

**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/24/5633

Re: Property at 3-1 23 School Wynd, Paisley, PA1 2DA (“the Property”)

Parties:

Mr Daryl Devine, 39 Causeyside Street, Flat 1/1, Paisley, PA1 1YL (“the Applicant”)

Calside Lettings Limited, having a place of business at Studio 4, Ground Floor, Sir James Clark Building, Abbey Mill Business Centre, Paisley, Renfrewshire, PA1 1TJ (“the Respondent”)

Tribunal Members:

Andrew Cowan (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 12 May 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 21 March 2025 the Tribunal received a response to the application from the Respondent’s letting Agent. No written representations were received from the Applicant.



The CMD

- 4 The CMD took place on 17 April 2025 at 2pm by teleconference. The Applicant joined the conference call. The Respondent was represented on the conference call by Mrs. Jennifer McMillan. Lettings Manager at Messrs. Pacitti Jones, solicitors and letting agents.
- 5 The Tribunal explained the purpose of the CMD at the commencement of the proceedings.
- 6 The Tribunal noted that Mrs. Mary Grogan had been identified in the application as a Respondent. At the CMD it was clarified that Mrs. Grogan was a Director of the Respondent. She is not a party, as an individual, to the tenancy between the parties. The Tribunal accordingly determined to remove Mrs. Grogan as a party to the application.
- 7 The Tribunal noted that the background to the application was agreed by the parties and was able to make the following Findings in Fact (which were agreed by the Parties at the Case Management Discussion).
 - (1) The parties had entered a Private Residential Tenancy in relation to the Property. The Applicant was the Tenant, and the Respondent was the Landlord.
 - (2) The tenancy had commenced on 11th February 2022.
 - (3) The Applicant paid a deposit of £575 to the Respondent on commencement of the Tenancy.
 - (4) The Respondent had paid that deposit into an approved tenancy deposit scheme.
 - (5) On 6th December 2023 the Applicant paid a supplementary deposit of £100. That supplementary deposit was paid to Belvoir Letting agents who were the letting agents acting on behalf of the Respondent on that date. The Supplementary deposit was paid by the Applicant to meet the Respondent's conditions to allow the Applicant to keep a pet at the Property.
 - (6) The supplementary deposit was not lodged in an approved tenancy deposit scheme.
 - (7) After the tenancy had terminated the Applicant was repaid the original deposit of £575 (less an amount deducted by the Respondent in accordance with the terms of that deposit).
 - (8) After the tenancy had terminated the Applicant was repaid the supplementary deposit of £100. The Applicant had to demand repayment of the supplementary deposit from the Respondent. It was paid back to the Respondent through Belvoir Letting Agents.

- 8 It was therefore a matter of agreement that the supplementary deposit of £100 had not been paid into an approved deposit scheme within 30 working days.
- 9 The Tribunal therefore explained that it would require to assess the appropriate level of award in this case and ask parties for their submissions on this point. For the avoidance of doubt the following constitutes a summary of the key
- 10 The Applicant 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. In his application the Applicant had stated:

"I would like suitable compensation for the deposit having not been registered with a protection scheme. I had to contact multiple organisations to find out what happened to it, as my landlord switched from Belvoir to Pacitti Jones in March 2024, partway through my tenancy. Although the deposit was eventually returned to me, it was not without a massive effort on my part and it could have been lost in the intervening months and the switch between the letting agents"

- 11 The Respondent's representative accepted that the supplementary deposit had never been lodged with an approved tenancy deposit scheme. She highlighted that this was a failure on the part of the Respondent's previous letting agents. She accepted that the previous letting agents were acting on behalf of the Respondent at the time the supplementary deposit was paid. The Respondent's representative highlighted that the full supplementary deposit had been repaid to the Applicant.

Relevant Law

- 12 The relevant law is contained in 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.

- 13 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.”

Reasons for Decision

- 14 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.

- 15 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. 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.
- 16 Although the supplementary deposit was paid by the Applicant after the commencement of the tenancy the Tribunal is satisfied that the Respondent was required to pay the supplementary deposit into an approved deposit scheme. At the time of payment of the supplementary deposit the Respondent required the Applicant to accept in writing terms upon which the supplementary deposit was to be held. Those terms confirmed that the additional £100.00 deposit was to be lodged with the relevant deposit scheme for the duration of the tenancy.
- 17 The Respondent accepts that the supplementary deposit was never paid into a scheme. The Tribunal therefore found the Respondent to be in breach of Regulation 3.
- 18 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.
- 19 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.”

- 20 No reason was provided by the Respondent for their failure to lodge the supplementary deposit with an approved scheme. The Respondent's representative was not able to provide any further reason for that failure.
- 21 The Tribunal went on to consider the mitigating factors in this application, and identified the following to which it gave significant weight: -
- (1) The primary deposit of £575 which had been paid by the Respondent at the commencement of the tenancy had been protected in a approved tenancy deposit scheme.
 - (2) The supplementary deposit of £100 had been repaid to the Applicant after he had requested repayment.
- 22 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 £300 the Tribunal determined that a fair and proportionate sanction in this case would be £100.
- 23 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.

Andrew Cowan

12th May 2025

Legal Member/Chair

Date