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 Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Regulations") and The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/24/4330

Re: Property at 92 Netherhill Road, Paisley, PA3 4RW ("the Property")

Parties:

Mr Sahil Rathod, 0/1 6 Muir Street, Renfrew, PA4 8PN ("the Applicant")

Tofigh Khamisi, 80 Fisher Drive, Paisley, PA1 2TR ("the Respondent")

Tribunal Members:

Nicola Weir (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment in the sum of £1,500 should be made by the Respondent to the Applicant.

Background

1. By application received on 16 September 2024, the Applicant applied to the Tribunal for an order for payment against the Respondent in respect of failure to carry out his duties as landlord in relation to a tenancy deposit. The failure alleged was a failure to lodge the deposit within an approved scheme, contrary to the terms of the 2011 Regulations. Supporting documentation was lodged in respect of the application, including a copy of the tenancy agreement, a copy of a Notice to Leave served on the Respondent, a copy bank statement showing partial refund of the deposit to the Respondent and some emails regarding the end of the tenancy/the deposit.

2. Following initial procedure, on 18 October 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.

3. On 18 March 2025, a copy of the application papers and details of the Case Management Discussion ("CMD") to take place were served on the Respondent personally by Sheriff Officer.

4. On 20 March 2025, the Respondent emailed the Tribunal, stating that he was out of the country until the end of April but that he would pass the paperwork to his solicitor. He further responded on 31 March 2025 to clarify that he or his solicitor would attend the CMD/lodge written representations.

5. On 7 May 2025, the Respondent lodged detailed representations, admitting the breach of the 2011 Regulations; stating that he was a first-time landlord and had been unaware of the legal position in Scotland; that the deposit had not been placed in a scheme due to his oversight; that his former partner had mistakenly told the Applicant that the deposit was with Safe Deposits Scotland; that, on realising his error, the Respondent had made arrangements to pay the deposit of £1000 less £100 for agreed cleaning/maintenance costs to the Applicant; that there had been a delay before this was done as he had been waiting for the Applicant to clean the flat which he did not done; he apologised for the matter for which he accepted full responsibility and expressed remorse; and confirmed that he has since educated himself fully regarding the deposit regulations to ensure his full compliance in the future.

Case Management Discussion

6. The CMD took place by telephone conference call on 30 May 2025 at 2pm. The Applicant, Mr Sahil Rathod was in attendance, as was his representative, Mr Laurie Clark, who is a landlord himself. The Respondent did not attend and was not represented. The commencement of the CMD was delayed for 5 minutes to see if the Respondent would join late but he did not do so.

7. Following introductions and introductory remarks by the Legal Member regarding the CMD, she made reference to the representations which had been lodged by the Respondent, Mr Tofigh Khamisi, dated 7 May 2025. Mr Clark advised that he had had not had sight of these, although had been out of the country recently and may have missed the email. Accordingly, arrangements were made for the Clerk to email the representations to Mr Clark during the CMD but, for the benefit of Mr Rathod and Mr Clark meantime, the Legal Member read out the representations.

8. The application was then considered. It was noted that Mr Rathod's tenancy commenced on 1 August 2023 and had ended towards the end of July 2025. The rent had been £700 per month and the deposit paid by Mr Rathod at the outset of the tenancy had been £1,000. Mr Rathod explained that he was working for the Respondent and this is how the tenancy came about. When he

stopped working for the Respondent, he feels he was pressured into leaving the Property and the Respondent immediately advertised it for let again at a higher rent. He was treated badly by the Respondent, both as an employee and as a tenant. When he was leaving the Property and handing back his keys, he asked about the deposit and was told that it was with Safe Deposits Scotland. However, he contacted that scheme and was told they did not hold the deposit. When he raised this with the Respondent, he had to wait 15 days but then the Respondent paid the sum of £900 directly into his bank account. Mr Rathod said that, despite what the Respondent had said in his representations, there was no agreement about a deduction from the deposit of £100 for cleaning/maintenance costs. Mr Rathod stated that he left the Property in a good, clean condition and the deduction was not justified or agreed. He said he was not given any receipts by the Respondent or anything like that and received no communication about what was going on. He was very worried that he would not get his deposit back at all when he found out it had not been placed in a scheme.

9. As to the Respondent's statement in his representations about being a 'first-time landlord', Mr Rathod said this was not true. When he got this tenancy, there had been a previous tenant living there. In addition, the Respondent lets out at least one other property above his restaurant, where he lets out two or three rooms to other people.

10. Mr Clark confirmed that Mr Rathod contacted him when he had to leave this tenancy as he was needing somewhere to live. Mr Clark is a landlord and he subsequently let out a property to Mr Rathod, although Mr Rathod has now moved away. Mr Clark feels that Mr Rathod was treated appallingly by the Respondent and this is why he had offered to assist him with this application. Mr Rathod was a student who had come to live in this country and Mr Clark feels he was taken advantage of. He stated that Mr Rathod was extremely distressed at how he had been treated by the Respondent. He had been threatened and money had also been withheld from him. He also did not have a deposit to pay for another property as a consequence. He can vouch for Mr Rathod as having been a good tenant and doubts very much if the Respondent's allegation that Mr Rathod did not clean the property properly before leaving was true. Mr Clark thinks that it is quite telling that the Respondent has clearly spoken to his solicitor who has no doubt told him what to say in his letter to the Tribunal, that he has never directly apologised to Mr Rathod and he has not even bothered to join the call today to speak in person and provide any further information to the Tribunal. He would not be surprised, given how Mr Rathod was treated, if the Respondent has been in front of this Tribunal before, in similar circumstances, or in the future. In the circumstances, Mr Rathod is seeking the maximum compensation amount from the Tribunal.

11. The Legal Member stated that it was clear that there had been a breach of the 2011 Regulations, which had been admitted by the Respondent and that it would accordingly be her intention to make a finding in this regard and to impose a financial sanction, in terms of the Regulations. It was explained that this would be done by way of a payment order against the Respondent being granted in favour of the Applicant. She explained that she would fully consider

the representations made by both parties in determining the appropriate sanction and would issue a written decision shortly, specifying the amount of the payment order and explaining the reasons for same. Mr Rathod and Mr Clark were thanked for their attendance and the CMD concluded.

Findings in Fact

1. The Respondent was the landlord of the Property which, according to the title deeds, he had purchased in 2019.

2. The Applicant was the tenant of the Property by virtue of a tenancy commencing on 1 August 2023, which ended in or around the end of July 2024.

3. The Applicant paid to the Respondent a tenancy deposit of £1,000 at the outset of the tenancy, in accordance with the terms of the tenancy.

4. The Respondent did not lodge the tenancy deposit in a tenancy deposit scheme at any time during the tenancy.

5. The Respondent served the Applicant with a Notice to Leave, stating the end of the notice period as 1 August 2024.

6. The Applicant was sent a message/email by a third party on behalf of the Respondent dated 16 July 2024 stating that his deposit was held by Safe Deposits Scotland.

7. The Applicant asked for his deposit back towards the end of his tenancy.

8. The Applicant contacted Safe Deposits Scotland regarding the deposit and was told it was not lodged with them.

9. The Applicant subsequently received the sum of £900 direct from the Respondent into his bank account on 15 August 2024.

10. The Applicant denied having agreed to the deduction of £100 from his tenancy deposit for cleaning/maintenance costs.

11. The Respondent admits the breach of the 2011 Regulations and takes full responsibility for the Applicant having been advised by the third party on his behalf that the deposit was held in a tenancy deposit scheme.

Reasons for Decision

1. The application was in order and had been submitted timeously to the Tribunal in terms of Regulation 9(2) of the 2011 Regulations [as amended to bring these matters within the jurisdiction of the Tribunal], the relevant sections of which are as follows:-

*"**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."

Regulation 3 [duties] referred to above, is as follows:-

*"**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."

The Legal Member was satisfied from the documentation before her and the oral representations made at the CMD that the Respondent was under the duties outlined in Regulation 3 above and had failed to ensure that the deposit paid by the Applicant was paid into an approved tenancy deposit scheme within 30 working days of the start of the tenancy, contrary to Regulation 3 of the 2011

Regulations and also that he had not provided the Applicant with the correct information regarding the whereabouts of the deposit. This was admitted by the Respondent, as were the pertinent facts. The Legal Member was therefore satisfied that the application did not require to be continued to an Evidential Hearing and that, in terms of Regulation 10 above that a sanction must be imposed on the Respondent in respect of this breach of the 2011 Regulations.

2. In determining the appropriate amount of the sanction to be imposed on the Respondent for payment to the Applicant, the Legal Member considered carefully the background circumstances and the information which had been provided by both parties on the matter. The Legal Member considered that the amount of the sanction should reflect the gravity of the breach. The Respondent had accepted full responsibility for his actions, expressed remorse and stated that he appreciated the seriousness of the matter, although had also stated some mitigating factors, namely that he was an inexperienced landlord. The Applicant considered that the maximum sanction should be payable. As the deposit here was £1,000, in terms of Regulation 10(a) above, the maximum possible sanction is £3,000. There is no minimum sanction stipulated in the 2011 Regulations.

3. The Legal Member considered the length of the tenancy of around one year and the fact that the deposit had not been placed in a tenancy deposit scheme by the Respondent at any time. The circumstances of the tenancy were also taken into account, particularly that the Applicant had been employed by the Respondent, had come to Scotland as a foreign student not long before entering the tenancy and had been relatively naïve about his rights. He had agreed to pay a deposit in the sum of £1000, which was relatively high when compared to the monthly rental of £700. The Respondent had used an out-of-date tenancy style, given that tenancies commencing after December 2017 should be Private Residential Tenancies (PRTs). Had the correct PRT style been used, there would have been a mandatory clause in the tenancy agreement regarding the tenancy deposit being placed in a scheme and details of the scheme concerned. The Legal Member considered the Applicant to be credible in what he said and was persuaded that there had been an element of him being taken advantage of by the Respondent in connection with the tenancy and the circumstances surrounding it and its ending, including in respect of the tenancy deposit. The Legal Member considered that the Respondent had compounded the situation by telling the Respondent (or authorising someone else to inform him) that the deposit had been placed in a particular scheme. This had caused the Applicant unnecessary and additional anxiety towards the end of the tenancy, particularly when it became apparent that his deposit was not being returned immediately and the Respondent was seeking to make deductions from it. The Legal Member is unable to assess whether or not the deduction of £100 was a reasonable deduction or not. However, this is really the crux of the issue. By not placing the deposit in a scheme, the Applicant had been prejudiced in that he was then denied the dispute resolution service which would otherwise have been available to him through the scheme in respect of the dispute which had arisen regarding his deposit being repaid in full. As this was one of the main purposes behind the 2011 Regulations, the Legal Member considered this to be an important factor in assessing the seriousness of the breach in this case. The Legal Member was

also not able to determine how much experience the Respondent had as a landlord ow whether he had fallen foul of the 2011 Regulations previously but, given the Applicant's own understanding of the situation from being an employee of the Respondent in addition to his tenant, the Legal Member considered it likely that the Respondent had perhaps more experience than he was stating in describing himself as a 'first-time landlord'. In any event, the 2011 Regulations have been in place for many years and the Legal Member was of the view that anyone acting as a landlord should be fully aware of their legal obligations, including in respect of tenancy deposits. In all the circumstances, the Legal Member considered this a relatively serious breach of the 2011 Regulations but not of such severity as to justify the maximum sanction. Weighing all of the factors above, the Legal Member determined that £1,500 was the appropriate amount of the sanction to be paid by the Respondent to the Applicant.

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.

Nicola Weir

_____ **30 May 2025**

Legal Member/Chair **Date**