

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/25/0786

Re: Property at 80B, Craigour Drive, Edinburgh, EH17 7NT (“the Property”)

Parties:

**Mr John Nwaiwu, Amaka Nwaiwu, 29A Craigour Drive, Unknown, EH17 7NU
 (“the Applicant”)**

**Mrs Jayagowriy Prabakaran, Ravi Prabakaran, 20 Henwoods Crescent,
Pembury, Tunbridge Wells, Kent, TN2 4LJ (“the Respondent”)**

Tribunal Members:

Virgil Crawford (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

BACKGROUND

1. The Respondents let the property to the Applicants.
2. The start date of the tenancy was 22 March 2024. A tenancy deposit of £1,100.00 was paid prior to the start date.
3. The tenancy deposit was not lodged with an approved tenancy deposit scheme (“TDS”) as required by the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the TDS Regs”).
4. On 2 April 2024 the First Named Applicant forwarded a text message to the Respondents asking if the deposit had been lodged. The text message read “Was my deposit put into Scottish Deposit Box please?” The Respondents replied with a message stating “It’s in the process”.

5. The tenancy ended on 21 January 2025. Before then, however, the Applicants became aware the tenancy deposit had not been lodged with a TDS
6. Following the termination of the tenancy and an exchange of messages between the Parties, £900.00 of the deposit was repaid to the Applicants. The Respondents retained £200.00, claiming this to be in relation to the cost of grass cutting and cleaning the Property.
7. The Applicants do not accept that there was any necessity to retain any part of the deposit for any works at the Property.
8. The Applicants presented an Application to the Tribunal on 19 December 2024, prior to the termination of the tenancy, seeking to have a penalty imposed upon the Respondents for their failure to comply with TDS Regs. (PR/24/5815). Subsequently they presented a further application seeking an order for payment of £200.00, being the amount retained from the deposit by the Respondents. (CV/25/0786).
9. The Tribunal assigned both cases to call as Case Management Discussions on 9th June 2025 at 10am.
10. Prior to the Case Management Discussions, the Respondents lodged written representations with the Tribunal. These written representations acknowledged that the deposit was not protected and made it clear this was a conscious decision by the Respondents due to ***“a bad experience from the last tenant (2024 Jan)”***. The submissions went on to say ***“Due to this experience this time we requested the estate agent not to deposit the money in the scheme. We could not be able to trust and therefore we did not choose to do so. But it is not an intension (sic) to avoid paying the deposit back to the tenant. We paid the deposit back to the tenant after a small deduction.... we just deduct money only for grass cutting and the cleaning”***.

THE CASE MANAGEMENT DISCUSSIONS

11. Case Management Discussions were assigned to be conducted by teleconference at 10am on 9 June 2025. The Applicants were represented by the First Named Applicant, Mr John Nwaiwu. The Respondents were represented by the First Respondent, Mrs Jayagowriy Prabakaran.

Breach of TDS Regs

12. Mrs Prabakaran acknowledged that the tenancy deposit had been paid by the Applicants. She acknowledged it had not been lodged with a TDS. She acknowledged that while, £900.00 had been repaid, £200.00 had been retained by the Respondents, purportedly to cover the cost of grass cutting and cleaning at the Property.

13. She accepted the decision not to lodge the tenancy deposit with a TDS was a conscious, deliberate decision because of an issue which arose with a previous tenant and letting agent. She explained that the previous tenant paid a deposit to the letting agent. It appears the deposit was not lodged with a TDS by the letting agents. The letting agents subsequently went out of business. At the conclusion of the tenancy there were no deposit funds available to enable the Respondents to attempt to recover the costs of repairs required at the end of the tenancy.
14. The Tribunal pointed out to Mrs Prabakaran, that whatever happened with a previous tenancy, the TDS Regs place an obligation upon landlords to lodge tenancy deposits with a TDS. Mrs Prabakaran stated "***I understand the law***" but went onto say "***The law cannot tell us (what to do)***".
15. Mrs Prabakaran pointed out that £200.00 of the deposit had been retained. She suggested the Respondents may wish to pursue the Applicants for a greater sum, suggesting that there had been damage to the Property, the cost of which the Respondents believe the Applicants are responsible for.
16. When again asked by the Tribunal as to why a decision was taken not to lodge the deposit with a TDS, Mrs Prabakaran again confirmed that the decision was taken by the Respondents to ensure the deposit funds would be available at the end of the tenancy.
17. The purpose of the TDS Regs was explained, including that, at the end of a tenancy, if there is a dispute in relation to the payment for repairs etc, the TDS has a cost-free dispute resolution process. It is the Applicants' position that no repairs were required to the Property, that no grass cutting was required and no cleaning was required. The actions of the Respondents, however, deprived the Applicants of the ability to make use of the cost-free dispute resolution process and resulted in the Respondents arbitrarily deducting £200.00 from the tenancy deposit.
18. Mr Nwaiwu advised the Tribunal that there had been some issues with the Property when the tenancy commenced. He indicated that, in his view, he would be entitled to compensation due to certain defects within the Property. None of these, however, had been properly detailed nor quantified in his application to the Tribunal.
19. Mr Nwaiwu pointed out to the Tribunal that he had communicated with the Respondents in relation to the tenancy deposit, seeking an assurance that it was being placed within a TDS and received a response indicating that it would be so lodged. That did not happen.
20. The Respondent was asked why the deposit was not lodged with a TDS, even at the end of the tenancy. No explanation was provided beyond what had been said before about the Respondents' conscious decision not to lodge the deposit funds.

21. The Tribunal considered there to have been a clear breach of the TDS Regs and imposed a penalty in the sum of £3,300.00, being the maximum penalty the Tribunal could impose.

Payment action

22. The Applicant sought an order for payment of the £200.00 balance of the deposit which was not repaid to them. They also made generalised comments about an order for specific performance, an order for damages for breach of contract, an order for aggravated damages and an order for recovery of expenses.
23. It was agreed by the Parties that £200.00 of the deposit had not been repaid. That part of the claim was clear and easily quantified. The other heads of claim were unspecific and unquantified. They did not give notice to the Respondents of an amount claimed nor any reasons why such that the Respondents could properly answer the claim.
24. In the circumstances, the Tribunal advised Parties that it intended restricting the claim for payment to the sum of £200.00, being the agreed balance of the deposit. In the event the Applicants considered further sums were due for any reason the Applicants could, of course, present a further application to the Tribunal seeking a payment order and detailing the reasons for the same and the amounts claimed for each head of claim.
25. Similarly, the Respondents' submissions suggested they were due money from the Applicants for a variety of matters arising at the end of the tenancy. There was no separate application for a payment order lodged by the Respondents and the comments made in their submissions were not quantified. The Respondents were advised that if they wished to make a claim against the Applicants, they could present an application to the Tribunal seeking a payment order and detailing the reasons for the same and the amounts claimed for each head of claim.
26. In relation to the £200.00 balance of the deposit, the Tribunal considered that this was withheld by the Respondents without justification. Had the Respondents wished to retain any part of the deposit funds the Respondents ought to have lodged the funds with a TDS, which could have been done even after the termination of the tenancy, and then made a claim on it for the cost of any repairs required. They did not do so. They arbitrarily withheld part of the tenancy deposit. They were not entitled to do so.
27. In the circumstances the Tribunal made an order for payment of the sum of £200.00.

FINDINGS IN FACT

28. The Tribunal found the following facts to be established:-

- a) The Respondents let the property to the Applicants.
- b) The start date of the tenancy was 22 March 2024.
- c) A tenancy deposit of £1,100.00 was paid prior to the start date.
- d) The tenancy deposit was not lodged with a TDS.
- e) On 2 April 2024 the First Named Applicant forwarded a text message to the Respondents asking if the deposit had been lodged with a TDS. The Respondents replied with a message stating "It's in the process".
- f) The reply by the Respondents was deliberately misleading.
- g) The tenancy ended on 21 January 2025.
- h) An application for a penalty to be imposed for a breach of the TDS Regs was lodged before the termination of the tenancy.
- i) Following the termination of the tenancy £900.00 of the deposit was repaid to the Applicants. The Respondents retained £200.00, claiming this to be in relation to the cost of grass cutting and cleaning the Property.
- j) The Applicants do not accept that there was any necessity to retain any part of the deposit for any works at the Property.
- k) Prior to the Case Management Discussions, the Respondents lodged written representations with the Tribunal. These written representations acknowledged that the deposit was not protected and made it clear this was a conscious decision by the Respondents due to "*a bad experience from the last tenant (2024 Jan)*".
- l) The Respondents deliberately decided not to comply with their obligations under the TDS Regs.

REASONS FOR DECISION

TDS breach

29. The TDS Regs 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](#).

(1A) Paragraph (1) does not apply—

(a) where the tenancy comes to an end by virtue of [section 48](#) or [50](#) of the [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#), and

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

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from

the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—

(a) the references to deposit were to each instalment of the deposit, and

(b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.

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

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

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

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

9.— (1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal][1](#) 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 [...] [2](#) 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][1](#) —

(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][1](#) 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](#).

30. The terms of Regulation 3 are mandatory.

31. The Tribunal determined that, in relation to the breach of the TDS Regs, a penalty of the maximum amount was appropriate.

32. The TDS Regs are designed to address a mischief which occurred previously whereby tenancy deposits paid to landlords were often retained by the landlords and not repaid at the conclusion of the tenancy agreement. Tenants in such circumstances, were often in a vulnerable position, the only recourse being to raise court proceedings with a view to seeking repayment of the tenancy deposit.

33. The TDS Regs are designed to prevent such a situation arising. They provide for the lodging of deposits with approved tenancy deposit schemes and for

any dispute in relation to repayment of the deposit at the conclusion of the tenancy to be determined by a cost free, dispute resolution process. The TDS Regs, in those circumstances, protect both the tenant and the landlord.

34. In this case, the Respondents admitted they were aware of the TDS Regs. They were aware of their obligation to lodge the tenancy deposit with a TDS within a period of 30 days. This is not a case where there was an error or oversight. They deliberately choose to ignore their legal obligations.
35. In submissions made to the Tribunal in the course of the Case Management Discussion, Mrs Prabakaran clearly stated that ***"I understand the law"*** but went on to say that ***"The law cannot tell us (what to do)"***. The Respondents appear to be under the misapprehension that, despite their knowledge of the TDS Regs they did not require to comply with them.
36. The position of the Respondents is aggravated by virtue of their refusal to return the full tenancy deposit at the conclusion of the tenancy. The Applicants do not accept that any deduction was appropriate from the tenancy deposit. They were left with no ability to participate in a dispute resolution process with a TDS Scheme. The deliberate decision of the Respondents to ignore their legal obligations, despite being fully aware of them, deprived the Applicants of an important protection provided by the TDS Regs.
37. In the face of such a clear and deliberate breach of the TDS Regs, combined with an attitude set forth in written submissions in advance of the Case Management Discussion, and in oral submissions to the Tribunal whereby the Respondents maintained their position that they did not consider it appropriate to lodge the deposit funds, coupled with their decision not to return the full funds at the end, the Tribunal came to the view that a penalty at the maximum level was appropriate.
38. The purposes of a penalty being imposed includes an element of punishment of errant landlords for their failure to comply with the TDS Regs and, separately, an element of deterrence to prevent future breaches by the Respondents and other landlords.
39. In the circumstances of this case, the Tribunal concluded that, particularly having regard to the attitude of the Respondents, showing no forgiveness for their decisions not to lodge the deposit and not to return the deposit in full, a significant penalty required to be imposed.

Repayment of Balance of Deposit

40. Given the Applicants were deprived of the ability to engage with the dispute resolution process in an effort to recover the full deposit, and given the Respondents provided no justification, other than their own assertion that money was deducted for grass cutting and cleaning, the Tribunal considered it appropriate to order that the sum of £200.00, being the balance of the deposit which was not repaid, be paid by the Respondents to the Applicant also.

41. Both Parties were advised were advised that, in the event they wish to make any further claims against one another for compensation for issues arising during the tenancy, they are each entitled to present appropriate applications to the Tribunal setting forth their heads of claim and quantifying the amounts claimed by them for any such grievances. The Tribunal will, if applications are presented, deal with those separate applications appropriately.

Time to Pay Direction

42. Mrs Prabakaran was asked if she wished to advise the Tribunal of the income and outlays of the Respondents with a view to a time to pay direction being considered or made. She declined to provide any such information to the Tribunal. She did not request the Tribunal to make a time to pay direction.

DECISION

The Tribunal granted an order against the Respondents for payment of the sum of TWO HUNDRED POUNDS (£200.00) STERLING to the Applicants

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.

Virgil Crawford

Virgil Crawford

Legal Member/Chair

09 June 2025

Date