Housing and Property Chamber
First-tier Tribunal for Scotland

**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations") and Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules").**

**Chamber Ref: FTS/HPC/PR/24/5823**

**Re: Property at Flat 2/3, 1103 Cathcart Road, Glasgow, G42 9XP ("the Property")**

**Parties:**

**Miss Moira Buchanan, 1 Ladeside Gardens, Kilmaurs, KA3 2TY ("the Applicant")**

**Claire Knape and Mary McFarlane or Duncan both of 14 Parklee Drive, Carmunnock, G76 9AS ("the Respondents") per their representative Edwin Duncan also of 14 Parklee Drive, Carmunock, G76 9AS ("the Respondents' Representative")**

**Tribunal Members:**

**Karen Moore (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal"), having found that the Respondents did not comply with Regulation 3 of the Regulations, determined that an Order for Payment in the sum of ONE THOUSAND TWO HUNDRED POUNDS (£1,200.00) Sterling be granted.**

**Background**

1. By application received between 20 and 24 December 2024 ("the Application"), the Applicant applied to the Tribunal for an Order in terms of Regulation 10 of Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").

2. The Application comprised a copy of a short assured tenancy agreement between the Applicant and the Respondents ("the Parties") with an entry date

of 1 July 2013, copy correspondence from SafeDeposit Scotland confirming receipt of the tenancy deposit on 28 October November 2024 and copy correspondence between the Parties. The Application was accepted by the Tribunal and a Case Management Discussion (the "CMD") was fixed for 12 June 2025 at 14.00 by telephone conference and intimated to the Parties. The Application was intimated to the Respondents by Sheriff Officers.

3. Prior to the CMD, the Respondents' Representative, Mr. Duncan, lodged written submissions which explained that the Property had been left in a poor condition by the Applicant, that the tenancy deposit was still held by SafeDeposit Scotland, that the Applicant had not applied for release of the tenancy deposit and that a determination on release of the tenancy deposit rested with SafeDeposit Scotland.

**CMD**

4. The CMD took place on 12 June 2025 at 14.00 by telephone conference. The Applicant, Ms. Buchanan, took part and was not represented. She was supported by Ms. J. Riddell in terms of Rule 11 of the Rules. Neither Respondent took part and both were represented by Mr. Duncan.

5. The Tribunal confirmed the detail of the Application with Ms. Buchanan. Ms. Buchanan confirmed that she had paid the deposit of £400.00 at the beginning of the tenancy and that she sought the full award as set out in the Regulations. Ms .Buchanan confirmed that she vacated the Property at the end of September 2024. She stated that she accepted that cleaning costs would be deducted from the tenancy deposit and did not object to this.

6. The Tribunal asked Mr. Duncan if the Respondents accepted a breach of the Regulations which he confirmed that they did. Mr. Duncan explained that neither he nor the Respondents were professional landlords and that the Property had been his daughter's flat and her home. He stated that they did not realise the requirement to lodge the tenancy deposit, but accepted that the terms and conditions of the tenancy agreement stated that the Respondents as landlords would do so. Mr. Duncan stated that he had held the tenancy deposit in a separate bank account in his name for the duration of the tenancy. When asked why the tenancy deposit was lodged in October 2024, he explained that he did so in case there was a dispute with the return of the tenancy deposit and that an approved scheme could arbitrate in fairness to both Parties.

7. With regard to the sum sought by her, Ms. Buchanan stated that she did not know where the tenancy deposit had been held. She stated that she had found the end of the tenancy and the application process stressful.

8. With regard to the sum sought by Ms. Buchanan, Mr. Duncan stated that this was excessive as he had had held the tenancy deposit untouched. He had nothing to add in respect of the Respondents' ability to pay an award.

**Issue for the Tribunal**

9. The Respondents having accepted a breach of the Regulations, the Tribunal, was bound to make an Order. Therefore, the only issue for the Tribunal was the amount of the Order.

**Findings in Fact**

10. From the Application, the written submissions and the CMD, the Tribunal made the following findings in fact: -
    i) There had been a short assured tenancy of the Property between the Parties from 1 July 2013 until September 2024;
    ii) A tenancy deposit of £400.00 was paid by the Applicant to the Respondents at the start of that tenancy;
    iii) The tenancy deposit was lodged with SafeDeposit Scotland on 28 October 2024;
    iv) The tenancy deposit was not lodged with an approved scheme within the statutory period of 30 working days;
    v) No information on the lodging of the tenancy deposit was provided to the Applicant by the Respondents;
    vi) The Respondents were in breach of Regulation 3 of the Regulations throughout the tenancy.

**Decision**

11. Having made those findings, the Tribunal had regard to Regulation 10(a) of the Regulations which states that, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

12. The Tribunal considered the breach of Regulation 3 by the Respondents to be extremely serious and so significant that it merited the maximum amount which could be awarded to the Applicant. In reaching that decision, the Tribunal had regard to the Application and to all of the submissions both written and oral made by or on behalf of the Parties.

13. Regardless of whether or not the Respondents were professional landlords, they had obliged themselves in their own tenancy contract to lodge the tenancy deposit in an approved scheme and in compliance with the Regulations and simply did not do so. Mr. Duncan's explanation, on the Respondents' behalf,

that they did not realise that the tenancy deposit should have been lodged with an approved scheme lacked credibility. The Tribunal had regard to Mr. Duncan's statement that he held the tenancy deposit in his own bank account and took the view that handing the deposit to a third party not connected to the tenancy agreement does not absolve the Respondents in any way but compounds the breach as the Respondents were no longer in control of their tenant's funds. Further, neither the Respondents nor Mr. Duncan advised the Applicant where her funds were held and on what basis the funds were held.

14. It is the Tribunal's view that the legislative purpose and intent of the Regulations is to protect tenants in a situation such as this where a tenancy deposit is treated by landlords as the funds of the landlord and not the funds of the tenant. The Tribunal noted that the tenancy deposit was at risk and unprotected for the duration of an eleven year tenancy. In the circumstances, the Tribunal had no hesitation in determining that an award in the full amount of three times the tenancy deposit should be made.

15. The Tribunal then had regard to Rule 17(4) of the Rules which states that the Tribunal "may do anything at a case management discussion …..including making a decision" and so proceeded to make an Order for Payment in the sum of £1,200.00.

**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.**

K Moore

_____ **12 June 2025**

**Legal Member/Chair** **Date**