Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 3(1) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 made under the Housing (Scotland) Act 2006 and Rules 103 and 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 made under the Tribunals (Scotland) Act 2014

Chamber Ref: FTS/HPC/PR/18/1117

Re: Property at Flat 4, 8 Murieston Terrace, Edinburgh, EH11 2LH ("the Property")

Parties:

Mr Calcedonio Riesi, Flat 27, 3 Salamander Court, Edinburgh, EH6 7JE ("the Applicant")

Mr James Allan, Flat 5, 3 Appin Place, Edinburgh, EH14 1PW ("the Respondent")

Tribunal Members:

George Clark (Legal Member)

Decision: The First-tier Tribunal for Scotland (Housing and Property Chamber ("the Tribunal") determined that the Respondent had failed in the duty, under Regulation 3(1) of The Tenancy Deposit Schemes (Scotland) Regulations 2011, to pay the deposit paid by the Applicant to the scheme administrator of an approved scheme and that the Respondent should be ordered to make a payment to the Applicant of Two hundred and Fifty Pounds in respect of that failure. The application by the Applicant to have the deposit refunded is refused.

Background

By application, received on 8 May 2018, the Applicant sought an Order for Payment under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations"), in respect of the failure by the Respondent to lodge the deposit he had paid in respect of a tenancy of Flat PF4, 8 Murieston Terrace, Edinburgh EH11 2LH ("the property"), with the scheme administrator of an approved tenancy deposit scheme, as required by Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011

Regulations"), made under the Housing (Scotland) Act 2006. He also sought repayment of the deposit and interest in respect of the delay in refunding it to him.
In written representations, the Respondent provided the Tribunal with a copy of a letter to the Applicant, dated 2 April 2018, stating the reasons for the Respondent not being prepared to refund the deposit. The Respondent contended that the property had been left in an unsanitary and unsatisfactory condition and that the cost of bringing the property back up to the condition when first let was estimated to be at least £2,100. The mattress was urine soaked to the point where the bed frame had rusted, mirrors permanently attached to the wall with sticky pads had caused damage during removal, skirting boards and light fittings were damaged and covered in dirt, two heating panels had been removed, a window handle was broken, a bespoke window seat, an easy chair and a chest of drawers had been removed from the property, there were nails sticking out of walls and the front door, woodwork in the hallway was chipped beyond reasonable wear and tear and the walls in the hallway were filthy and, through lack of proper ventilation, condensation had come down walls and had caused the bath panel to rot. The Respondents provided a file of photographs in support of the written representations.

Case Management Discussion

A Case Management Discussion was held at George House, 126 George Street, Edinburgh EH2 4HH on the morning of 30 August 2018. The Applicant was present and the Respondent was represented by his son, Mr Ewan Allan, and his daughter, Ms Dawn Allan.

The Legal Member advised the parties at the outset that, at a Case Management Discussion, the Tribunal could do anything which it might do at a hearing, including making a decision on the application.

The Applicant told the Tribunal that his investigations showed that the Respondent had not paid his deposit over to Safe Deposit Scotland or any other approved deposit scheme.

The Applicant told the Tribunal that he had had a wonderful relationship with his landlord (the Respondent) and his wife. Mrs Allan had told him that, when he left the property, they would be "gutting it" and then selling it, so he should not be so concerned about cleaning it before he left. The mattress was not urine-soaked. It was wet as a result of dampness in the property. He had told Mrs Allan that he was leaving at the end of February 2018. He was getting the keys to his new flat on the 14th and that would give him a couple of weeks to get the new flat ready, but there appeared to have been a misunderstanding, as Mrs Allan and her daughter had arrived at the property on 14 February, expecting him to have already left.
The Applicant accepted that he had taken a heating panel off the wall and that he had put a couple of nails on the walls and one on the entrance door, to hang pictures. The mirror referred to by the Respondent had been there when he moved in and he had reported the broken window handle to the Respondent. He had ventilated the property every day as, if he did not, the walls and his bedding would become soaked with condensation. His routine was to ventilate and heat. It appeared that, over the 8 years of his tenancy, the mattress had absorbed the humidity. He accepted that he had not cleaned the property as well as he would

normally have done when he left, but stated that this was because he had been led to believe by the Respondent that this was not expected, as builders would be moving in shortly afterwards. He quoted from the reference given to him by the Respondent's wife, which stated that the property had been kept in great condition throughout the tenancy and that the Respondent would recommend him to any new landlord. Mrs Allan had also indicated to him that if he wished to take any items from the property, that would not be a problem, as it was going to be "gutted" and refurbished. He had spoken to the Respondent many times regarding dampness and had washed the walls with water and vinegar and the bathroom tiles and ceiling with bleach, in order to get rid of mould. He believed that he was being made to pay for a misunderstanding.

The Respondent's representatives confirmed that the deposit had not been paid to an approved deposit scheme. This had been due to ignorance of the requirement to do so and the lease had commenced before the tenancy deposit scheme came into force. The Respondent did not own any other properties that were let out.

The Respondent's representatives told the Tribunal that the relationship with the Applicant had, indeed, been a very good one and that, during the tenancy, the property had been kept in very good order, but the condition in which the property had been left could not simply be attributed to fair wear and tear. The lease stated that the property should be properly aired and written notice given of any defects, but the Applicant had not at any time given such written notice. The bath panel was rotted and its deterioration had clearly been a gradual process and the Respondent had not known about the broken window handle until the visit to the property on 14 February 2018. During the tenancy, the Respondent had replaced the cooker, the shower and the electric fire in the living room.

The Respondent's representatives were unable to confirm or deny the Applicant's contention that Mrs Allan had indicated that she was not concerned about the condition in which the property was going to be left, but were of the view that, even if the intention had been to sell, the Respondent would have expected the property to be handed back in the same condition as it was when it was let, fair wear and tear excepted, as per the lease contract and as it appeared to have been through almost all of the tenancy period.

Reasons for Decision

The Tribunal considered the application, written representations and oral evidence and concluded that, as permitted by Rule 17(4) of the 2017 Regulations, it was in a position to make a Decision on the application without further procedure.

The Respondent accepted that the deposit had not been paid over to the scheme administrator of an approved tenancy deposit scheme. The Tribunal noted that the lease had commenced before the 2011 Regulations came into force and accepted that the failure had been due to ignorance on the part of the Respondent, but held that landlords must be deemed to know their responsibilities and legal duties and the onus is on landlords to ensure that their knowledge of rules and regulations that affect them is up to date. Being satisfied that the Respondent had failed to comply with Regulation 3(1) of the 2011 Regulations, the Tribunal was bound to order the

Respondent to pay to the Applicant an amount not exceeding three times the amount of the tenancy deposit. The deposit in this case was £470. The tribunal accepted that the failure had not been intentional, but it had compromised the negotiating position of the Applicant in relation to its return or retention by the Respondent. Having considered all the facts and circumstances, the Tribunal decided that the amount to be paid by the Respondent to the Applicant should be £250.

There was no dispute between the parties as to the condition in which the property had been left, but the tribunal had been presented with conflicting evidence as to the reason for that being the case. The Applicant had stated that the Respondent's wife, Mrs Allan, had told him that the property was being "gutted" and then sold, so the condition in which he had left it was not of concern and that removing items of furniture would potentially be of assistance as it would make easier the clearing of the flat prior to refurbishment. The Respondent's representatives did not accept that version of events and there was no independent evidence to support the position of either party. The Tribunal noted the terms of the reference given by the Respondent, but noted also that there was no dispute as to the condition of the property at the termination of the let. The Applicant accepted the condition was as stated in the Respondent's written representations, photographs and oral evidence, so the Tribunal did not place any reliance on the terms of the reference. Accordingly, the Tribunal determined that it was unable to uphold the Applicant's request for an Order requiring the Respondent to return the deposit.

Decision

The Tribunal determined that the Respondent had failed to comply with Regulation 3(1) of the 2011 Regulations and that he should pay to the Applicant the sum of Two hundred and fifty Pounds in respect of that failure, but did not uphold the Applicant's request for a refund of the deposit of £470.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

George Clark

Legal Member/Chair

30 August 2018

Date