

Written decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/1931

Re: Property at 2B Avondale Drive, Whitehaugh, Paisley, PA1 3TT (“the Property”)

Parties:

Miss Alisa Peters, 3a Durrockstock Crescent, Foxbar, Paisley, PA2 0AW (“the Applicant”)

G7 RSK Ltd, 25 Dalziel Drive, Glasgow (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Gerard Darroch (Ordinary Member)

- **Background**

1. This was an application by the Applicant for a penalty under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), applying for an order in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”). The Tribunal held a hearing on this and the conjoined case, for a claim for repayment of the deposit, under FTS/HPC/CV/22/1632, by teleconference over two days. The first day of evidence took place on January 2023 and the second day of evidence took place on 27th April 2023.
2. The two cases were originally lodged and set down to be heard separately and were conjoined when it was recognised that the two cases involved the same parties. The original hearing fixed for 16th November was postponed to 26th January 2023 at 10am at the Respondent’s request.
3. The Applicant lodged her application on 29th May 2022 and applied for a penalty in terms of the 2011 Regulations as she alleged she paid a deposit of £475 to Mr Bobby Singh in cash when she first entered into a lease of the Property. She also claimed in the conjoined application for the return of the deposit. The Applicant lodged a copy of a tenancy agreement dated 6th April 2018 which states on page 3 that a deposit of £475 was due. She also lodged copy e-mail messages from the tenancy deposit schemes confirming they have no deposit lodged for the Property address and advised that when she

asked Mr Singh about repayment of the deposit at the end of the tenancy she had no response.

4. After service of the papers on the Respondent, Ms Sandhu a Director of the Respondents replied on 7th August 2022 advising that

!1. My full name is Miss Tanu Sandhu. The papers that were served on me are under Mr Tanu Singh. Please have this corrected.

2. The tenant you have contacted me about does not have a deposit that was due to be registered in a tenancy deposit scheme. If you see the attached appendix A, you will see I have placed many deposits relating to any rental agreements into the rent deposit scheme with mydepositsscotland.co.uk. It is obvious I am aware of my obligations and the law when it comes to registering deposits correctly. The tenant has never paid a deposit during my ownership of the property.

3. The lease the tenant has provided has been superseded as it had errors including the deposit which was an admin error. Please see the latest lease which supersedes any old leases provided in Appendix B.

4. The lease the tenant has provided and the latest lease in Appendix B clearly states my full name correctly.

5. The lease the tenant has provided and the latest lease in Appendix B clearly states my phone number of which I have had no contact regarding the tenancy including the deposit.

6. The lease the tenant has provided and the latest lease in Appendix B clearly states my email address of which I have had no contact regarding the tenancy including the deposit.

7. If you refer to Appendix B sub section 4; it is agreed both the landlord and the tenant agreed all communications will be made in writing by hard copy by either personal delivery or recorded delivery. This has not been done in this case and I cannot confirm date of termination of the lease.

8. If you refer to Appendix B sub section 11; it is confirmed a deposit of £0.00 will be paid.

9. Soiled furniture and waste was left in the property totalling £485 just to be removed.

10. Please note, I will forward contractors notes and invoices for the substantial damage the tenant caused in the property including carpets, underlay and sub floor soiled with animal faeces. This damage will cost in the excess of £1,700 alone.

11. Please note, the attic space had structural timber joists sawn at places by the tenant including the tool they used to damage the joists. This is a serious alteration to the safety and structural integrity of the building which can only be classed as malicious damage. This damage alone has cost me in excess of £2,650 alone.

12. After speaking with neighbours it has been found the tenant was ordering illegal drugs regularly with them being filmed collecting drugs by neighbours by local dealers. The neighbours are willing to make copies of this footage if required and confirm an affidavit along with it. The neighbours have issued concerns around the wellbeing of the tenants' children relating to substance abuse. If you include all the additional data above, it is clear the tenant did not pay a deposit and is attempting to extract more funds illegally and taking advantage of the Housing and Property Chamber. The phone number provided by the tenant is not mine. There has been no contact with me by the tenant direct. The latest lease confirms the tenant did not pay a deposit. The tenant has given misinformation in order to manipulate their claim. The tenant has entered the wrong landlord details, given the wrong phone number for me and given the wrong postcode in their claim even though they have lived at the address for over 5 years. I have shown I am a responsible landlord who registers all deposits in the appropriate scheme and law accordingly. The tenant has shown malice towards the property and disregard to the laws in this country. Kind Regards Tanu Sandhu"

5. The Respondent also lodged a lease between the Applicant and the Respondent for the Property dated 1st November 2020. This lease is in the style of a Private Residential Tenancy and states the deposit is £0.

6. The Tribunal sent a direction to both parties in respect of the applications seeking the following further information.

From the Applicant:

1. Details of and if possible a copy of the original tenancy agreement for the lease of the Property confirming, when it was entered into, who was the named landlord, the address of the Property and the rent and deposit charged.
2. The Date of when the deposit was paid
3. Copy and if necessary redacted bank statements showing the rent paid for the duration of the tenancy and who it was paid to,
4. The date the Applicant started college and the date or dates of any further tenancy agreement entered into
5. Confirmation if the two tenancy agreements lodged to date i.e. the one dated in 2018 lodged by the Applicant and the one dated 1st November 2020 lodged by the Respondent are signed by her and why they were entered into at those times.
6. Any letters or correspondence supporting the payment of the deposit to the landlord
7. Details of when the surveyor came to the Property and any correspondence from the landlord regarding that visit or subsequent transfer of landlord or title to the property.
8. Details of the outcome of her claim for the return of the deposit which is the subject of a separate application
9. Any other evidence the Applicant wishes to lodge to support her claim and any response to the Respondent's claim regarding the end of the tenancy?
10. A list of any witnesses the Applicant wishes to bring.

From the Respondent:-

1. Details of when they became landlords in the Property and what lease they entered into with the Applicant and how that lease was entered into i.e. when and where it was signed.
2. Who dealt with the Applicant as tenant in the tenancy for the Respondents in their dealings with the tenancy?
3. Any relevant correspondence from them to the Applicant regarding the tenancy.
4. A copy of any rent statement or request for payment from the Applicant showing the rent due and paid by the Applicant.
5. A copy of the title to the Property and confirmation of who the owner is.
6. Details of the address of the Property and if and when it changed over the last 5/6 years.
7. Any response from the Respondent to the Applicant's claim she paid a deposit to a Mr B Singh in person at the start of the tenancy.
8. A list of any witnesses they wish to bring to the hearing.

An extension for the return of documentation to be lodged with the Chamber was granted to 18th November 2022 as the previously fixed hearing was discharged.

1. The Applicant responded to the Direction on 15th November and stated
"To whom it may concern, I cannot locate a copy of the original tenancy agreement. I have attached copies of;
 - *invoice showing month in advance and deposit paid (sent to myself by Renfrewshire council)**Apologies, I was updated for myself starting college and the address was updated (I was only told of it being updated), the college do not hold this information. The second one being last year due to losing my job and needing an in date agreement which was posted through my letter box (this is the lease I queried the amount as it stated the wrong amount and other pages posted through door and asked to correct. (I have also submitted text messages showing the time & date of this message exchange with Bobby Singh and attached the original copies of this lease handed to myself which shows the deposit paid). I contacted the job centre for which I needed a lease/letter for my universal credit claim. They have told me that they do not keep this information and destroy it, apologies that I can not provide this.*
 - *I have attached 5 years worth of redacted bank statements showing I have always paid rent to Bobby Singh since day one of moving into the property. These will show amounts of £575 & later reducing to £525 (sometimes I was a little short & would pay the extra when I could and would give notice as shown on my statements of these payments). The reason the amounts shown are higher than the rental agreement of £475 is because at the start of the tenancy, Bobby told me the gas & electric were split between myself, his mother (who resides in the main house below) & Thomas who rents the unit below the flat and would cost £50 per month each). In June/July 2019 during COVID, the main gas supply to the property was cut. I called the Scottish gas board who asked for details of the meter in the property and advised that it was not registered and the bills were not paid. They then advised me to call the gas supplier and ask them to install a meter under my name 2 to ensure that the bills were paid going forward & took the meter number & asked details of my payments to my landlord & his name etc. The Scottish gas board are happy to verify this with yourselves, but due to me not being the property owner they won't provide me with any evidence due to data protection. I have attached an email to show this. I have also attached an email from the boiler company, as they are also happy to speak to yourselves but can't me, again due to me not being the property owner as I was again impacted and left without hot water/heating.*
 - *Unfortunately I cannot provide a date or evidence in regards to the surveyor. The night before Bobby text me asking if someone would be in as a surveyor was coming out and needed access to the flat. I have since changed mobile phones and do not have these text messages. The surveyor was given access, I felt worried about this and asked him if I had anything to worry about or had to look for somewhere else to stay. He advised me that his parents were going through a divorce and his dad was saying the house was worth more than it is worth, and reassured me I had nothing to worry about and everything would remain as it always had, which it did. I didn't hear anything about this after his visit, I was not aware the property was sold at any point and continued to pay my rent as normal to Mr Bobby Singh.*
 - *In regards to the claims made by the respondent in regards to the end of the tenancy. I had not long decorated the flat (apart from the kitchen and bathroom) before moving due to the speed I had to move. There was a couch left but it was not soiled (it was a light grey fabric Ikea 2 seater which folded down into a sofa bed) & a hollow table that opened at the top. I left these thinking they would do someone a turn, as had been done with myself when I first moved into the property. My son had put a small hole in his bedroom wall (which I had plastered), and there were x2 door handles from both room doors missing due to them snapping off. As for the rest of the claims made, I was shocked and disgusted while reading. I was a Tenant for 5/6*

years with my old landlord and never had any complaints, I paid my bills on time & stayed in to collect packages for him, his family and one of his other renters who rents the store below where I stayed. Even with the main gas supply being cut off for 2/3 weeks and Bobby trying to save money on the boiler, myself and my son was left without hot water/heating. I didn't ask for a rent reduction or money back as I was just happy to have a roof over my head in already hard times. When I moved out, I enquired about my security deposit to be met with silence. I then discovered my deposit had never been protected, I made my old landlord aware of this and gave around a month after notifying him that I was aware that my deposit wasn't protected and advised by the 3 security deposit schemes that if he did not respond, to apply to the first tier housing tribunal which is what I did. I hope based on the evidence I have submitted that this shows, I did pay a £475 security deposit along with £475 month in advance up front when I first moved into the property. If my landlord had any issues with the condition of the flat, he could have spoken to me instead of outright ignoring my messages in regards to my deposit and attempts at communication. I have heard nothing outside of their responses to this tribunal.

I believe the respondents attempts at character assassination, slander and defamation and accusing me of trying to extort money from them or via this tribunal are nothing but vindictive, which I believe is due to me bringing this case before the tribunal.

The witnesses I will be bringing will be my mother, Anne Peters who was present, and also signed the invoice showing my deposit paid. She is also aware I got everything removed from the flat via uplifts as she watched my son as I did so. My sister's partner Khush Channah who helped uplift items to dump the days before posting the keys as requested by Bobby on 18th April 2022.

I will be sending a further email with redacted statements from my current bank, I have redacted the statements from my old bank and called this afternoon to confirm I will be posting these secure delivery tomorrow morning so hopefully they will arrive to yourselves in Friday."

2. The Respondent responded to the direction on 17th November 2022 stating that :-
 - a. She became the landlord on 9th October 2017. That the tenant entered into a short assured tenancy agreement on 6th April 2018 and it was signed at 2b Avondale Drive, that the tenant also signed a new lease that overrides the old lease on 1st November 2020 and this was also signed at 2b Avondale Drive with 2 individuals present.
 - b. That Mr Bobby Singh dealt with the tenant with colleagues Laura Archibald and Octavian Corneciu.
 - c. The Respondent lodged copy messages and referred to one which confirms there was no deposit. The other message she advised showed the tenant had checked the second lease and only found one error which was the rental payments.
 - d. The Respondent attached a rental statement showing sums due
 - e. The Respondent lodged a copy of the title to the Property showing G&RSK are the owners from October 2017.
 - f. She advised the address of the Property is 2b Avondale Drive Paisley which is under one title which is 74 Arkelston Road on land register.
 - g. The Respondent states in her submissions that she has made that she has never received a deposit from the Applicant and no deposit was paid to the previous landlord. She refers to a screenshot of a message with Bobby Singh where the tenant confirms this and goes on to say "The tenant has also lied; to the Housing & Property Chamber Notice of

Direction (Point 5 of CMD) dated 12th September 2022; regarding changes in lease pages by Bobby, as there is a further text message showing the tenant checked the lease thoroughly by 22nd September 2021 and confirms the only error in the lease is the rent figure. It also confirms the tenants rent is 4 weekly but she has only been paying the rent monthly. There was no mention about the deposit being £0 (nil) at this point either. The message also confirms the tenant lied about her previous statement and changed the lease page herself and not by the agent. If you look at the rent statement you can see the tenant is late in her rental payments but always catches up except in August 2018 (when she asked about the deposit and realized there was not one) and in February 2022 when they refused to pay rent while residing in the property and left owing £1,590. This will now need to be pursued as well as serious damages to the structure of the building that I have had to record as malicious damage to the authorities. Mr Singh did not receive a deposit from the tenant at all and has witnesses to prove this. Historically I have also proven previously to the Chamber that I store all deposits relating to my tenancies in My Deposit Scotland Scheme and it would not make sense why this would be an exception. All the evidence provided and common sense prevailing there is no reason why I would have taken a deposit and not registered it as I have done with all other tenancies. I am well aware of my legal obligations as a landlord and obey them to the letter whatever the cost. I can provide other tenants letters to confirm this. The fact the Applicant has made a false statement is an offense and I would like the Applicant to be reminded to make false statements can be convicted with imprisonment with the terms described in the Chambers letter dated 12th September 2022.

h. Witness List - Mr Bobby Singh, Mrs Baljinder Singh, Mr Simranjeet Singh, Miss Miss Laura Archibald, Mr Octavian Corneciu.”

The Hearing

3. The first day of the hearing was on 26th January with both parties present. The Tribunal went on to hear evidence from the Applicant, her mother Mrs Anne Peters, the Respondent, and Mr Bobby Singh. Mr Sekhon, the Respondent's partner was present as the Respondent's supporter. The first day took all day and then the hearing was adjourned after the Tribunal heard evidence from Mr Bobby Singh as further documentation was identified as necessary and further evidence would then be sought on this from both parties.

Evidence

4. **Ms Peters the applicant** gave evidence first.
5. Ms Peters confirmed that she had lived in Seedhill prior to moving into the Property. Her previous rent had been flooded a few times and she took out a Provident loan. She placed an advert on Gumtree seeking a 2 bedroom flat and advised she viewed it with her Mum. She advised that the previous tenants in the Property had young children and had moved out the day before she moved in as it was too small for them. Ms Peters confirmed it happened really quickly because all her presents were ruined in the flood, she had the money (cash) with her and handed over £950 in cash to Mr Singh in the living room of his Mum's house with her Mum and Mr Singh's mother present. She explained that she had taken out a cash loan from the Provident a loan

company where you can apply for cash for a higher rate of interest. She got the cash loan before she advertised and borrowed £1,200 to make sure she had money for the first month's rent, a deposit and some money for moving expenses. Ms Peters confirmed her previous tenancy was from a housing association so there was no deposit to be returned from that.

6. She advised that as she only worked part time in a Macdonalds at that time she had to get confirmation of her tenancy for the Council to claim rent payments and that is what the invoice which she has lodged showing the deposit paid was for. She advised the invoice is from archives at the Council and the Tribunal noted it shows the date stamp of the council on it.
7. Ms Peters confirmed that the only person she has dealt with regarding the flat was Mr Singh. She advised that when she left she left the keys with him and asked about the return of her deposit but did not hear anything. She then checked with the 3 deposit companies and was advised nothing was lodged under either Arkelston Road or Avondale, alluding to the name change of the relevant property.
8. Ms Peters was not sure exactly when she moved into the flat but advised it happened really quickly because all her presents were ruined. She reiterated throughout her evidence that she had paid over cash for one month's deposit and rent.
9. Ms Peters advised the first tenancy was for 74 Arkleston Road and then when the council notified of a change of address title for the flat she advised that Bobby Singh produced another lease and it was signed with Bobby Singh in the shed in the garden. She then advised there was a further lease requested when she lost her job and had to provide up to date information. Ms Peters advised that Mr Singh advised his parents were going through a messy divorce and a survey had to be carried out on the Property. She confirmed that she was told rent payments would remain the same and not to worry. She then advised that he text her to ask her to send the rent to another account. Ms Peters was not clear when that was although she believed the 2018 lease was signed when the address changed. The 2020 lease she believed was for her claim for housing benefit and she asked for another in 2021 but she didn't get a copy of it. Ms Peters also admitted that she didn't really look at the names on the leases when asked to sign them. She advised that she doesn't remember signing a lease in 2020 (which is the one that shows "£0" for the deposit entry) but agreed it was her signature so accepted she had signed it. She confirmed that she did not know who Ms Tanu Sandhu was but thought it might have been Mr Singh's sister. She advised that in the later 2021 lease she noted the amount of rent was wrong because she needed that for her housing benefit claim but she did not notice the amount of a deposit as she was not looking at that page.
10. With regard to the text messages that the Respondent had lodged claiming Ms Peters had agreed there was no deposit, Ms Peters explained that after she didn't have to worry about moving she wasn't sure if she had to pay another deposit for the updated address and she asked if she had to pay another deposit and was told there wasn't a deposit for 2 Avondale but then she asked "how does it work with the previous deposit and he (Mr Singh) said everything stays the same it is just transferred."
11. Ms Peters also denied the text messages lodged by the Applicant which is dated 13th August 2018 and states:

"Hi Bobby I was just wondering if I could use some of the deposit to cover some of the rent this month?"

"Hi Just checked There wasn't a deposit with this tenancy. If I remember right you were struggling to raise the money so we did a tenancy without a deposit as your mum said she will guarantee any outstanding bills damage etc."

"yes sorry I remember now I had to use it for furniture"

"If you need some time you can pay the rent in instalments over a couple of months. Would that help?"

"That's great thank you so much."

were from her or that it came from her phone as she claimed all her messages show a picture of her and a dog. Under questions Ms Peters categorically denied the text message but did confirm that Mr Singh was good about allowing her to pay rent later in the month.

12. Ms Peters agreed under questions that the amount of tenancies were unusual, she confirmed she did not remember the 2020 one but did remember asking for one in 2018 as she required it for her proof of address and in 2021 after she lost her job and required it for her Universal Credit application. Again she stated she did not see the deposit only the error in the rent figure because that was what she was concerned at confirming.
13. Ms Sandhu asked Ms Peters if she did not see that the Respondent was the landlord in the 2018 lease and Ms Peters advised she did not see this and she was not aware Ms Sandhu was the landlord then, nor was she aware Ms Sandhu or her company had bought it. Ms Peters stated she trusted Bobby and took him at face value and she only became aware of the change of ownership during the Tribunal process. She agreed that she had the lease of 2018 (which showed the new landlord name) but that she did not notice it and was not aware of the change of ownership until raising this action. With regard to the 2021 lease Ms Peters confirmed that Bobby posted the lease through her door, she spotted the mistake in the rent but not the deposit amount and he changed the error in the rent clause.

Mrs Anne Peter

14. Mrs Anne Peters then gave evidence and confirmed she is the Applicants mother and advised that her daughter had a flood in her flat in Seedhill just before she took on the tenancy in Arkleston Road. Mrs Peters confirmed that her daughter had taken on a provident loan and posted on Gumtree looking for a flat. She advised that Mr Singh had text wanting to see if her daughter wanted to see a flat he had. They both went along and it seemed a nice area and there was no one above her so Mrs Peters advised she thought it was a good flat. She confirmed that they both then went downstairs where the Applicant signed a missive and paid £950 in cash in the sitting room to Mr Singh. Mrs Peters confirmed the Applicant moved in just before Christmas and shortly after the previous tenants left. She confirmed when they visited the flat it was dark and around 7pm before Christmas she remembered another woman being there with 3 children renting another of Mr Singh's flats. Mrs Peters confirmed that the Applicant was paying a deposit and so carrying a lot of money and asked her to go with her and also to get her opinion of the flat. Mrs Peters advised the Applicant told her she had to pay £475 for rent

and £475 for a deposit and she counted the money. She confirmed that Mr Singh (whom she referred to as Bobby) introduced them to his mother in the living room, the Applicant told him she would take the Property and she signed paperwork, Mrs Peters signed it and so did Mr Singh saying the deposit was paid. The paperwork she advised was one sheet which was then given to the Applicant and Ms Peters then handed over the money and advised Mrs Peters everything was fine.

In response to questions Mrs Peters advised that she never guaranteed any damage or bills. They also advised there was no receipt for the money just the piece of paper they all signed but that showed the deposit of - £475.

Ms Tanu Sandhu

15. Ms Sandhu confirmed that as per her written submissions she became the owner of the Property on 9th October 2017 when her company the Applicant bought the Property. She advised that Mr Singh manages a lot of properties for her and that he knew I would buy an investment property and he approached me about this one and she bought it. Ms Sandhu advised she was aware the previous landlord was Ms Baljinder Singh Mr Bobby Singh's mother and she continued to get paid the rent until around February 2018 when G7Rsk took over the rental. Ms Sandhu confirmed that she never received a deposit to lodge and that she lets out around 20 properties and always lodges her deposits.
16. She advised that she was aware of who the tenant was and the rent was paid to her company by the Applicant from February 2018 but she expected Mr Singh to advise of the change of ownership.
17. When asked if she asked about the deposit she advised that there are some properties where there are no deposits and some where there are, and she said she would have asked Mr Singh, and he said there was no deposit because the tenant was on benefits.
18. Ms Sandhu advised that she signed the tenancy in the office beside the main house around 6th April 2018. She was told there needed to be a new tenancy with the new name and she wanted that. She advised that she noted the deposit was wrong in the 2018 lease after she had signed it and told Mr Singh who advised he would amend it and that he would drop a copy off later that week. She advised that she has a different copy of the 2018 lease.
19. Around February 2022 Mr Singh told her that he was no longer going to manage any properties as he was changing jobs and he also told her the tenant was leaving. Ms Sandhu confirmed that she never had any dealings with Ms Peters the tenant. She confirmed under questions that she had been told there was no deposit and that she took the 2018 lease as a mistake but thought it was an admin error that would be corrected. She agreed she left him to change the paperwork and on her copy it had been changed. She advised she trusted Mr Singh.
20. Ms Peters put it to Ms Sandhu if there were rent arrears why did Ms Sandhu not pursue these and why was she only hearing about them now in this action.

Mr Bobby Singh

21. Mr Bobby Singh then joined the call and gave the following evidence.
22. He confirmed his name was Bobby Singh and he was 43 and working as a builder.
23. With regard to the tenancy and how it was entered into he advised that he saw an advert on gumtree from the Applicant and contacted her and she and her mother came over to the Property. They saw the flat and wanted it as soon as possible. He said they were so keen they went back and got the rent money the same day. He thought he had showed them round the flat and the rent was £450 /475 at the time. He advised it was his mother's house but he managed it at the time. He advised his business model was simple just to give decent properties and there was no deposit if they couldn't afford it. He advised most tenants just paid one month rent in advance. From memory he said there was no deposit, he counted cash in front of everyone but he said he preferred not to deal in cash because the human mind is so variable.
24. When asked who Narinderpal Singh was (the name on the invoice produced by the Applicant) Mr Singh confirmed it was his name. He also advised he thought the tenancy may have started around Christmas time maybe just after because he was aware the Applicant had a problem with her flat. He remembered she had some damaged Christmas stuff and wanted to move pretty quickly.
25. Mr Singh was asked to look at the invoice dated 28th November 2015 and asked if it was his invoice. He acknowledged it looked similar and he said he normally had a logo on his invoices and that he would do an invoice for the months' rent in advance. He felt however that this was not his invoice and was not signed by him. He said there would have been an agreement when the tenancy was entered into but it would be on a hard drive. He confirmed that he sold the property to Ms Sandhu's company at the end of 2017 and got a lease sorted out. He confirmed it would not affect Ms Peters at all nothing was changing but he thought he did tell her there was a change of landlord and thought he had done a new lease. He admitted there were quite a few leases for this Property and mentioned that "we do try and do new leases. Old leases can cause major problems".
26. When asked about the mention of the deposit in the 2018 lease he said that was a mistake and he was "sure we changed that". There was "one occasion where Ms Sandhu pointed this out".
27. Mr Singh confirmed that a lease would have been signed at 2B Avondale as it was a temporary office base, He confirmed that he would get one party in after another so the landlord and tenant would sign on 2 separate occasions. He advised that he thought the landlord came in the morning and spotted the deposit issue and then the tenant wasn't far behind her. He stated that the mistake with the deposit being mentioned in the lease was his and they corrected it afterward and gave the landlord a separate lease to take away.
28. Mr Singh confirmed that he was not related to Ms Sandhu but had worked with her until he stopped doing letting agent work in March/April 2022.
29. With regard to the bank statements he said when the landlord took over the payments were made to the new landlord and the names would change.
30. Mr Singh advised that with reference to the text messages lodged he had 4 or 5 different numbers from Ms Peters and generally she would say "Hi it's Alisa" and I knew it was he. He insisted the text was from her and he had her number saved on his phone at the time and so her name would come up. He

affirmed that those text messages were made between himself and the Applicant.

31. With regard to the new owner, Mr Singh advised that Ms Peters had asked if she had to pay a deposit to the new landlord.
32. With regard to the invoice he admitted that it looked similar to his and had the same details with his address on it.
33. He suggested that the fact the deposit is mentioned in the 2018 lease was an administrative error by admin staff he used and suggested they had just used a template agreement and had by mistake put in a deposit amount. He went on to say he doesn't usually take deposits from people on benefits as a lot of them can't afford it. He advised that she needed to get a loan to pay money and flat wasn't fully furnished so it needed furnishings. "Ideally we would take a deposit but often not able to".
34. He indicated he did not want to get anyone into trouble and when asked what that meant he stated he did not want to accuse anyone of forgery, that he accepted he had made a mistake with the lease but the invoice was not genuine.
35. When asked why he had not responded to Ms Peters asking about the deposit after the end of the tenancy he advised he had a lot going on and had just not responded.

The Second day of evidence on 27th April 2023

36. At the second day of evidence Ms Sandhu and the Applicant were present there were no more witnesses.
37. Ms Sandhu had lodged an invoice from Mr Singh to indicate a genuine invoice.
38. The Tribunal then asked some questions regarding the rent statement. Ms Peters clarified she was asked to pay as well as rent a sum of £100 for gas and electricity. However at one point, the gas was cut off and as the meter was not registered for the property she got a new meter and started paying for gas directly so the amount for utilities reduced to £50.
39. The Tribunal then went through the bank statements lodge by Ms Peters to compare them with the rent statement lodged by Ms Sandhu.
40. The Applicant could show two payments that the Respondent had omitted on 1st April 2020 and 30th October 2020. The Respondent was able to confirm these payments were made after rechecking her own statements after a short break and confirmed they had been omitted. The other payments were all confirmed by both parties.
41. It was noted and the parties accepted that the Applicant had routinely paid her rent in arrears usually towards the end of the month or the beginning of the next one. The last payment made was on 1st April 2022 and was for the rent due and owing on 9th March 2022.
42. The Respondent had lodged evidence to confirm the tenant had sent a message giving notice to Mr Singh the Respondent's agent on 7th April 2022. The Applicant agreed she had sent that message and advised that she had been offered a council property very quickly, was aware that she could have a period where she would owe overlapping rental payments and had asked the Council for some help with this. She also advised that she asked Mr Singh about the deposit and confirmed that he never replied. The Applicant

confirmed that because he hadn't replied about the deposit she did not chase up the Council about help with the double rent due.

43. The Applicant confirmed she handed in the keys on 18th April.
44. Ms Sandhu in cross examination asked Ms Peters why if she had been able to spot an error in the lease with regard to the rent she had not spotted the "error" in the deposit. Ms Peters advised that when she had signed it was just open for her to do that and she hadn't checked any other page, she only had to upload the rent clause for universal credit and that is the page she looked at. Ms Sandhu commented that the lease was a one page document and she should have been able to see both the rent and the deposit.

• Findings in Fact

1. The parties entered into a lease of the Property whereby the Applicant leased the Property from Baljinder Singh from 28th November 2015.
2. The Respondent purchased the property and became the landlord in or around February 2018
3. The Tenancy was originally an assured tenancy. The original agreement is not available.
4. The original landlord was Baljinder Singh (Mr Bobby Singh's mother).
5. Rent payments were made out to Mr Bobby Singh on the Applicant's bank account for the duration of the lease.
6. The Applicant dealt with Mr Singh throughout the period of the lease and after the sale of the property and change of landlord.
7. An invoice was granted by Mr Singh to the Applicant dated 28th November 2015 confirming the first month's rent and deposit was £475 each and a total of £950 was paid.
8. That invoice was lodged by the Applicant with Renfrew Council on 1st December 2015 as part of her claim for housing benefit.
9. A Second tenancy agreement extending to 11 pages was entered into between the Respondents as landlord and the Applicant on 8th April 2018.
10. The tenancy of 8th April confirms the rent is £475 payable every 4 weeks and there is a deposit of £475.
11. A third tenancy agreement in the form of a Private Residential tenancy was entered into between the Applicant and Respondent which is dated 2020.
12. The Rent due in terms of the third lease was £475 every 4 weeks payable in advance.
13. In clause 5 of the tenancy agreement dated April 2020 the deposit is stated to be £0
14. The rent was paid and accepted on a monthly basis at the rate of £475.
15. The sum of £100 was initially also paid in consideration of electricity and gas used by the tenant.
16. After July 2019 the Applicant paid for gas directly and the sum paid for utilities to the Respondent reduced to £50 per month.
17. The Applicant gave notice that she was leaving the Property on 7th April 2022.
18. The lease ended on 7th May 2022.
19. A deposit of £475 was paid in cash at the beginning of the lease to Mr Bobby Singh.
20. The deposit has not been returned to the Applicant.
21. The Deposit has not been lodged in a tenancy deposit scheme.

22. The rent was due on 9th of each month and was paid by the Applicant into the Respondent's bank account usually towards the end of each month.
23. The Applicant overpaid rent on 3rd December 2021 when she paid rent due in November 2021 and paid £740.
24. The Applicant paid rent up to and including the rent due for 9th March 2022 which was for rent due to 8th April 2022.
25. The pro rata rent due from 9th April 2022 to 7th May 2022 is £433.33.
26. The pro rata cost for utilities is £43.67.
27. The rent due at the end of the tenancy is £490 less £215 overpaid previously leaving a sum due of £275.
28. No claim for arrears of rent were made by the Respondents prior to the raising of this action.
29. The deposit is not lodged with an approved tenancy deposit scheme and has been unprotected during the tenancy.
30. The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

Reasons for Decision

1. The matter in dispute between the parties in this application and the conjoined one is simply was a deposit paid by the Applicant to Mr Bobby Singh who was the landlord's representative throughout the tenancy.
2. From the evidence presented by the applicant, the Respondent and the witness Mr Singh the following facts were agreed. They all agreed the Applicant was the tenant in the property and that she dealt full time with Mr Singh. They agree that the rent was £475 and paid in advance, usually late each month. They agree that at some point probably during 2018 the address for the property changed from Arkleston Road to Avondale Ave which is reflected in the leases. They all agree the tenancy ended on 7th May 2022 after the tenant gave notice to Mr Singh.
3. The Applicant states that she was never told the Property had been sold to Ms Sandhu's company G7Rsk Ltd but accepts that they are the current owners and therefore the landlord for the purposes of this application so she has correctly named the company as the Respondents in this action. Ms Sandhu agrees that she allowed Mr Singh to carry on managing the Property on her behalf after the Respondent purchased it and she assumed he had told the tenant of the change of ownership, but there was no evidence lodged that he did so in writing and Mr Singh was vague and inconclusive on whether he did say anything. Ms Peters was clear she did not know about the sale although she knew there was an issue with his parents and that he had to get a surveyor out to check the property, but as she pointed out even though the account to which she sent rent changed on her bank statements they still referred to Mr Singh, this was the reference used throughout her tenancy of the Property.
4. The Tribunal therefore accepts the generally agreed evidence that Ms Peters was the tenant in the Property which changed address during the tenancy, that Mr Singh was the letting agent throughout the tenancy firstly for his mother then for the Respondents and the Respondents took over the tenancy

at least from February 2018. The Tribunal also accepts that as the new landlord took over the tenancy with a sitting tenant, namely the Applicant they become responsible for the protection of any deposit paid.

5. Ms Sandhu in her evidence was clear that although her company bought the Property in October 2017, she did not actively engage in the landlord role until February 2018 and the rent paid up to that point was paid to the previous landlord. It is not clear why this was the case and why G7Rsk did not act as landlords from the start of their ownership but that is not crucial for this application.
6. The crucial evidence for the purposes of these applications arises from the evidence led and produced regarding how and when the tenancy started and what money was paid i.e. was a deposit paid in cash at the same time as one month's rent as the Applicant submits. Ms Sandhu by everyone's admission was not present at the time when the tenancy started she was unable to provide any evidence regarding this time and only stated that she was advised by Mr Singh that there was no deposit paid for this Property and she believed him as she had worked with him for a number of years.
7. The Applicant spoke clearly and cogently about why she was looking for a flat around Christmas time 2015. She explained that her previous tenancy which was a housing association tenancy had flooded, a lot of her stuff was ruined and she needed a flat quickly. She advised that she took out a loan to cover moving expenses such as rent and a deposit and some left over for furnishings. She said she took out £1200 from the Provident and she took cash when she went to view the flat Mr Singh had contacted her about after she posted an advert. Both Mr Singh's evidence and the evidence of Mrs Peters corroborate that her previous flat had flooded, that she moved quickly and that it was around Christmas time. Both agreed she had taken out a loan. Mrs Peter's evidence was particularly clear and convincing as she spoke in detail of where and when the cash was handed over, the fact that a single piece of paper was signed by all 3 of them in Mr Singh's mother's house downstairs from the flat. The only real point of dispute in the evidence of the 3 parties who were present when it was agreed between the applicant and Mr Singh that she would take the flat which was then known as Flat 1 74 Arkleston Road is how much she handed over in cash. Ms Peters and Mrs Peters confirmed it was £950. Mrs Peters explained the rent was £475 and the deposit was £475 and so the full amount for both was handed over after her daughter counted it in Mr Singh's mother's living room. Mr Singh disagreed and said it was only one month's rent that was handed over. He was not clear however how much the rent was saying it was either £450 or £475 indicating his memory was not that clear and he had not checked the sum on any lease before attending the Tribunal.
8. To support Ms Peter's evidence she has lodged an invoice she obtained from Renfrewshire Council to whom she claimed she had sent it at the start of the tenancy to support her claim for benefits.
9. The invoice is headed "Narinderpal Singh, 14 Whiteyetts Drive, Sauchie, FK10 3GE and is addressed to Alisa Peters at Flat ½ , 84 Seedhill Road, Paisley it is dated 28th November 2015 and has the reference IINVOICE REF 01/74 ARK/1P/001.
10. The invoice reads after that as follows:-

<i>Deposit for above property</i>	<i>£475</i>
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Rent for one month in advance

£475

Please note the deposit will not be refundable if the original tenancy agreement is cancelled within the first 6 months by the tenant. After that period the deposit will be refunded 28 days after the tenant removes from the property so there is ample time for the landlord to confirm there is no outstanding debt or damage to the property.

The invoice is then signed in 3 places for the tenant, landlord and Witness. The tenant's signature states A Peters the witness' signature states A Peters (but in a different handwriting) and the Landlord's signature is more difficult to read but could be Singh.

It is also dated stamped and signed in the bottom of the invoice by "Customer services, Cotton Street, Paisley 1st December 2015."

11. The Applicant advised that this is the invoice she obtained on the evening of visiting the flat and paying over the £950 in cash. Mrs Peters fully corroborated that and confirmed cash was handed over for the full months' rent and deposit. She confirmed she signed a one page document which acknowledged the deposit. Ms Peters advised she needed proof of her rent for her benefits claim and sent this to the council after getting it from Mr Singh. This is supported by the fact it states it is dated 28th November and is date stamped at the bottom by Customer Services Cotton Street Paisley. Cotton Street Paisley is the headquarters of Renfrewshire Council. The Tribunal found this to be compelling evidence in support of the fact a deposit was paid.
12. Mr Singh in his evidence and shown a copy of the invoice stated that it looked like one of his but denied it was genuine and suggested it was not correct and had been made up. When pushed as to what he meant he said "he didn't want to get anyone in trouble by stating it was a forgery". Crucially he did not deny it was his signature on the invoice but suggested he had a logo on his that was not on this one.
13. Following on the first day of evidence the Tribunal asked if another sample invoice could be lodged and Ms Sandhu lodged one which is dated 15th June 2015 and which she advised she received from Mr Singh who had advised her his hard drive was damaged and he could not produce other invoices or significantly the applicants invoice but found this one in a paper copy. The copy invoice is redacted to exclude the tenants details but looks very similar to the one lodged by the Applicant. It has the same name and address at the top, lays out the rent and deposit in the same way and has the same wording underneath. Which wording talks of repayment of the deposit at the end of the tenancy and not lodging the deposit in a tenancy deposit scheme. The main difference is there is a logo NS at the top of the invoice however in the invoice lodged by the applicant the top of the invoice is obscured by a black border with lettering on it and a time of 8.55 and 4G which looks like it has been uploaded from a phone perhaps and this part of the letter has not been shown. In all other aspects the invoice is the same.
14. If the invoice is legitimate then it is proof a deposit was paid. The Respondents are suggesting that this is not a genuine invoice, that the fact the lease lodged by Ms Peters dated April 2018 states a deposit was due of

£475 is an administrative error and should have been corrected which it was in the next lease and that it is not credible that Ms Peters would have noticed an error in the rent shown in the lease prepared in 2021 but not an error in the deposit amount. The Tribunal does not accept that the invoice dated 28th November is not genuine. It is highly improbable that a woman with a 6 year old child desperately seeking accommodation before Christmas after her previous flat had been flooded would seek to, and have time to make up an invoice to lodge with a local authority to support her claim for benefits, but with the intention to put in a payment of a deposit with a view to claiming a penalty for non-payment of a deposit into a tenancy deposit scheme an indeterminate time later. This is wholly implausible and the Tribunal found Ms Peters and her mother's evidence clear, credible and convincing and supported by the written evidence. The Respondents have not been able to show any evidence to support the invoice is false or made up. Mr Singh was not credible in his recollection of the exact events leading to the tenancy. He could not remember what the rent was exactly, he admitted that there were errors in a later lease where the rent was stated wrongly but suggests that the fact a deposit is stated in the 2018 lease is also an error. He could not produce the original lease or any other invoice signed at the time the tenancy was created. His invoices including the one produced by Ms Sandhu as evidence of how his invoices normally looked both state that the deposit would be returned to the applicant after the end of the tenancy if there is no damage, but not within the first 6 months of the tenancy. The Tenancy deposit regulations were in force in 2015 and this statement clearly indicates Mr Singh was not placing his deposits in a scheme then contrary to the regulations.

15. Ms Sandhu admitted that she raised the issue of the deposit being wrong (as far as she was concerned in the 2018 lease.) the Tribunal notes that she raised this with Mr Singh and he may (although we have not seen this) have provided her with a different version but in the one produced by the applicant which is the one she signed it is clearly stated there is a deposit of £475. It is more likely than not that this is correct, it is supported by the invoice which is date stamped on 1st December showing the Council received it shortly after the tenancy started. Mr Singh blamed an administrative error but has not led any evidence to show it was an error. There have been no other witnesses called and no other physical evidence produced. It is interesting that an error in the lease would record the exact amount of a deposit that Ms Peters states she paid.
16. Ms Sandhu asked why wouldn't the Applicant have noticed the wrong deposit amount in the subsequent leases 2020 and 2021, but those lease are Private Residential Tenancies. The page with the deposit details on it is different to the one with the rent on it unless the Applicant looked through the whole lease she would not have seen this as she stated she just checked the rent clause and in the 2021 draft lease she noticed and pointed out the error re the rent, this is highly plausible. The new style tenancy agreement is relatively long. Ms Peters explained that when she was asked to sign the signing page was open and she just had to sign. When sending her proof of rent she would she said just upload the rent page. This sounds credible and the Tribunal accepted this is why she did not notice any error in the deposit statement in the subsequent leases.

17. The text message evidence the Respondent lodged does suggest that the applicant may have agreed there was no deposit but this is refuted strongly by the Applicant who states that these were not her messages. This is more unclear however it is clear that there was some conversation between the parties around the time of the change of ownership where the Applicant was not sure what was happening and asked if she needed to pay another deposit and was told no everything would be crossed over. The text message may have something to do with that if it is indeed Ms Peters message. The Tribunal is not persuaded that this is an acceptance by the Applicant that there was never a deposit paid. The invoice is conclusive evidence of that, and this is backed up by 2 witnesses and the lease of 2018. As stated previously Mr Singh's account was not credible and his memory of the event much more vague than either Ms or Mrs Peters.
18. Taking account of all the evidence the Tribunal finds on the balance of probabilities that a deposit was paid in the sum of £475.
19. The fact that the Applicants' deposit was not lodged with an approved tenancy deposit scheme as required by Regulation 3 is confirmed by the letters submitted by the Applicant and from the evidence presented by the Respondent who denied there was any deposit lodged. Having concluded for the reasons stated above that a deposit was lodged the Tribunal has to consider what penalty to apply.
20. A deposit that is not lodged means the tenant is vulnerable to the landlord going bankrupt and deprives both parties of the opportunity of dispute resolution through an approved tenancy deposit scheme at the end of the tenancy which has been the case with this deposit.
21. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, to protect deposits for tenants and to provide the benefit of dispute resolution for parties. When a breach of the Regulation has taken place the Tribunal must make an award. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015 by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
22. In coming to its decision the Tribunal considered and took account of the decision of the Upper Tribunal UTS/AP/19/0020 which states: 'Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.'
23. The Tribunal considered this to be a serious matter, although not one at the most serious end of the scale. The Respondent is aware of the Regulations. They have advised that they rent out a large number of properties and are aware of their duties to lodge a tenancy deposit in accordance with the Regulations. There does not appear to be other cases where penalties have been applied against the Respondents. The Respondents did not believe a deposit had been lodged. This case has a complicated factual history and it appears that the record keeping of Mr Singh is not comprehensive and it has

taken a considerable amount of evidence to clarify this. Ms Sandhu was credible in her evidence that she did not believe there was a deposit but she was totally reliant on Mr Singh who it appears has not kept good records of what happened and the Applicants has been able to show a deposit was indeed lodged.

24. The Applicants were entitled to have confidence that the Respondent would comply with their duties as a landlord and that their tenancy would be protected. Their deposit has not been returned to them because the Respondents did not believe one had been lodged. With regard to any potential issues with the condition of the Property at the end of the tenancy this is not relevant to this application and has not been taken into account.
25. Taking all the circumstances into account, including that the Applicants have had to apply to the Tribunal to request the return of her deposit, that the deposit was not protected for several years and that the Respondents genuinely did not believe there was a deposit lodged the Tribunal decided it would be fair and just to award a sum of £712.50 to the Applicants, which is one and half times the tenancy deposit.

Decision

The Tribunal grants an order against the Respondent for payment to the Applicants of the sum of £712.50.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

Jan Todd

Legal Member

_12th

Date

May

2023