



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/PR/23/3210**

**Re: Property at 4 Boase Ave, St Andrews, KY16 8BX (“the Property”)**

**Parties:**

**Ms Amelia Osborne, Ms Saira Vyas and Ms Zahra Chard, all 43 Kinnessburn Road, St Andrews, KY16 8AD (“the Applicants”)**

**Mr James Macaulay, 1 Saxe Coburg Place, Edinburgh, EH3 5BR (“the Respondent”)**

**Tribunal Member:**

**George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicants of the sum of £5,000.**

**Background**

1. By application, dated 7 September 2023, the Applicants sought an Order in respect of the failure of the Respondent to lodge a tenancy deposit in an approved Tenancy Deposit Scheme. The application was made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the 2017 Regulations”).
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 6 May 2023 at a rent of £4,500 per month. The Tenancy Agreement followed the Scottish Government’s Model Tenancy Agreement but the Section therein relating to deposits had been removed, so there was no mention of a deposit or of the requirement to lodge it in an approved scheme, in the Tenancy Agreement signed by the Parties. The Applicants provided a copy of an email of 3 April 2023 from the Respondent offering them the tenancy of the Property and requesting a “rental deposit of £4,500 to secure the lease” and a further email

from him, also dated 3 April 2023, stating “That’s all the deposits received thank you. Please could set up direct debits for all rent payable on 6th.”

3. The Applicants also provided copies of emails from each of the approved Tenancy Deposit Schemes, namely MyDeposits Scotland (5 September 2023), Safe Deposits Scotland (22 September 2023) and Letting Protection Scotland (26 September 2023) confirming that they had not at any time held deposits paid by the Applicants relative to the Property, and evidence of payments of £1,500 by each of the Applicants to the Respondent. In the case of the Applicant Ms Chard, the evidence took the form of a Bank Statement showing a Debit Card Transaction going through her account on 3 April 2023. In respect of the other two Applicants, the payments were made by direct bank transfer on 4 April 2023.
4. The Applicants also provided copies of Notice given by them on 1 August 2023 to end the tenancy on 5 September 2023.
5. The Applicants were also seeking repayment of their deposits, but the Tribunal advised them on 18 September 2023 that this was not an Order the Tribunal could competently make under Rule 103 of the 2017 Regulations and that a separate application would be required for this. They also commented on the condition of the Property when they moved in and about missing and damaged belongings following their having been moved by the Respondent to permit redecoration and other works carried out over the summer months when they were not going to be living in the Property. The Tribunal was to rule that it was not competent to seek compensation in respect of these matters within the present application under Rule 103.
6. On 26 October 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion and required the Respondent to submit any written representations by 16 November 2023.
7. On 15 November 2023, the Respondent submitted written representations to the Tribunal. He stated that the deposit had only partially been paid and that Ms Chard had not paid her share. He had been waiting for this payment to be made before lodging the whole deposit, as he understood that Safe Deposits Scotland would only accept complete deposits. The partially paid deposit had been paid into a separate bank account and at no time was it at risk. The Respondent had gone on an extended holiday and decided to leave administration of the Property until his return, including chasing the remainder of the deposit and handing over the Property when the Applicants returned to occupy it. On 1 August, however, the Applicants served notice to terminate the lease. This was before the Respondent could request the remainder of the deposit and hand over the Property with the works completed. The Applicants asked him to retain the deposit in lieu of their final month’s rent, but this meant that the rent was £1,500 short, as he only held £3,000 of the agreed deposit.
8. The Respondent made comments relating to the condition of the Property at the commencement of the lease, the works he carried out over the summer

the storage of the Applicants' belongings and damage he alleged was caused by them when they removed their belongings in September 2023, but the Tribunal was to rule that these matters could not be considered in an application under Rule 103.

9. The Respondent stressed that the Applicants had not experienced any financial loss, that the partially paid deposit had been held in a separate bank account and would have been lodged in an approved scheme had Ms Chard's proportion been received by him and that he calculated that the deposit lodging period was less than 30 days past the 30 working days limit required by law, the tenancy having started on 4 May 2023 and notice having been served on 1 August 2023.
10. On 28 November 2023, the Applicants responded to the Respondent's representations. They attached further copies of the evidence of payment of the deposits by each of them and a copy of the Respondent's email of 3 April 2023, confirming receipt of all the deposits. They also provided material relevant to the condition of the Property and relative to their belongings, but, as already noted, the Tribunal was to rule that these matters could not be considered as part of the present application.
11. On 1 December 2023, the Respondent provided the Tribunal with video evidence of the condition of the Property.

### **First Case Management Discussion**

12. A Case Management Discussion was held by means of a video conference call on the afternoon of 6 December 2023. The Applicants were represented by Ms Osborne's mother, Mrs Rachel Osborne. The Respondent was also present.
13. The Tribunal Member told the Parties that, as this was an application under Rule 103 of the 2017 Regulations, the Tribunal could not consider whether the Applicants were entitled to have the deposit repaid to them. In any event, it was accepted that the deposit had been used to pay the last month's rent. The Tribunal also could not consider whether the Respondent had any claim against the Applicants for alleged damage to the Property or whether the Applicants had any claim against the Respondent in respect of alleged damage to or loss of their belongings. The Tribunal could have regard only to the payment of the deposit and the Respondent's failure to lodge it in an approved Tenancy Deposit Scheme, that being the limited scope of an application under Rule 103.
14. It was agreed between the Parties that the Applicants had never lived in the Property. As students, they had gone home for the summer and in their absence, the Respondent was to carry out some redecoration and repairs and to replace two beds. Prior to returning, however, they gave Notice to terminate

the tenancy and the Respondent did not dispute the fact that they were entitled to do this.

15. On behalf of the Applicants, Mrs Osborne referred the Tribunal to the Respondents' email, timed at 8.48pm on 3 May 2023, confirming receipt of all the deposit payments. The Respondent told the Tribunal that he had only been referring to the payments by Ms Osborne and Ms Vyas. The payment by Ms Chard had not cleared through his bank account until late May or early June, as she had made a VISA payment into a "STRIPE" Account. Such payments took several weeks to clear. The Tribunal Member told the Respondent that, on the face of it, his email of 3 May 2023 could only reasonably be interpreted as confirmation that the deposits had been paid (and received) in full and that, if he was contending that Ms Chard's payment was not actually credited to his account until the end of May or early June, he would have to provide evidence that that was the case. The Tribunal Member told the Respondent that he did not understand how Ms Chard could have obtained details of the Respondent's "STRIPE" account and would have assumed that all three Applicants had been provided with the same bank details for deposit and rent payments. The Respondent said that he must have provided details of a second account to Ms Chard. He insisted that the payment from her was not cleared funds. The Tribunal was also concerned that the Respondent had not taken any steps even after that time, to lodge the deposit in an approved Tenancy Deposit Scheme and that he had stated in his written submissions that the agreement to take the deposits in lieu of the final month's rent left a £1,500 shortfall, when, as he had just stated, Ms Chard's payment had cleared by late May or early June.
16. The Tribunal asked the Respondent why there was no mention of a deposit in the body of the Tenancy Agreement, as it had clearly been taken from the Scottish Government's Model Tenancy Agreement, but the Section relating to deposits had been deleted before the edited on-line document was printed out for signature. The Respondent said that letting agents had provided him with the style agreement.
17. The view of the Tribunal was that, as the statement of the Respondent regarding the "STRIPE" account and cleared funds had not been mentioned prior to the Case Management Discussion, it would continue the case and issue appropriate Directions to the Respondent.
18. The Tribunal's Direction required the Respondent to provide:
  1. Any evidence on which he intends to rely in relation to his claim that a Debit Card payment made by the Applicant Ms Chard on 3 April 2023 did not become cleared funds in the bank account into which it was paid before the end of May or early June 2023 and
  2. Evidence by way of bank statement(s) (with non-relevant details redacted for privacy reasons) that he held the deposit payments received from the Applicants Ms Osborne and Ms Vyas in a separate bank account from his other banking affairs.

19. On 27 December 2023, the Respondent provided the Tribunal with screenshots which listed his bank accounts and a printout that he stated represented the STRIPE account clearance facility, which showed a payment “Paul Chard Boase Avenue Deposit” deposited on 17 May 2023. He told the Tribunal that the screenshots showed that he had an account named “Boase Deposit Account” and another one named “Property”. These were separate from his normal everyday account and demonstrated that at no time were the deposits at risk.

## **Second Case Management Discussion**

20. A second Case Management Discussion was held by means of a video conference on the afternoon of 1 February 2024. The Applicants were again represented by Mrs Osborne. The Respondent was not present or represented.
21. Mrs Osborne told the Tribunal that, when the Applicants turned up to view the Property, the Respondent told them that the rent was to be double the amount at which the Property had been advertised. She referred the Tribunal again to the email of 3 April 2023, which clearly stated that all the deposits had been received, and to the fact that the Deposit section in the Model Tenancy Agreement had been removed. The Respondent had given the Applicants the keys of the Property to enable them to move in their belongings. It was very unlikely that a landlord would do that if, as he was claiming, the deposit was £1,500 short. The Applicants had decided that they were dealing with a landlord who was not using best practice, so gave notice on 1 August 2023.

## **Reasons for Decision**

22. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to determine the application without a Hearing.
23. Under Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The 2011 Regulations”), a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme. Under Regulation 10, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit. Regulation 42 of the 2011 Regulations requires a landlord to provide certain information to tenants, including the name and contact details of the scheme administrator of the tenancy deposit scheme to which the deposit has been paid.
24. The Tribunal considered carefully all the evidence before it.

25. The Applicants had provided copies of bank statements showing payments of their deposits to the Respondent. On 3 April 2023, he stated in an email “That’s all the deposits received thank you” and went on to ask the tenants to set up direct debits for all rents payable on the 6<sup>th</sup> of each month. Thereafter, presumably on or about 6 April, the Respondent handed over to the Applicants the keys of the Property.
26. The Respondent said at the first Case Management Discussion that, in his email of 3 April, he was referring only to the payments by Ms Osborne and Ms Vyas. The Tribunal found this contention unconvincing. It seemed inconceivable that the Respondent would allow tenants to take entry to the Property when as large a sum as £1,500 had not been paid by way of deposit. The bank statement for the account from which a payment of £1,500 was made on behalf of Ms Chard, showed that it had been made on 3 April 2023.
27. The Respondent had contended that this payment was not credited to his account until late May or early June, but the screenshot that he provided confirmed a credit of £1,500 on 17 May 2023. The Tribunal was unable to understand how a payment made on 3 April 2023 could have taken so long to appear as a credit on the Respondent’s account.
28. The Tribunal determined that, even if the Respondent’s statement that, when he said “all the deposits” in his email of 3 April 2023, he really meant two out of three, was to be believed and even if payment on behalf of Ms Chard had taken 7 weeks to show up in his account, it was incontrovertible that it was in his account by 17 May 2023 and he had a duty then to lodge the entire deposit of £4,500 in an approved scheme. He failed to do that and even contended that the deposit was still £1,500 short when the Applicants gave notice on 1 August 2023.
29. The Respondent stated in his written representations that when the Applicants served notice on 1 August 2023 and asked that the deposit be taken as the final month’s rent, he was unable to do so, as, due to an extended holiday, it was before he could request the remainder of the deposit, so was £1,500 short. The Tribunal held that this was manifestly untrue, as his own evidence showed that he had had Ms Chard’s deposit since (at latest) 17 May. There was also no evidence that he raised that issue with the Applicants when they made their request, although in his written representations, he contended that he was still owed the outstanding amount.
30. The Tribunal determined that the Respondent had an obligation to lodge the deposit with an approved tenancy deposit scheme by, at latest, 30 working days after 17 May 2023, namely 26 June 2023. The Respondent had, therefore, failed to comply with the legal obligations imposed on him by the 2011 Regulations. Accordingly, the Tribunal was obliged to order him to make a payment to the Respondents under Regulation 10.
31. The Respondent contended that the deposit had at no time been at risk, as it was held in a separate bank account. The whole purpose of the 2011

Regulations, however, is to protect deposits by placing them with an independent third party, so that, if the landlord runs into financial difficulties, the deposit is not at risk and, more importantly, the deposit is outwith the landlord's control, so that tenants (and landlords) can ask an independent adjudicator to consider representations from both parties and determine whether all, some or none of the deposit should be returned to the tenants when the tenancy comes to an end. In the present case, the Respondent had at least £3,000 on 3 April 2023 and that increased to £4,500 by, at latest, 17 May. The tenancy did not end until 5 September and that fact that it was in a separate bank account did not offer any protection to the Applicants.

32. The Tribunal also noted that the Tenancy Agreement made no mention of a deposit. The Scottish Government's Model Tenancy Agreement, available to be downloaded online, was used in the present case. The version available online has a lengthy section on deposits and tenancy deposit schemes, so it was deliberately edited out. This was a matter of considerable concern to the Tribunal. The Tribunal found the statement of the Respondent that it had been provided to him by his letting agents unconvincing, noting that the deposits and rent were being paid to him directly and not to a letting agent.

33. Having considered all the facts and circumstances of the case, the Tribunal then considered how much to order the Respondent to pay to the Applicants. The maximum sum was £13,500. The Tribunal decided to order the Respondent to pay to the Applicants the sum of £5,000. This was a figure that the Tribunal regarded as fair, proportionate and just, taking into account the large sum of money involved, the fact that it was at risk from, at latest, 17 May 2023 until 5 September, and the stress and inconvenience caused to the Applicants, three young students from abroad, by the Respondent's failure to lodge the deposit as required by law. The Tribunal took into account the fact that the Respondent had not retained any part of the deposit and that it had been utilised to pay the final month's rent, but regarded the Respondent's failure as serious and prolonged. The amount awarded by the Tribunal would have been greater, but for the fact that the Applicants suffered no actual loss.

## **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.**

**George Clark**

**Legal Member/Chair**

**1 February 2024  
Date**