondence with the local authority and utilities providers. The Tribunal was invited to have regard to the documents lodged. No issue was taken with the provenance of any of the documents, and we readily accept that all documents produced are what they bear to be and say what they bear to say.

Evidence – Alasdair Clark

6. The Applicant spoke to entering into the tenancy agreement with the Respondent. The Tribunal was directed to the tenancy agreement. It provides, at clause 5, that the rent was to be £420 per calendar month. It goes on to provide, as clause 6, that a tenancy deposit equal to one month's rent was payable.

7. The Applicant spoke to an exchange of text messages on 1 June 2015 at 09:42 between him and the Respondent. In terms thereof, the Applicant wrote, "*Morning Ross, what's best for you in regards to the deposit/1st rent? Do you want me to arrange a bank transfer after I sign the lease or would you prefer cash? Just so I know wether* [sic] *to jump down to the bank before heading over there.*" In response, the Respondent wrote, "*Cash would be good if possible. Just got to flat so will be here whenever suits you. Speak soon.*"

8. The Applicant then spoke to a screenshot of his bank account ending 669. There is an entry on 1 June 2015 in terms of which a cash withdrawal of £840.00 was made. He explained that, having agreed in terms of the earlier text exchange, he made this withdrawal in order to pay the first month's rent and tenancy deposit to the Respondent in cash.

9. The Applicant told the Tribunal that he then met with the Respondent at the Property. He said that the Respondent had experienced problems with the outgoing tenant in that items of furniture had been taken from the Property. The proposed let was a furnished let, but the Applicant had agreed to take on the let notwithstanding the absence of furniture. The Applicant said that the Respondent appeared grateful to the Applicant for doing so, and suggested that the Applicant had "done him a favour". As a consequence, it was agreed between the parties that, although the Applicant would take possession on 1 June 2015 and the tenancy agreement was supposed to have commenced on 25 May 2015, the actual commencement date would be 7 June 2015. The Applicant said that he paid the total sum of £840.00 to the Respondent in cash at the Property. He recalled that the Respondent partially counted the money, but then advised that he would not insult the Applicant by counting it all there and then. The Respondent then advised the Applicant that if there were any issues regarding the payment, he would raise them later. The Applicant told the Tribunal that no issues were raised thereafter.

10. The Applicant remained in the Property until early July 2018. The tenancy ended on 29 July 2018. The Applicant referred to an email exchange between him and the Respondent dated 8 and 9 August 2018. The earliest email, which was on 8 August 2018 and timed at 22:04, was from the Respondent to the Applicant. In it, the Respondent wrote, "*I will have your deposit returned to your bank minus the rent due. Can you confirm what your intentions are re the cleaning costs that you promised, by text, would be done prior to you leaving the property.*" In the emails that followed, the Respondent appeared to recant the suggestion that the deposit would be returned, and instead began insisting

that the deposit would have been receipted. The Respondent was insisting upon the receipt being produced. The Applicant's position was that no receipt was given to him by the Respondent.

11. It was submitted on behalf of the Applicant that the evidence tended to support a finding that the deposit had been paid to the Respondent. The Tenancy Agreement required the payment of a deposit. The text message exchange envisaged payment of a deposit. The sum withdrawn from the bank was a sum equal to the aggregate of the rent and deposit. The Respondent's initial reaction to the request for the deposit to be repaid was to say, in email, that it would be (albeit, subject to certain deductions). In all of the circumstances, it was said that the deposit was paid and that the failure by the Respondent to pay it into an approved scheme or provide the prescribed information was a failure to comply with the Regulations. Whilst the Applicant accepted that the Property had perhaps not been left in a pristine condition, it had been left in a lettable condition in his submission. He contended, in the face of the written submission by the Respondent to the contrary, that he had paid all monies properly due to the local authority and utilities companies. However, it was the Applicant's submission that, in any event, such issues were irrelevant to the matter under consideration by the Tribunal.

Evidence – Ross Calderwood

12. The Respondent's evidence of the commencement of the tenancy was largely consistent with that of the Applicant. He recalled the text message exchange, and he recalled meeting at the Property. He also agreed that, at the time, he felt that the Applicant was helping him out by accepting the Property unfurnished due to the issues he was experiencing with the outgoing tenant. However, he had no specific recollection of what was discussed at the meeting on 1 June 2015, or of the sum of money that he received. His position was that he must have received payment of the first month's rent because he gave the Applicant the keys to the Property. However, he had nothing to suggest that he had ever received payment of a tenancy deposit.

13. The Respondent explained that he personally attends to the letting of nine residential properties that he owns. He confirmed that his personal portfolio is larger than that, but that his other properties are managed by letting agents on his behalf. In consequence of that, he said that he was familiar with the legal obligations and duties incumbent upon residential landlords, including those relating to tenancy deposits.

14. The Respondent advised that he has a process that he follows when letting his properties. Firstly, having identified an individual to whom the let is to be offered, the Respondent carries out reference checks on the proposed tenant. Secondly, he meets the proposed tenant at the property for a viewing. The Respondent advised that this usually allowed him to form a view on the proposed tenant. He described the process of letting properties as being something akin to a "leap of faith". This meeting at the property allowed him to take a view on whether he felt comfortable letting to the proposed tenant. In the case of the Applicant, he had formed a favourable view and that

transpired to be correct for all but the final weeks of the tenancy. Thirdly, the Respondent would meet the proposed tenant again at the property for the purposes of signing the tenancy documentation and finalising the agreement. Ideally, he said, the first month's rent and any deposit would be paid into his bank account on the day before that meeting, but he accepted that he had in the past taken cash payments from tenants on the day of signing the documentation. That was not his standard practice, and he could not be sure why he decided to do that on this occasion. Finally, the Respondent advised that any deposit received was then paid into the tenancy deposit scheme that he typically uses.

15. The Respondent advised that, when deposits were paid in cash, he would give paper receipts for those payments to the tenant. However, he advised that it was not his practice to give receipts for cash payments of rent. When asked why, he had no discernible reason other than that he did not have to. The Respondent also advised that it was his practice, where a deposit had been paid, to mark up the tenancy agreement with the word "PAID" next to the deposit clause.

16. The Respondent advised that no receipt had been given for the deposit, nor had the tenancy agreement been marked up to suggest that the deposit had been paid. It was his submission that this indicated, based on his own practice, that the deposit had not been paid.

17. The Respondent was asked why, when the contract required payment of a deposit and the correspondence plainly envisaged payment of a deposit, he had not challenged non-payment of the deposit if, in fact, none had been paid. The Respondent's position was that he was glad to have the Applicant as a tenant standing the furniture issues with the previous tenant and, as the tenancy went on, he had no reason to review the deposit situation or require its payment. The relationship with the Applicant was good. He was a good tenant. Accordingly, his approach was "laissez-faire".

18. However, the Respondent advised that this situation changed towards the end of the tenancy. The Applicant was due to leave the Property. The Respondent was out of the country. The Applicant was helping the Respondent by aiding viewings for new tenants. The text messages produced by the Respondent and numbered T1-T3 and W1-W3 support that. However, according to the text messages produced by the Respondent at W3, one viewer had contacted him on 19 July 2018 to advise that, having attended at the Property, the Applicant had not been there. Those text messages indicate that the message had been sent to the Applicant by Whatsapp, but had not been delivered. The Respondent advised that this, together with his attempts to call the Applicant that would not connect and the profile image of the Applicant in Whatsapp no longer being viewable, are indicative that the Applicant had "blocked" his calls and messages in Whatsapp.

19. The Respondent spoke to arriving back in the country and attending at the Property. There was no answer at the door to the Property. The Respondent

noted a pile of mail behind the door and let himself into the Property. He called out and received no answer. He said that he found the Property to be in an unlettable condition and had thirteen viewings organised for the following day. He thereafter made immediate arrangements regarding the Property's condition and those viewings.

20. The Respondent was referred to the email of 8 August 2018 timed 22:04 and asked to explain why it was sent. The Respondent recalled that he had logged into the tenancy deposit scheme and had been unable to find a tenancy deposit. His initial reaction was that he had failed to pay a tenancy deposit into the scheme and had sent the email in haste in an effort to appease the Applicant and avoid his failure to comply with the Regulations coming to light. However, he thereafter began to investigate the matter further. He noted that he had not banked any deposit received from the Applicant. He noted that the tenancy agreement had not been marked up to show that a deposit had been paid. The Respondent then asked the Applicant to produce a copy of his receipt for the payment which, the Respondent insisted, would have been provided had a cash deposit been paid. No receipt was forthcoming. The Respondent therefore concluded that, absent documentary evidence that the deposit had actually been paid, no deposit had been paid.

21. The Respondent was asked whether he had banked the rent payment received from the Applicant on 1 June 2015. He confirmed that he had not banked that payment. The Respondent was asked what reason there might be for the Applicant raising this application had the deposit not been paid, and his answer was somewhat cryptic. He seemed to imply that the raising of this application was consistent with other conduct of the Applicant during and after July 2018 whereby the Property was left damaged, undertakings to assist with viewings had been breached and contact with the Respondent was terminated. The Respondent was asked why, if a deposit was contractually required and he had, in 2015, only just had a bad experience with a tenant who had stolen furniture and (to the best of the Respondent's recollection) had paid a deposit, he had not followed up on the alleged non-payment of the deposit. The Respondent's position remained as previously stated: he got on well with the Applicant, he was taking a bit of a leap of faith, the Applicant had helped him out in his eyes and his approach was more relaxed than it ought to have been.

Assessment of the evidence

22. Having heard the parties and considered the documents produced by them in this application, the Tribunal prefers the evidence of the Applicant in relation to whether or not the deposit was paid. The Applicant's evidence was credible. There was a contractual obligation on the Applicant to pay the deposit. He made express contemporaneous enquiries of the Respondent on how the deposit was to be paid. Having confirmed that the deposit was to be paid in cash, there was a withdrawal from his bank account on the same day in a sum equal to one month's rent and the deposit (i.e. £840.00). At no time thereafter until after termination of the tenancy did the Respondent suggest that no deposit had been paid. The Applicant was not evasive when

answering the questions posed to him, and gave his evidence in a straightforward manner. The Tribunal considered him to be a reliable witness.

23. Having had regard to the Respondent's other tenancy agreements, which are marked up to show that a deposit had been paid, it is the Tribunal's view that this evidence must be considered alongside his evidence as to his process. He prefers that payments to be due are paid to him before the tenancy documents are signed. His evidence was that first rent and deposits are usually in his account before the tenancy agreement is signed. It seems consistent with that approach that, where such payments are made ahead of signing, the tenancy agreement would be marked up in advance with the word "PAID" typed thereon. In productions L2 and L3, that appears to be what happened. However, in this case, the deposit was not paid ahead of time. It was paid in cash at the time the tenancy agreement was signed. It does not seem likely that the agreement would be marked up in such a fashion ahead of the deposit being paid.

24. Further, the Respondent's own initial reaction was that the deposit had been paid. It was on that basis that he logged in to the tenancy deposit scheme to check. It seems unlikely that, as an experienced landlord who manages a number of properties, he would have believed a deposit to have been paid when one had not been.

25. The Respondent's own approach to giving evidence was less candid than the Applicant. For example, at the outset of the hearing, having considered the notes from the previous Case Management Discussion, I confirmed with the Applicant that his position was that the tenancy deposit had been paid in cash to the Respondent on 1 June 2015. I then asked the Respondent whether his position was that no tenancy deposit had been paid. He clarified that his position was that, "There is no evidence that it was paid." He could not present a credible explanation as to why he would provide receipts for certain cash payments, but not others. He invited the Tribunal on one hand to accept that, had a deposit been paid, he would have diligently issued a receipt and paid the sum into a deposit scheme but, on the other hand, invited the Tribunal to separately find that he had adopted a less-than-diligent approach to his dealings with the Applicant. It is for those reasons that we have found that the Respondent's evidence is neither credible nor reliable.

26. We are therefore of the view that, on the balance of probabilities, the Applicant made payment to the Respondent at the Property on 1 June 2015 in the sum of £840.00 in cash, which sum comprised (i) £420.00 in respect of the first month's rent, and (ii) £420.00 in respect of the tenancy deposit. In fairness to the Respondent, and giving him the benefit of the doubt, it is our view that he was likely preoccupied by the ongoing issues with the former tenant of the Property and, adopting his "laissez-faire" approach to the Applicant's tenancy, failed to properly record the payment he received and forgot to lodge the deposit with a scheme. When the time came to review the deposit situation, he interpreted the lack of proper recording as a sign that no deposit had been paid, and has convinced himself of that.

Decision

27. However, having found that the deposit was in fact paid by the Applicant on 1 June 2015, and that the tenancy commenced on 8 June 2015, it follows that the failure to pay that deposit into an approved scheme and provide information prescribed in Regulation 42 to the Applicant by 20 July 2015 was a failure by the Respondent to comply with the requirements of Regulations 3(1)(a) and (b) of the Regulations.

28. In terms of Regulation 10 of the Regulations, having determined that there has been a failure to comply with the requirements of Regulation 3, the Tribunal must now order payment by the Respondent of a sum not exceeding three times the tenancy deposit. We therefore now turn to the question of appropriate sanction.

Sanction

29. Appropriate sanction under the Regulations was considered in *Jenson v Fappiano*, [2015] 1 WLUK 625. When considering the approach to sanction, Sheriff Welsh stated as follows:-

> *"11 Non-compliance is admitted in this case, therefore the regulation is engaged. I consider regulation 10(a) to be permissive in the sense of setting an upper limit and not mandatory in the sense of fixing a tariff. The regulation does not mean the award of an automatic triplication of the deposit, as a sanction. A system of automatic triplication would negate meaningful judicial assessment and control of the sanction. I accept that discretion is implied by the language used in regulation 10(a) but I do not accept the sheriff's discretion is 'unfettered'. In my judgment what is implied, is a judicial discretion and that is always constrained by a number of settled equitable principles.*
> *1. Judicial discretion is not exercised at random, in an arbitrary, automatic or capricious manner. It is a rational act and the reasons supporting it must be sound and articulated in the particular judgment.*
> *2. The result produced must not be disproportionate in the sense that trivial noncompliance cannot result in maximum sanction. There must be a judicial assay of the nature of the noncompliance in the circumstances of the case and a value attached thereto which sounds in sanction.*
> *3. A decision based on judicial discretion must be fair and just (*'The Discretion of the Judge'*, Lord Justice Bingham, 5 Denning L.J. 27 1990).*
>
> *12 Judicial discretion is informed and balanced by taking account of these factors within the particular circumstances of the case. The extent to which deterrence is an active factor in setting the sanction will vary (cf Tenzin v Russell 2014 Hous. L.R. 17). The judicial act, in my view, is not to implement Government policy but to impose a fair, proportionate and just sanction in the circumstances of the case."*

30. That approach was applied in *Kirk v Singh*, 2015 S.L.T. (Sh Ct) 111.

31. Having heard the evidence, we were cognisant of the fact that the Respondent is an experienced landlord of a substantial portfolio of residential properties. He personally deals with the letting of nine properties, although he has others which are professionally managed for him. He has experience of the Regulations, and submitted that he understood the obligations placed upon him by the Regulations. The tenancy deposit was paid on 1 June 2015 and was never paid into an approved tenancy deposit scheme. It has never benefitted from protection by a scheme. The deposit has not been paid back to the Applicant, and he has been deprived of the ability to seek recovery under the Dispute Resolution Procedures offered by an approved scheme.

32. However, we also considered that the Applicant's failure to comply was born of genuine (though misconceived) error. We accept that he believed the deposit had not been paid, and convinced himself of that fact. However, his basis for reaching that conclusion was, for the reasons outlined above, perilous and he has been found wanting. He has outlined a process which he asserts is his standard process which would likely, if followed, ensure compliance with the Regulations. That he did not follow that process in this case is unfortunate. It may also be the case that, if he had adopted a practice of issuing receipts for all payments, the payment in this case would have been properly recorded and this dispute avoided. We are mindful that, given that he lets nine properties, it is important that any sanction in this case provided adequate deterrent from allowing this situation to happen again.

33. For all of those reasons, the Tribunal has reached the conclusion that the non-compliance in this case is at neither extreme of the spectrum of triviality. Rather, it sits somewhere in the middle. It is therefore our opinion that an appropriate sanction is a sum of £630.00, which is a sum equal to one and a half times the tenancy deposit. We will grant an order requiring payment of that sum by the Respondent to the Applicant.

The Deposit

34. The deposit itself has never been repaid to the Applicant. It remains in the possession of the Respondent. Both parties, to an extent, spoke of the condition that the Property was left in by the Applicant as well as whether there were rent arrears or not. Those are issues which seems to remain live between the parties, but which are not subject to determination as part of these proceedings. It is the Tribunal's view that the parties ought to be placed in the position that they would have been in but for the Respondent's non-compliance with the Regulations. That means that the tenancy deposit ought to be lodged with an approved scheme and the parties should be able to make use of the Dispute Resolution Service offered by the chosen scheme.

35. Accordingly, under and in terms of the Tribunal's discretionary powers under Regulations 10(b)(i) and (ii), we will grant an order requiring that the Respondent, within 28 days of the order being extracted, (i) make payment of

the tenancy deposit of £420.00 into an approved scheme, and (ii) provide the Applicant with the information required by Regulation 42.

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.

Andrew Upton

14 JANUARY 2019

Legal Member/Chair **Date**

*Insert or Delete as required