



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy  
Deposit Scheme (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/24/4825**

**Re: Property at 9 Warrix Avenue, Irvine, KA12 0DP (“the Property”)**

**Parties:**

**Mr Leo Carruthers, 9 Warrix Avenue, Irvine, KA12 0DP (“the Applicant”)**

**Mr John 'Jay' Carpy, 16 Church Wynd, Bo'Ness, EH51 0EQ (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had breached Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”). The Tribunal therefore determined to make an order for payment in the sum of One hundred pounds (£100) Sterling under Regulation 10.

**Background**

- 1 The Applicant applied to the Tribunal for a payment order under Rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and Regulation 9 of the 2011 Regulations.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 17 April 2025. Notification of the CMD was given to the parties in terms of Rule 17(2) of the Rules.
- 3 Both parties were invited to make written representations in advance of the CMD. On 12 March 2025 the Tribunal received a response to the application from the Respondent. No written representations were received from the Applicant.

## The CMD

- 4 The CMD took place on 17 April 2025 at 2pm by teleconference. Both parties joined the call.
- 5 The Tribunal had the following documents before it:-
  - (1) Form G application form dated 17 October 2024;
  - (2) Email from the Respondent's wife to the Applicant confirming receipt of the deposit;
  - (3) Private residential tenancy agreement between the parties;
  - (4) Deposit certificate from the Letting Protection Service Scotland dated 7 December 2021;
  - (5) The Respondent's written representations dated 12 March 2025.
- 6 The Tribunal explained the purpose of the CMD. It noted that it was a matter of agreement that the deposit had not been paid into an approved deposit scheme within 30 working days of the commencement of the tenancy. The deposit had not been lodged until 3 December 2021, after the Applicant had queried the status of his deposit with the Respondent.
- 7 The Tribunal therefore explained that it would require to assess the appropriate level of award in this case and asked parties for their submissions on this point. For the avoidance of doubt the following constitutes a summary of the key elements of the discussion and is not a verbatim account of the proceedings.
- 8 The Applicant advised that he had submitted the application on advice from CHAP, a local housing charity who had assisted him with some repair issues at the property. The Respondent had failed to lodge the deposit within the statutory timescale, and had only done so when the Applicant flagged it. The Applicant confirmed that he had contacted the Respondent's wife on 29 November 2021 and the deposit was lodged on 3 December 2021. There had been no significant impact on the Applicant as a result of the delay, but he pointed out that if he had ended his tenancy at the time his deposit would not have been secured in a scheme. He confirmed that he was still residing at the property. He was unsure about what would be an appropriate level of award in this case, however pointed out that it was the Respondent's responsibility to lodge the deposit in a scheme timeously.
- 9 The Respondent accepted the error in not lodging the deposit timeously. It was coming to the end of the coronavirus pandemic at the time and his wife was pregnant. They each had a hand in managing the tenancy and thought each other had lodged the deposit. The Respondent pointed out the clause in the contract, which confirmed the arrangements for lodging the deposit in a scheme. It was his intention to do so. As soon as they were made aware of the oversight the deposit was lodged. The Applicant appeared satisfied at the time. The Respondent confirmed that he had a rental portfolio and would always secure deposits in a tenancy deposit scheme. This was the first time

he had made such an error. The Respondent was similarly unsure about what an appropriate level of award would be in the particular circumstances of this case. He did not know how much the Applicant had been inconvenienced.

## Relevant Law

- 10 The relevant law is contained with the Housing (Scotland) Act 2006 and the Tenancy Deposit Scheme (Scotland) Regulations 2011. Section 120 of the 2006 Act provides as follows:-

*“120 Tenancy deposits: preliminary*

*(1) A tenancy deposit is a sum of money held as security for—*

*(a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or*

*(b) the discharge of any of the occupant's liabilities which so arise.*

*(2) A tenancy deposit scheme is a scheme for safeguarding tenancy deposits paid in connection with the occupation of any living accommodation.*

- 11 The 2011 Regulations provide as follows:-

*“3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—*

*(a) pay the deposit to the scheme administrator of an approved scheme; and*

*(b) provide the tenant with the information required under regulation 42.*

*(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*

*(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*

*(a) in respect of which the landlord is a relevant person; and*

*(b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

*(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.”*

*“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 by summary application and must be made no later than 3 months after the tenancy has ended.”*

*“10. If satisfied that the landlord did not comply with any duty in regulation 3 the 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.”*

## **Findings in Fact**

- 12** The parties entered into a tenancy agreement in respect of the property, which commenced on 1 July 2021.
- 13** The tenancy was a private residential tenancy under section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 14** On or around 20 June 2021 the Applicant paid a tenancy deposit of £500 to the Respondent. The Respondent’s wife acknowledged receipt of the deposit by email dated 20 June 2021.
- 15** In terms of Clause 10 of the aforementioned tenancy agreement the Respondent undertook to lodge any deposit received with a tenancy deposit scheme within 30 working days of the start date of the tenancy. The scheme administrator was stated to be the Letting Protection Service Scotland.
- 16** In terms of Regulation 3(a) and (b) of the 2011 Regulations the deposit should have been lodged with a scheme, and information provided to the Applicant under Regulation 42, no later than 12 August 2021.
- 17** On 29 November 2021 the Applicant emailed the Respondent’s wife to query the status of his deposit.
- 18** Following the Applicant’s email, the Respondent paid the Applicant’s tenancy deposit into an approved deposit scheme, namely the Letting Protection Service Scotland, on 3 December 2021.
- 19** The Applicant received the deposit protection certificate on 7 December 2021.
- 20** The failure to lodge the deposit timeously was due to a misunderstanding between the Respondent and his wife. The Respondent and his wife were both involved in managing the tenancy.

- 21 At the time the deposit was received from the Applicant the Respondent's wife was pregnant.
- 22 The Applicant continues to occupy the property under the terms of the aforementioned tenancy agreement.

### **Reasons for Decision**

- 23 The Tribunal considered it could make relevant findings in fact in order to make a decision on the application, having considered the documents before it and the submissions from parties at the CMD, in the absence of a hearing under Rule 18 of the Rules. The Tribunal determined that there were no substantive facts in dispute that would require a hearing to be fixed, and that proceeding to a decision following the CMD would be in accordance with the Tribunal's overriding objective under Rule 2 of the Rules to avoid delay so far as compatible with proper consideration of the issues.
- 24 The Tribunal was satisfied that the tenancy between the parties was a relevant tenancy for the purpose of Regulation 3(3) of the 2011 Regulations. The Regulations specify clear duties, which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy and provide information to the tenant regarding the deposit. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.
- 25 In terms of Regulation 3 of the 2011 Regulations, the Respondent in this case required to pay the deposit over to a deposit scheme no later than 12 August 2021. The Respondent accepted that the deposit was not paid into a scheme until 3 December 2021. The Tribunal therefore found him to be in breach of Regulation 3.
- 26 Regulation 10 states that in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly having been satisfied that the Respondent had failed to comply, the Tribunal then had to consider what sanction to impose having regard to the particular facts and circumstances of the case. The application of the sanction must seek to act as a penalty to landlords and ensure compliance with their statutory duties in relation to tenancy deposits.
- 27 The Tribunal had regard to the decision of Sheriff Cruickshank in *Ahmed v Russell* (UTS/AP/22/0021) which provides helpful guidance on the assessment of an appropriate sanction. In doing so the Tribunal must identify

the relevant factors, both aggravating and mitigating, and apply weight to same in reaching its decision. The Tribunal is then entitled to assess a fair and proportionate sanction to be anywhere between £1 and three times the sum of the deposit, which in this case is £1500. As per Sheriff Cruickshank at paragraph 40 of his decision in *Ahmed*:

*“The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose of the sanction is not to compensate the tenant. The level of sanction should reflect the level of overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations.”*

28 The Tribunal considered the aggravating factors in this case. It noted that the Respondent has a rental portfolio and should therefore be aware of, and fully compliant with, his duties under the 2011 Regulations. The Tribunal also took into account the requirement to deter landlords from future breaches of the Regulations through the imposition of an appropriate sanction.

29 The Tribunal had regard to the comments made by the Applicant in terms of the potential impact upon him if the tenancy had ended and his deposit had not been held in a scheme. However, the Tribunal did not give great weight to this as an aggravating factor. There was no suggestion that either party were contemplating ending the tenancy at that time.

30 The Tribunal went on to consider the mitigating factors in this application, and identified the following to which it gave significant weight:-

(1) The deposit had been paid into a deposit scheme as soon as the Respondent was made aware of the error. There was no evidence to suggest any deliberate attempt on the Respondent's part to evade his duties under the 2011 Regulations.

(2) The deposit has been protected since 3 December 2021.

(3) The situation had arisen due to a genuine misunderstanding between the Respondent and his wife, who was pregnant at the time. The Tribunal accepted the Respondent's submissions on this point as a credible explanation, which was supported by the action taken to secure the deposit as soon as the error came to light.

(4) The Respondent has a rental portfolio and is generally compliant with his obligations regarding tenancy deposits. There was no evidence before the Tribunal to suggest otherwise.

31 Accordingly, having weighed the aggravating and mitigating factors in this case the Tribunal considered that the level of culpability was low, when

measured against the nature and extent of the breach. Accordingly taking into account the potential for a maximum award of £1500 the Tribunal determined that a fair and proportionate sanction in this case would be £100.

32 The Tribunal therefore made an order for payment in the sum of £100.

### **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.**

Ruth O'Hare

17 April 2025

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Legal Member/Chair

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Date