

# Housing and Property Chamber First-tier Tribunal for Scotland



## First-tier Tribunal for Scotland Housing and Property Chamber

Decision with Statement of Reasons of the First-tier Tribunal for Scotland Housing and Property Chamber under Rule 26 of the First-tier Tribunal for Scotland Housing and Property Rules of Procedure 2017 (“the Procedural Rules”)

Chamber Ref: FTS/HPC/PR/19/3394

Re: Property at Flat 2/1, 23 Riccarton Street, Glasgow, G42 7NX (“the Property”)

### Parties:

Mr Iqbal Zafar, Flat 2/1, 23 Riccarton Street, Glasgow, G42 7NX (“the Applicant”), represented initially by Ms Sally Mair, trainee solicitor, Govanhill Law Centre, Glasgow and then by Ms Claire Cochrane, solicitor, formerly of Govanhill Law Centre and then of Legal Services Agency, Glasgow (Applicant’s representative)

Mr Adnaan Aslam, 13 Queen Mary Avenue, Glasgow, G42 8DS (“the Respondent”)

### Tribunal Members:

Mrs Aileen Devanny (Legal Member and Chairperson) and Mrs Mary Lyden (Ordinary Member)

### DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent, as landlord of the Property, has acted in breach of his duties in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and an appropriate sanction to be paid by the Respondent to the Applicant is the sum of One Thousand Eight Hundred POUNDS (£1800.00) STERLING in relation to that breach.

**Furthermore, the Respondent is required to lodge the tenancy deposit of Six Hundred Pounds (£600) STERLING with an approved tenancy deposit scheme within 30 working days of the date of this decision and provide the Tribunal and the Applicant's representative with evidence that the deposit has been lodged with an approved tenancy deposit scheme within eight weeks of the date of this decision. The decision is unanimous.**

## **Background and Hearings**

(1) This is an Application by the Applicant for sanction of his landlord under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the TDS Regulations"). The Applicant states that on 9 March 2017 he entered into a tenancy with the Respondent and paid a tenancy deposit of Six hundred (£600) pounds to the landlord for property at Flat 2/1, 23 Riccarton Street, Glasgow, G42 7NX. The Applicant alleges that this Deposit was never lodged in an approved Tenancy Deposit Scheme within the 30 working day period of commencement of the tenancy as required by the TDS Regulations. The Application was brought in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The application was submitted electronically to the Tribunal on 23 October 2019 and resubmitted because of omissions on 12 November 2019.

(2) The Applicant sought an order that the Respondent should comply with the Regulations and in addition a sanction of three times the deposit being One thousand eight hundred (£1800) pounds be paid to him by the Respondent.

(3) The Applicant provided with his application the minute of let showing a date of execution of 9 March 2017 and document entitled "application for pre-tenancy determination" which contained details of the Applicant, his wife and their family members, which document states it forms part of any contract. Other documents submitted were letters from Deposit Protection Service dated 6 November 2019, My Deposits Scotland dated 28 October 2019, and Safe Deposits Scotland undated but received 28 October 2019, all confirming no deposit had been lodged with the respective schemes for this property. The application confirmed that the Applicant continued to reside in the property at Flat 2/1, 23 Riccarton Street, Glasgow, G42 7NX at the date of the application to the Tribunal.

(4) The Application was accepted by the Tribunal for determination on 13 November 2019 by a legal member of the Tribunal.

(5) A copy of the Application was served on the Respondent and the Respondent was invited to provide written representations.

(6) A direction was issued on 10 December 2019 for this application being case reference FTS/HPC/PR/3394 and another application FTS/HPC/CV/2047 involving the same parties and same property that they be heard together in terms of Rule 12

of the Procedural Rules. Since an applicant in one case is a respondent in the other linked case and vice versa, the Tribunal will from now on in this decision refer by name to the parties to avoid confusion.

(7) A hearing was notified to the parties for 15 January 2020 for both applications. There had already been case management involved for application FTS/HPC/CV/2047, the details of which are provided within the Tribunal decision and statement of reasons for that case.

(8) The case called for a hearing on 15 January 2020. Following the recusal of Mr Jim Bauld, legal member, at the previous hearing of case FTS/HPC/CV/2047, the evidence for that case required to be considered afresh before Mrs Aileen Devanny (legal member) and Mrs Mary Lyden (ordinary member). This was the first calling of case FTS/HPC/PR/3394. Mr Adnaan Aslam's mother Mrs Farda Aslam attended as his supporter. Mr Adnaan Aslam, indicated that he intended to call his father, Mr Mohammed Aslam, to give evidence in both cases. Mr Iqbal Zafar intended to give evidence and the Tribunal was told he had no witnesses. Mr Adnaan Aslam confirmed the sum he sought from Mr Iqbal Zafar and his wife in rent arrears for case FTS/HPC/CV/2047.

At the hearing the Tribunal stated its proposal that the two cases FTS/HPC/PR/19/3394 and case FTS/HPC/CV/2047 be heard together in terms of Rule 12 of the Procedural Rules and there was no objection from either party to this procedure or the direction issued on 10 December 2019. It was agreed that evidence relating to FTS/HPC/CV/19/2047 (the rent arrears claim) would be heard first and, thereafter, evidence relating case FTS/HPC/PR/19/3394 (the tenancy deposit sanction claim) would be heard. Therefore, the order of witnesses would be Mr Adnaan Aslam as applicant in FTS/HPC/CV/19/2047, followed by his witness Mr Mohammed Aslam, followed by Mr Iqbal Zafar as respondent in the rent claim and he would also be asked questions as the applicant in the tenancy deposit sanction case, and since Mr Iqbal Zafar indicated he had no witnesses, finally Mr Adnaan Aslam as respondent in the tenancy deposit sanction case and his witness Mr Mohammed Aslam to address issues relating to the tenancy deposit sanction case. Mr Adnaan Aslam wished an opportunity to lead evidence from himself and his witness once he had heard from Mr Iqbal Zafar in relation to the tenancy deposit sanction claim. The Legal Member in the introduction explained that there would be an opportunity for questions to be put to each witness by the tribunal members and by the other party.

Having addressed the case management issues, Mr Adnaan Aslam gave his evidence in relation to his rent claim in FTS/HPC/CV/19/2047 by reading from a prepared written statement. Whilst he was doing this, his mother repeatedly interrupted and made comments to him. Given that her interruptions were not in English it was difficult to conclude if this was an attempt to advise on issues which Mr Adnaan Aslam may wish to raise or went beyond that into prompts on the content of his evidence. Mr Aslam's Mother was warned on more than seven occasions by

the Legal Member not to interrupt and not to disrupt the proceedings and was reminded that she was there as a supporter and her role did not extend to influencing her son's evidence. She was warned that if she continued with these interruptions she would be asked to leave the hearing room. When she continued with these interruptions after Ms Cochrane, Mr Zafar's solicitor, started to ask questions in cross examination of Mr Adnaan Aslam, she was excluded from the hearing. This action was taken in terms of Rule 34 of the Procedural Rules. There was insufficient time to conclude questioning of Mr Adnaan Aslam by Ms Cochrane and to hear other witnesses. As a consequence the case was adjourned to a continued hearing on 11 February 2020.

(9) At the continued hearing on 11 February 2020 preliminary issues were considered. The Tribunal's decision on requests by parties for late lodgement of documents and late intimation of two witnesses for Mr Iqbal Zafar and late lodgement of a witness list was conveyed to the parties. There was also a disturbance before the hearing started outside the hearing room which resulted in Mr Mohammed Aslam, who was due to give evidence after Mr Adnaan Aslam, being removed from Glasgow Tribunal Centre. The hearing was continued to allow Mr Adnaan Aslam and Mr Iqbal Zafar to lodge additional information before further oral evidence was heard. For brevity, the full hearing note is attached and referred to at Appendix 3

(10) A direction was issued by the Tribunal on 20 February 2020 which excluded Mrs Farda Aslam, mother of Mr Adnaan Aslam, from acting as supporter for Mr Adnaan Aslam at the tribunal hearing in terms of Rule 34 of the Procedural Rules. Notification in advance of the continued hearing allowed Mr Adnaan Aslam to bring another person as his supporter, thus minimising the impact on him. This decision was taken due to Mrs Farda Aslam's disruption of the proceeding on 15 January 2020 and her participation in a noisy disturbance outside the hearing room on 11 February 2020 when the police were called. The Tribunal were of the view that her presence would be likely to lead to further disruption of the tribunal proceedings and would prevent the proper conduct of the case.

(11) The case called on 25 and 26 February 2020 at Hamilton Sheriff Court when evidence was heard. It had been decided in advance that a sheriff court rather than Glasgow Tribunal Centre would be an appropriate hearing venue. Ms Cochrane, Mr Iqbal Zafar's solicitor, sought to amend Mr Zafar's tenancy deposit sanction claim in relation to case FTS/HPC/PR/19/3394 on the basis that Mr Zafar's oral evidence was that the deposit paid was not £600 as averred in the application and in information previously lodged with the Tribunal, such as an e-mail dated 31 January 2020, but the deposit paid was £1200 and the sanction payment being sought by Mr Zafar was a multiple of three times that higher figure. Mr Adnaan Aslam objected. The Tribunal decided to refuse this proposed amendment on the basis that the amount of the deposit is a matter which should have been known to Mr Iqbal Zafar before the proceedings were raised; and an opportunity could have been taken on 23 October

2019 to amend the amount of the deposit at the same time as Ms Mair, the trainee solicitor acting for Mr Iqbal Zafar, amended his averments in relation to the amount of rent paid by him. This followed a meeting between the trainee solicitor and Mr Iqbal Zafar at which an interpreter was present. An amendment of the amount of the deposit at this stage in the proceedings when issues relating to the deposit have already been touched on in the evidence of Mr Adnaan Aslam and of Mr Mohammed Aslam would place Mr Adnaan Aslam in a position of disadvantage. Mr Adnaan Aslam had not had fair notice of the extent of the sanction claim which would in effect double in value should the amendment be allowed. This could have had a bearing on whether Mr Adnaan Aslam wished to instruct legal representation.

The hearing was due to continue on 24 March 2020 but was postponed on various occasions thereafter due to the pandemic and the inability to conduct face to face hearings for safety reasons. The parties did not wish to engage in a remote hearing using technology.

(12) The case called on 11 February 2022 at Paisley Sheriff Court and on the joint motion of Mr Adnaan Aslam and Mr Iqbal Zafar, the Tribunal after announcing oral directions, postponed the hearing until 9 May 2022 with a further date fixed for 10 May 2022. For brevity, the full hearing note is attached and referred to at Appendix 4

(13) The witnesses for Mr Iqbal Zafar did not attend the hearing at Paisley Sheriff Court on 9 and 10 May 2022 and following conclusion of evidence and cross-examination of Mr Iqbal Zafar on these dates, a joint motion was made by Mr Adnaan Aslam and by Mr Iqbal Zafar to adjourn to allow the attendance of Mr Zafar's witnesses to give evidence and to be cross examined.

(14) The case called for a continued hearing of evidence on 3 and 4 August 2022 at Paisley Sheriff Court. The Tribunal concluded hearing oral evidence on 4 August 2022. Following the conclusion of evidence and for reasons of fairness in order to give parties time to consider their closing submissions and to avoid further delay, the Tribunal directed that closing submissions in writing from the parties should be lodged with the Tribunal administration by 1 September 2022. Originally a shorter period for closing submissions was proposed to parties but was increased to a 4 week period at the request of Mr Adnaan Aslam. Parties were reminded that this was not an opportunity to provide fresh evidence or additional productions. For brevity, the full hearing note is attached and referred to at Appendix 4.

(15) Mr Adnaan Aslam and Mr Iqbal Zafar attended each hearing. Mr Zafar's wife, Mrs Shagufta Chaudhry, although a joint respondent in the rent arrears claim did not attend any of the proceedings and her interests were represented by her husband. In the case of Mr Adnaan Aslam, he was not represented and he had a supporter, initially his mother, Mrs Farda Aslam, and then Mrs Patricia Paterson and then Ms Karen Toner. An interpreter was provided by SCTS for Mr Iqbal Zafar, as requested in advance. Mr Iqbal Zafar was represented originally by Ms Mair, trainee solicitor, and then by Ms Cochrane, solicitor. Mr Adnaan Aslam and his father, Mr Mohammed

Aslam, gave evidence in relation to both the claim for rent arrears and the deposit sanction claim. Witnesses for Mr Iqbal Zafar were Mr Ihsan Ullah and Mr Mohammed Akram, who gave evidence in relation to both the rent arrears and tenancy deposit sanction claims after Mr Iqbal Zafar concluded giving his evidence and before Mr Adnaan Aslam and his father gave evidence on the tenancy deposit sanction claim. Helpfully in advance of the hearing on 9 May 2022, Ms Cochrane provided copies of affidavits signed by Mr Ihsan Ullah and Mr Mohammed Akram to the Tribunal and to Mr Adnaan Aslam. Both Mr Ihsan Ullah and Mr Mohammed Akram required the services of the interpreter when giving their evidence. The hearings were conducted in person with the exception of the hearing of the evidence of Mr Mohammed Akram, who gave evidence remotely from Portugal by a teleconference link. Closing submissions from Mr Adnaan Aslam and from Mr Iqbal Zafar's solicitor were provided in writing to the Tribunal.

(16) The issue before the Tribunal in case FTS/HPC/PR/19/3394 relates to whether Mr Iqbal Zafar has on the balance of probabilities established his claim that a tenancy deposit was paid to the landlord, whether the TDS regulations had been breached and, if so, whether a sanction should be imposed and, if so, the amount of such a sanction.

### **Closing written submissions of the Parties**

(17) The parties were invited to submit their closing submissions in writing at the end of the hearing. Both parties submitted lengthy closing written submissions pointing to inconsistencies in the other's evidence and to points in support of their own version of events.

The position of Mr Adnaan Aslam is that he was in receipt of housing benefit and received two payments of rent in cash from Mr Iqbal Zafar. One payment of £600 for rent along with a deposit payment of £600 was paid at the time of entering into the tenancy agreement on 9 March 2017 and another rent payment of £500 was paid in cash by Mr Zafar on 11 April 2017 when Mr Adnaan Aslam took Mr Zafar and his wife Mrs Shagufta Chaudhry to Glasgow City Council at John Street, Glasgow to submit a housing benefit claim and they were driven there by his father, Mr Mohammed Aslam. Mr Adnaan Aslam states he issued one written receipt only to Mr Iqbal Zafar during the tenancy and that was for the payment of £500 on 11 April 2017. The sum being claimed in case FTS/HPC/CV/19/2047 by Mr Adnaan Aslam is the short fall between the housing benefit payments paid direct to him as landlord and the rent due in terms of the tenancy agreement minus the two cash rental payments totalling £1,100 and a credit of £600. The statement of rent due lodged with the Tribunal by Mr Adnaan Aslam details the housing benefit payments made direct to him, the two cash rental payments made by Mr Zafar totalling £1,100 and a sum of £600 which Mr Adnaan Aslam states does not represent the deposit but is a credit "cash discount" which is a gesture of goodwill to incentivise payment. Mr

Adnaan Aslam states that the deposit paid was spent at the request of Mr Zafar on furniture for the property at 23 Riccarton Street. Mr Adnaan Aslam states that the house was let unfurnished with no white goods or appliances, although items of furniture and some appliances had been left by a previous owner when he took entry as owner to the house a short time before the commencement of the tenancy and they had remained in the property. He stated that Mr Iqbal Zafar had agreed to buy these items using the deposit paid to him. Consequently, Mr Adnaan Aslam's position is that there is no deposit to lodge. He states that his father, Mr Mohammed Aslam, does not manage his portfolio of properties as his agent and does not collect rent on his behalf. His father sometimes accompanies him as a witness when he meets with tenants. In Mr Adnaan Aslam's closing written submissions, he increased the claim previously intimated of the amount due for rent arrears to £6,318.27 plus late payment interest and other charges

In summary, Mr Adnaan Aslam in his closing written submissions denied that assistance was provided to Mr Iqbal Zafar to complete forms beyond May 2017; he disputes Mr Zafar's version of the place and circumstances of signing of the written tenancy agreement for the property; he indicates that Mr Zafar was aware of the housing benefit claim having received letters from the Council; he points to discrepancies in Mr Zafar's evidence as to when relationships broke down; he disputes Mr Zafar's lack of English pointing to Mr Zafar's job as a private hire driver; he points to the discrepancies between the evidence of Mr Zafar and his witnesses; and he points to inconsistencies in evidence of Mr Zafar with regard to whether Mr Zafar paid the shortfall of rent due after housing benefit was paid him or whether Mr Zafar paid full rent of £600 per month being unaware of housing benefit payments made to the landlord. Mr Adnaan Aslam considers that contradictions impact on Mr Zafar's credibility. Mr Adnaan Aslam states that it would be illogical to raise proceedings for rent arrears if he was being paid housing benefit and also receiving full rent from Mr Zafar over and above. Mr Adnaan Aslam stated Mr Zafar and his witnesses were lying and he pointed to the inconsistency between the tenancy deposit amount stated in the written application with Mr Zafar's later oral evidence of a deposit twice the stated amount. Mr Adnaan Aslam stated he had given Mr Zafar an opportunity, which he had not taken, to collect furniture when the tenancy was terminated around 2 March 2020. The property at Riccarton Street had been left with a broken bathroom window which had not been paid for by Mr Zafar.

(18) Mr Iqbal Zafar's position is that because he is vulnerable and cannot read or understand English having arrived from Pakistan via Italy he relied for assistance with completion of paperwork and reading of his post from Mr Adnaan Aslam's father, Mr Mohammed Aslam. Mr Mohammed Aslam held himself out as the landlord of the property at Flat 2/1, 23 Riccarton Street and it was Mr Mohammed Aslam whom Mr Zafar engaged with when the tenancy was entered into and the person to whom he paid rent in cash amounting to £600 per month. He respected Mr

Mohammed Aslam as a fellow Muslim and he trusted him. It was only following his complaints about outstanding repairs to the property that there was a breakdown in his relationship with Mr Mohammed Aslam and only then did Mr Zafar take independent advice in relation to the tenancy and discover that housing benefit was being paid to the landlord. Mr Zafar maintains that he owes no money to Mr Adnaan Aslam. He maintains that the deposit he paid was not used for buying furniture or appliances and Mr Mohammed Aslam was separately paid £800 by him for furniture. Mr Iqbal Zafar states that he was told the £800 he paid for furniture would be returned to him at the end of the tenancy which did not happen.

In summary, Mr Iqbal Zafar's solicitor in closing written submissions invited the Tribunal to prefer the evidence of Mr Zafar and his witnesses Mr Ullah and Mr Akram who she states provided an honest account and any inconsistencies could be attributed to the passage of time and difficulties they may have experienced communicating through interpreters. The solicitor did not criticise the interpreters but pointed to the difficulty of providing a translation when the factual matters in dispute were complex with large volumes of evidence being led. The solicitor stated that it was clear during the course of the hearing that Mr Zafar was unable to understand written productions. This she stated contributed to further confusion but supports the position that he was unable to understand written material relating to benefits and relied on Mr Mohammed Aslam's assistance with this. Ms Cochrane submitted that it was unlikely that an experienced landlord would use a tenancy deposit to purchase furniture, leaving himself with no funds should the property be damaged. She stated the inventory check at the end of the tenancy by Mr Adnaan Aslam was inconsistent with white goods and furniture being owned by Mr Zafar.

Ms Cochrane pointed to the failure of Mr Adnaan Aslam to provide any independently verifiable evidence of non-payment of rent; she invited the Tribunal to find Mr Adnaan Aslam's explanation for failure to pursue alleged rent arrears for a period in excess of two years not credible; she pointed to an e-mail of Angela Harkins, a Housing Welfare Officer at Glasgow City Council, which supported that Mr Zafar made various statements to her before legal proceedings for the rent arrears were raised by Mr Adnaan Aslam supporting the version of events he has told the Tribunal; she submitted that Mr Adnaan Aslam, had not shown himself to be a credible witness on a number of occasions during the tribunal proceedings and referred to specific instances; she pointed to the degree of control exercised by Mr Mohammed Aslam over his son's business affairs which is consistent with the account of Mr Zafar. She submitted that the payments made to Mr Mohammed Aslam should be treated as having been paid to Mr Adnaan Aslam by virtue of an agency agreement. She expanded on this and stated that in the circumstances of the case Mr Mohammed Aslam had express or implied authority to collect rent from tenants on his son's behalf. Mr Mohammed Aslam, in the knowledge that Mr Zafar could not read the tenancy agreement, held himself out to be the landlord of the property or as the principal under the law of agency, notwithstanding the written terms of the tenancy agreement. Where an agent such as Mr Mohammed Aslam,



contracts ostensibly as a principal, he is bound in contract with the third party, who in this case is Mr Zafar. Mr Adnaan Aslam has intervened in the contract agreed between his father and Mr Zafar, which he is entitled to do to enforce the contract against Mr Zafar. She referred to *Gloag and Henderson, The Law of Scotland, Thirteenth edition para 18.31* as the authority for the legal position she stated.

## **Findings in Fact**

(19) Having considered the evidence and parties' submissions, the Tribunal made the following findings in fact:

19.1. Mr Adnaan Aslam is the owner of a flat Flat 2/1, 23 Riccarton Street, Glasgow G42 7NX. He took entry as owner on 24 February 2017 and became the registered owner of the flat on 1 March 2017.

19.2. Mr Mohammed Akram met Mr Mohammed Aslam, father of Mr Adnaan Aslam, at or outside the home of a Mr Ajaz. Mr Akram spoke to Mr Mohammed Aslam about renting a property for someone from his village in Pakistan who required a tenancy. That person was Mr Iqbal Zafar. During their discussions Mr Mohammed Aslam held himself out to be in the property business and a landlord of properties, including Flat 2/1, 23 Riccarton Street, Glasgow.

19.3 On 7 March 2017 Mr Mohammed Aslam showed Mr Iqbal Zafar, Mr Ihsan Ullah and Mr Mohammed Akram the property at Flat 2/1, 23 Riccarton Street, Glasgow. Mr Adnaan Aslam was not present at the viewing on 7 March 2017.

On 9 March 2017 at Flat 2/1 23 Riccarton Street, Glasgow in the presence of Mr Mohammed Aslam, Mr Ihsan Ullah and Mr Mohammed Akram, Mr Iqbal Zafar signed a tenancy agreement presented to him by Mr Mohammed Aslam for the rent by him and his wife Mrs Shagufta Chaudhry of the Flat at 2/1 23 Riccarton Street, Glasgow. The tenancy agreement presented to Mr Iqbal Zafar by Mr Mohammed Aslam to sign consisted of a number of printed pages with other details specific to the transaction already handwritten onto the tenancy agreement. Mr Iqbal Zafar was asked by Mr Mohammed Aslam at the time for details about his family, children's names and dates of birth. Mr Adnaan Aslam was not present when the tenancy agreement was signed at the property by Mr Iqbal Zafar. Mr Iqbal Zafar's wife was not present as she was staying in Italy on that date. On 9 March 2017 at the flat at 2/1 23 Riccarton Street Mr Mohammed Aslam was given cash by Mr Iqbal Zafar of £1800 consisting of at least £600 for a tenancy deposit and at least £600 for one month's rent in advance. No receipt was issued to Mr Iqbal Zafar for the cash payment of £1800 by Mr Mohammed Aslam. Mr Iqbal Zafar was given a copy of the tenancy agreement at the property after signing it. The copy he was given had the signature of Mr Adnaan Aslam on it. Mr Iqbal Zafar's wife did not sign the tenancy agreement until she accompanied Mr Iqbal Zafar on 11 April 2017 to Glasgow City Council Offices with Mr Mohammed Aslam and Mr Adnaan Aslam following her return from Italy. Mr

Mohammed Aslam acted as the driver on 11 April 2017 and did not enter the Council Offices. During the meetings at the property for viewing and signing the tenancy agreement, Mr Mohammed Aslam held himself out to those present as the landlord.

19.4. The written tenancy agreement provides that the tenancy falls within the provisions of the Housing (Scotland) Act 1988. The date of entry is provided as 9 March 2017 and the rent payable in advance is £600 per month with the Tenants responsible for all rates, taxes, factor or other costs relating to the property. Significantly, the written agreement states that the property let is "part of the furnished dwelling at 23 Riccarton Street, Flat 2/1, Glasgow G427NX (hereinafter referred to as flat)". The agreement provides for a deposit of £600 against loss or damage. There is provision for a 10% late rent payment charge when the rent remains unpaid for more than one week. The only signature with a date for execution against it is that of Mr Iqbal Zafar. There is no date of execution against the signatures of Mr Zafar's wife or Mr Adnaan Aslam.

19.5. When the house was viewed by Mr Iqbal Zafar the property was part furnished. The furniture present in the flat had been included in the sale when Mr Adnaan Aslam bought it approximately two weeks before commencement of the tenancy. An arrangement was made between Mr Iqbal Zafar and Mr Mohammed Aslam for additional items of furniture to be acquired for the property, this included beds for Mr Iqbal Zafar's family. Mr Zafar paid an additional payment to Mr Mohammed Aslam over and above the £1800 paid for rent and deposit for these additional items of furniture to be provided by Mr Mohammed Aslam. Mr Mohammed Aslam hired a van from Arnold Clark on 10 March 2022 at a cost of £30 paid on the debit card of Mr Adnaan Aslam. The hire charge of £30 was reimbursed to Mr Mohammed Aslam by Mr Iqbal Zafar. Mr Ihsan Ullah was present and assisted when the furniture was delivered by Mr Mohammed Aslam to the flat at Riccarton Street. At the time of delivery of the furniture to the property at 23 Riccarton Street, Mr Adnaan Aslam was not present.

19.6. Mr Iqbal Zafar is illiterate and his first language is not English. He relied upon Mr Mohammed Aslam for assistance with reading correspondence and completing paperwork, such as child benefit claims and immigration documentation. Mr Mohammed Aslam and Mr Adnaan Aslam completed a housing benefit claim form for Mr Iqbal Zafar to sign. They took Mr Iqbal Zafar and his wife Mrs Shagufta Chaudhry to Glasgow City Council Offices, John Street, Glasgow on 11 April 2017. Mr Mohammed Aslam drove them there and Mr Adnaan Aslam went into the Council Offices with Mr Iqbal Zafar and his wife and acted as interpreter when the housing benefit form was submitted. Mr Mohammed Aslam did not enter the Council Office as he is not allowed into the Council Office.

19.7. Mr Mohammed Aslam in practice managed the property at Flat 2/1, 23 Riccarton Street, Glasgow. He did so on behalf of and as agent for his son, Mr Adnaan Aslam, who was the owner of the property. Mr Mohammed Aslam had express or implied authority from Mr Adnaan Aslam to collect rent payments and

deposit monies from Mr Iqbal Zafar. Mr Mohammed Aslam telephoned Mr Iqbal Zafar when rent was due and he made arrangements to collect the rent. The money was paid over in cash by Mr Iqbal Zafar to Mr Mohammed Aslam. On none of these occasions was a receipt provided despite requests for them by Mr Iqbal Zafar. During the currency of the tenancy, Mr Mohammed Akram visited Mr Iqbal Zafar and his wife at Flat 2/1, 23 Riccarton Street to enquire into the health of a family member of Mr Iqbal Zafar who was unwell. During the visit, Mr Mohammed Akram witnessed Mr Iqbal Zafar pay the sum of £600 in cash to Mr Mohammed Aslam within the living room of the flat. Mr Adnaan Aslam was not present when this payment was made to Mr Mohammed Aslam and witnessed by Mr Mohammed Akram. Another cash payment towards the rent due was paid by Mr Iqbal Zafar to Mr Mohammed Aslam at a Lidl supermarket car park after Mr Iqbal Zafar was driven there by Mr Ihsan Ullah. Neither of these payments were shown on the statement of rent payments and credits provided as part of the claim submitted by Mr Adnaan Aslam to the Tribunal in case FTS/HPC/CV/19/2047. Consequently, the statement of rent and credits provided to support the claim to the Tribunal is not accurate and does not include all the rent payments for the property paid by Mr Iqbal Zafar to Mr Mohammed Aslam.

The rent statement lodged by Mr Adnaan Aslam as a production shows on the last line an entry under the item "other cash payments received and credited" of £600 cash. This was not attributed to rent. Unlike the rent entries, there was no date against this entry. The only other two cash credits shown on the statement was for rent, one payment on 9 March 2017 of £600 and another payment on 11 April 2017 of £500, which corresponded to the payments made by Mr Zafar.

19.8. If Mr Iqbal Zafar did not pay rent or paid less than the sum of rent due, Mr Mohammed Aslam behaved in a threatening manner to Mr Iqbal Zafar or caused a disturbance.

19.9. Mr Mohammed Aslam has been refused permission by Glasgow City Council to be a registered landlord.

19.10. Mr Mohammed Aslam, his wife Mrs Farda Aslam and his son Mr Adnaan Aslam stay at the house at 13 Queen Mary Avenue, Glasgow. Mr Mohammed Aslam reads all the post received at the house addressed to Mr Adnaan Aslam and his other children, as well as reading all emails received on the family e-mail account. The family e-mail account bears the name Mohammed Aslam in the electronic address. The rent books used by Mr Adnaan Aslam are the same rent books used by Mr Mohammed Aslam before it was decided by Glasgow City Council that Mr Mohammed Aslam could not act as a registered landlord. Mr Adnaan Aslam has ostensibly taken over his father's portfolio of let properties as well as purchasing the flat at 2/1, 23 Riccarton Street, Glasgow in his own name to add to the portfolio. Mr Mohammed Aslam has significant influence on his son and managed the tenancy of the flat at 2/1, 23 Riccarton Street. Mr Mohammed Aslam acts as agent for Mr Adnaan Aslam.

19.11. Mr Adnaan Aslam received housing benefit direct from Glasgow City Council for Mr Iqbal Zafar's tenancy of the flat at 2/1, 23 Riccarton Street, Glasgow. The statement of rent submitted to support the claim by Mr Adnaan Aslam shows rent arrears accumulating due to a short fall between housing benefit and the rent due since summer 2017, with a fairly substantial sum of rent arrears due by the end of 2017. Despite these arrears, Mr Adnaan Aslam did not raise proceedings against Mr Iqbal Zafar and his wife until around March 2019. There is little evidence of written requests for payment of rent lodged with the Tribunal by Mr Adnaan Aslam with only one written demand for payment sent to Mr Iqbal Zafar submitted to the Tribunal by Mr Adnaan Aslam showing a rent statement was sent to Mr Iqbal Zafar recorded delivery on 25 February 2019 with a copy sent by first class post.

19.12 The deposit monies paid by Mr Iqbal Zafar to Mr Mohammed Aslam at commencement of the tenancy for 2/1, 23 Riccarton Street on 9 March 2017 have not been lodged in an authorised tenancy deposit scheme. At the time that Mr Iqbal Zafar lodged an application with the Tribunal for a tenancy deposit sanction the tenancy was ongoing and had not terminated. The tenancy terminated around 2 March 2020.

## **Legislation**

(20) In terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("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.

(1A) Paragraph (1) does not apply— (a) where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and

(b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord, within 30 working days of the beginning of the tenancy.

(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.

(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if— (a) the references to deposit were to each instalment of the deposit, and (b) the reference to the beginning of the

tenancy were to the date when any instalment of the deposit is received by the landlord.

(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.”

### **Decision and Reasons**

(21) The test to be applied in this case is whether Mr Iqbal Zafar has satisfied the Tribunal on the balance of probabilities that (1) he paid a tenancy deposit for flat 2/1, 23 Riccarton Street, Glasgow to Mr Adnaan Aslam or someone acting on his behalf and (2) that, if paid, the tenancy deposit has not been lodged in an approved tenancy deposit scheme within 30 working days of the commencement of the tenancy. If satisfied Mr Zafar paid a deposit, the Tribunal must be satisfied it was not used at the request of Mr Zafar for a purpose other than a tenancy deposit. The argument advanced by Mr Adnaan Aslam was that a deposit of £600 was paid at the time the tenancy was entered into on 9 March 2017 but with the agreement of Mr Iqbal Zafar it did not remain as a deposit as the sum paid of £600 was used on 10 March 2017 by the landlord to purchase furniture for the flat bought at the request of Mr Iqbal Zafar, thus resulting in no deposit monies to lodge in an approved tenancy deposit scheme. If the evidence supports this, there can be no breach of the regulations if no

tenancy deposit existed at the time it was prescribed to be lodged in terms of the TDS regulations.

The Tribunal concluded after considering the evidence submitted by parties and having considered their submissions that the sum of £600 was paid by Mr Iqbal Zafar as a tenancy deposit on 9 March 2017 to Mr Mohammed Aslam, as agent for the landlord Mr Adnaan Aslam. This sum of £600 was not used for the purchase of furniture and consequently it should have been lodged in an authorised tenancy deposit scheme within the prescribed timescale of 30 working days from 9 March 2017.

(22) It was impossible to reconcile the evidence of the parties in this case. The evidence of the Mr Adnaan Aslam and his witness, Mr Mohammed Aslam, is at odds with the evidence of Mr Iqbal Zafar and his two witnesses in a number of fundamental issues. This involved the Tribunal considering the credibility of the parties and their witnesses as well as the reliability of their evidence. The Tribunal looked at the demeanour of the parties and witnesses and the way they conducted themselves as well as extraneous evidence beyond oral testimony in an attempt to establish on the balance of probabilities where the truth lay. It was clear that a party and their witness or witnesses were not telling the truth.

(23) Documents, such as the tenancy agreement, shed light on where the truth lay. The written tenancy agreement refers to the tenancy as being a "furnished dwelling". This was contradicted by Mr Adnaan Aslam who stated that he never provides furniture or white goods in any of his tenancies. When the flat was viewed by Mr Zafar on 7 March 2017 furniture remained in the property left by the previous owner when the house was purchased some weeks before by Mr Adnaan Aslam and a property schedule and photographs produced by Mr Adnaan Aslam support this. If Mr Adnaan Aslam had sought to let the property unfurnished, the furniture remaining in the flat at 2/1, 23 Riccarton Street should have been removed before the tenancy was entered into or an alteration made in the written tenancy agreement provided to Mr Zafar to sign stating specifically that the property was unfurnished and stating the separate contractual arrangement made with regard to the furniture remaining within the property. If an arrangement to use the deposit to buy furniture was made the day after the tenancy agreement was signed as suggested by Mr Adnaan Aslam, the alteration in the contractual tenancy agreement should have been the subject of a written amendment to the tenancy agreement. Mr Iqbal Zafar disputes the account advanced by Mr Adnaan Aslam that at his request the deposit monies were used to purchase furniture and white goods for the flat stating that he had no involvement with Mr Adnaan Aslam and all his involvement was with Mr Mohammed Aslam who held himself out to be the landlord and to whom he paid £1800, being for rent and a tenancy deposit, and to whom he separately paid a sum of £ 800 for extra furniture for the flat such as beds. Mr Zafar states that he was told by Mr Mohammed Aslam that the amount of £800 he paid for the furniture would be returned when he left the tenancy.

Significantly, the rent statement lodged with the Tribunal by Mr Adnaan Aslam shows a sum of £600 cash credited to the rent due. Mr Adnaan Aslam's explanation for this is it is an inducement for a tenant to make rent payments. There was no explanation given why the word "cash" was attached to a credit against rent due. The only other items on the statement to which the word "cash" is linked are the rent payments of £600 and £500 paid on separate dates by Mr Zafar. There was no convincing argument provided by Mr Adnaan Aslam as to why the credit was included when he had raised proceedings for rent arrears due by Mr Zafar in case FTS/HPC/CV/19/2047 which was being heard with this tenancy deposit sanction claim. The Tribunal did not accept the explanation provided by Mr Adnaan Aslam of it being an inducement to pay. The Tribunal concluded that the £600 credit on the rent statement most likely represents the deposit monies paid in cash by Mr Zafar on 9 March 2017 to Mr Mohammed Aslam.

(24) The Tribunal found the oral evidence of Mr Mohammed Akram and Mr Ihsan Ullah the most persuasive of all the witnesses who gave evidence. In the case of Mr Akram, he is an acquaintance of Mr Zafar having been contacted by him for help through the common connection of having lived in the same village in Pakistan. His evidence was not entirely consistent with Mr Zafar and Mr Ullah about the sequence of events and the arrangements for delivery of furniture to the flat at Riccarton Street by Mr Mohammed Aslam but this can be attributed to the passage of time and his involvement as a helper rather than someone with a personal interest in the outcome. Indeed more suspicion on credibility may have arisen if his evidence had fitted exactly with that of Mr Ullah and Mr Zafar that there had been discussion and collusion on the evidence being presented to the Tribunal. Mr Ullah states that he is a friend of Mr Zafar and that may provide a willingness or motivation to embellish evidence to support Mr Zafar. However, when Mr Ullah gave evidence of taking Mr Zafar to pay rent to Mr Mohammed Aslam in a supermarket car park he candidly stated that he was aware of the reason for their meeting but did not witness the money actually being paid over by Mr Zafar to Mr Mohammed Aslam. The Tribunal considers this admission adds credibility to his testimony. Both Mr Akram and Mr Ullah were consistent on the circumstances around the signing of the lease, that a sum of £1800 not £1200 was paid and that Mr Mohammed Aslam alone was present and Mr Adnaan Aslam was not there. The Tribunal believe their accounts.

(25) Mr Zafar was cross examined by Mr Adnaan Aslam for a considerable period. The essential facts of Mr Zafar's evidence were consistent with that of his witnesses Mr Akram and Mr Ullah. Nonetheless, Mr Zafar's answers to some questions were at times confusing. To a degree this may be due to the convoluted nature of some questions put to Mr Zafar by Mr Adnaan Aslam, which appeared to result in some confusion and problems in translation with the potential for misunderstanding. That is no criticism of the interpreter who was clearly trying to convey the meaning of these involved questions. In some instances, Mr Adnaan Aslam asked questions stating a position which had not been established from the evidence of the witness to whom the question was directed. Mr Adnaan Aslam appeared to have prepared a list of

questions in advance rather than rely on formulating his questions in response to the evidence already stated by the witness. The Tribunal do appreciate that party litigants are unskilled in questioning techniques but Mr Adnaan Aslam's approach elongated proceedings and created the potential for confusion and misunderstanding. To assist clarification and to ensure the proceedings were fair, the legal chairperson had on occasions to assist Mr Adnaan Aslam to break the question he wished to put to a witness into its component parts to seek an answer on each part. This is consistent with the Tribunal's powers of inquiry and the overriding objective of dealing with proceedings justly in the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

(26) On 15 January 2020 when giving evidence in relation to the payment claim for rent arrears Mr Adnaan Aslam read from a pre-prepared statement with interruptions and possible prompting from his mother who was his supporter. These interruptions continued by the mother of Mr Adnaan Aslam despite her being warned on many occasions until she was excluded from the hearing. It was observed by the Tribunal that there was a marked difference in the confidence of Mr Adnaan Aslam and the certainty of his evidence when he was reading from a prepared statement compared to his hesitancy, guardedness and vagueness when answering questions put by Ms Cochrane. There was delay between the question being asked by Ms Cochrane and the answer given by Mr Adnaan Aslam with requests for the question to be repeated which suggested that Mr Adnaan Aslam was having to think through his answer before responding. When answering questions there were facts the Tribunal would have expected Mr Adnaan Aslam to know with certainty only for him to change his evidence when inconsistencies were put to him. One such instance was that he stated that he first met with Mr Zafar and his wife shortly before they entered into the tenancy agreement and then he changed this to meeting Mr Zafar's wife for the first time weeks later when he took them to council offices. He also stated that his father did not assist tenants to complete benefit forms, yet that is contradicted in a letter dated 18 March 2019 he sent to Govanhill Law Centre when he stated

"because I and my Dad help the tenants to complete/fill all benefit forms and all benefit he received from DWP and housing and council benefit"

The Tribunal noticed that when Mr Adnaan Aslam was finding a question difficult to answer he tried to deflect from the question by becoming dismissive verging on hostile towards Ms Cochrane.

(27) Mr Adnaan Aslam's witness was his father, Mr Mohammed Aslam. The evidence of Mr Adnaan Aslam and that of his father were broadly consistent. There was some inconsistencies about the sources of the furniture which was collected in the hired van with Mr Adnaan Aslam stating the furniture was all sourced from the internet site Gumtree and no receipts could be provided and Mr Mohammed Aslam stating some furniture possibly came from his garage.



(28) Mr Mohammed Aslam stated in his evidence that he read all the communications received for his children, including his son Mr Adnaan Aslam. He stated that he assisted his son, who is a university graduate, writing the letter to Govanhill Law Centre dated 18 March 2019 and the errors in that letter were his. He was asked by Ms Cochrane to confirm that he had been banned from the register of landlords which prompted a tirade against Ms Cochrane, Glasgow City Council and members of the court judiciary who appear to have been involved in proceedings related to the ban.

Mr Mohammed Aslam was warned several times throughout the proceedings when giving evidence about his conduct which involved his raised voice and finger waving at Ms Cochrane; and derogatory comments made to Mr Zafar which the interpreter translated as "sister fucker" "dog". He said on 25 February 2020 when being asked about helping Mr Zafar complete paperwork that the first port of call for people like Mr Zafar from the slum area of the Punjab, who arrive at Heathrow, is to ask about where the Benefit Office is.

The intimidating behaviour Mr Mohammed Aslam displayed in the hearing room on both occasions he gave evidence and the level of control he attempted to exert over those present was consistent with the threatening behaviour described by Mr Zafar when Mr Mohammed Aslam attended to collect rent and he was unable to pay all the amount due. The evidence presented to the Tribunal including that provided by Mr Mohammed Aslam himself of the level of control he exerted over his adult children, his controlling demeanour as observed by the Tribunal during the proceedings, and his comments when giving evidence of considering the flat at Riccarton Street his property were, in the view of the Tribunal, indicative that Mr Mohammed Aslam considered himself to be the *de facto landlord* and was the individual managing the tenancy, which is consistent with the account provided by Mr Zafar and his witnesses.

At one stage in cross examination on 4 August 2022 Mr Mohammed Aslam, stated "Everybody in Govanhill knows me as a landlord." This is not consistent with him being subject to a ban from being a registered landlord.

The Tribunal did not consider based on the demeanour of Mr Adnaan Aslam and Mr Mohammed Aslam that they would offer a tenant £600 credit against rent arrears due as an inducement to pay promptly, particularly where they had resorted to legal proceedings to recover rent arrears.

(29) The Tribunal did not believe Mr Adnaan Aslam and his witness Mr Mohammed Aslam were being truthful in parts of their evidence. The Tribunal preferred the evidence of Mr Iqbal Zafar and his witnesses Mr Mohammed Akram and Mr Ihsan Ullah. The Tribunal are satisfied based on the oral evidence that Mr Iqbal Zafar paid the sum of £1800 to Mr Mohammed Aslam, as agent for Mr Adnaan Aslam, on 9 March 2017, at least £600 of the sum paid of £1800 was for a tenancy deposit and at least £600 for rent. The Tribunal rejects the evidence of Mr Adnaan Aslam and Mr

Mohammed Aslam that only £1200 was paid on 9 March 2022 amounting to a £600 deposit and £600 for rent.

(30) Having decided that Mr Adnaan Aslam received a tenancy deposit of £600 and that deposit was not lodged with an authorised tenancy deposit scheme within 30 working days of the commencement of the tenancy, the Tribunal considered if a sanction should be imposed and if so the amount that Mr Adnaan Aslam should be ordered to pay to Mr Iqbal Zafar.

The Tribunal considered this to be a serious breach of the TDS regulations. Mr Adnaan Aslam had deliberately sought to conceal receiving a deposit by claiming the money was diverted to buying furniture. The Tribunal accepts that furniture was purchased for the flat and Mr Mohammed Aslam was involved in that arrangement and received a sum of money from Mr Zafar for that purpose but that was a separate arrangement unconnected to the deposit paid of £600. As a consequence, the deposit of £600 has been unprotected outside a tenancy deposit scheme since April 2017, a period of over 5 years. Mr Adnaan Aslam has a portfolio of tenanted properties, he holds himself out to be a professional landlord. He did not argue that he was unaware of the legislative requirements for lodging a tenancy deposit in an approved tenancy deposit scheme. The tenancy for Flat 2/1, 23 Riccarton Street terminated in March 2020 and no deposit monies have been returned to Mr Zafar. As a result of the Mr Adnaan Aslam's failure to lodge the tenancy deposit, Mr Zafar has been denied the use of the proper mechanism offered by the deposit protection scheme to be used in the event of a dispute. In these circumstances, the Tribunal consider that Mr Adnaan Aslam should be ordered to pay the maximum sanction of three times the deposit of £600 to Mr Zafar. In addition, the deposit monies of £600 should be lodged within a reasonable timescale with an approved tenancy deposit scheme. This allows the scheme to consider if the deposit should be returned to Mr Zafar and allows Mr Adnaan Aslam to argue that not all the deposit should be returned because of the property damage he alleges.

## A DEVANNY

Mrs A Devanny

Legal Member and Chairperson

17 November 2022

### 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.**

## **Appendices**

1. Appendix 3 – full hearing note from hearing on 11 February 2020
2. Appendix 4 – full hearing note from hearing on 11 February 2022
3. Appendix 5 – full hearing note from hearing on 3 and 4 August 2022