



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

**Chamber Ref: FTS/HPC/CV/24/3105**

**Re: Property at Flat 0/1 15 Partickhill Road, Glasgow, G11 5BL (“the Property”)**

**Parties:**

**Mr David Hughes, Dr Catherine Eileen Hughes, 3 Murchie Drive, Prestwick, KA9  
2ND (“the Applicants”)**

**Dr Mark Littlewood, Amy Carroll, 12 Maude View Road, Hawea Flat, 9382, New  
Zealand (“the Respondent”)**

**Tribunal Members:**

**Jim Bauld (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the Respondent should be ordered to make payment  
to the Applicants of the sum of TWO THOUSAND AND TWO HUNDRED POUNDS  
AND FIFTY POUNDS (£2,250)**

**Background**

1. By application dated 25 June 2024 the applicants sought an order in terms of Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) in respect of an alleged failure by the respondent to comply with those regulations.
2. The application was accepted by the Tribunal and referred for determination by the tribunal.

3. A Case Management Discussion (CMD) took place on 4 June 2024. The applicants and the respondent, Mr Mark Littlewood all attended personally. The respondent Ms Carroll was not present
4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters. The tribunal asked various questions of the applicants and the respondent with regard to the application.
5. The tribunal explained to the parties the maximum award which could be made in terms of the 2011 Regulations and the requirement that an award must be made if the tribunal finds that there has been a breach of the regulations. Parties confirmed they understood these provisions.
6. The tribunal indicated that it would be entitled to utilise the power within regulation 17 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the tribunal rules") and that the tribunal could make a final decision at the case management discussion without remitting the matter to a further full hearing. Parties confirmed they wished the tribunal to make a final decision

### **Discussions at the CMD**

7. It was a matter of agreement between the parties that there had been a tenancy which commenced on 28 August 2015. The monthly event was £750 and the applicant paid a deposit of £750 at the commencement of the tenancy.
8. The tenancy had ended in April 2024 and the deposit had never been paid into any approved deposit scheme
9. The respondent accepted that he had eventually repaid the deposit to the applicants in December 2024
10. The respondent indicated to the tribunal that this had been the first time that he had let this property and the first time he had used a letting agent and used a deposit scheme. He indicated that he had instructed Rannoch Properties to act as his agent in finding a tenant, completing a tenancy agreement and obtaining the first month's rental payment and dealing with the deposit. He paid for their services using a credit card. At the time the respondent was living in Newcastle.

11. Monthly rent thereafter was paid directly by the applicants to the respondent and continued to be paid in that throughout the tenancy. The appointed letting agent had no further involvement in the ongoing management of the tenancy
12. The respondent indicated that he first became aware that the deposit had not been lodged in an appropriate tenancy deposit scheme when the tenants had given him notice on 28 April 2024 that they intended to leave on 28 May 2024. The applicants eventually vacated the subjects in or around 17 May 2024.
13. He indicated that he checked with the various deposit schemes in Scotland and found that none of them had a record of the deposit. He indicated he had then then tried to take steps to ascertain where the deposit had gone as it had not been paid to him by the letting agent. He discovered that the letting agent was no longer trading and that their business had been acquired by another company called the Cairn Group.
14. Copies of email correspondence between the parties after the tenancy was terminated had been lodged with the tribunal which indicated that the respondent had asked the applicants to produce evidence that they had paid a deposit at the time, despite the fact that its payment was specifically mentioned in the tenancy agreement. He had also stated that when setting up the tenancy he was aware that the deposit scheme was to be used by his agent, suggesting he must have been aware that a deposit was paid at the time. The applicants responded to his emails and produced the evidence. In those emails the respondent indicated that he could not “find” the deposit and seemed to be suggesting that it was matter for the applicants to prove to him that they had paid it and that it could only be returned to them if it was “found”. That belief indicates a significant level of misunderstanding of the legal position on the part of the respondent.
15. The respondent confirmed that he did not at any time seek legal advice from any Scottish qualified lawyer relating to the situation. He indicated he took some advice from friends in England and letting agents in England.
16. He indicated that he had required to travel back to the United Kingdom in September/October 2024 to obtain copies of his own bank statements from 2015 which showed that he have received the sum of £785 from the letting agent. He could not explain what that figure represented nor why he did not query that payment at the time The respondent indicated that he now also acts as a landlord for two properties in England although they are managed by his partner, the second named respondent.

17. He confirmed the deposit was eventually repaid to the applicants in December 2024. That repayment was subsequent to these proceedings being intimated to him.
18. The applicants indicated that it was their view that it was the respondent's duty to lodge the deposit with the appropriate scheme and it was his duty to ensure that his letting agent did so. They also indicated that the further delay in the return of the deposit after the end of the tenancy cost them significant stress and upset. They had provided copies of all documents to the respondent indicating the deposit had been paid. Their position was that it was his responsibility to comply with the law and it was his choice to use a letting agent
19. The applicants confirmed that throughout the tenancy the relationship between them and the respondent had been harmonious and that rent was always paid on time and they had been good tenants. . The respondent confirmed that the landlord/tenant relationship had been very good throughout the tenancy. He indicated that it was only when legal issues arose at the end of the tenancy that the relationship deteriorated. He did not seem to accept that the subsequent deterioration was caused by his failure to accept that it was his legal duty to ensure the deposit was lodged and to ensure it was paid speedily at the end of the tenancy.
20. The applicants invited the tribunal to make an award in respect of the failure to lodge the deposit at the maximum allowable level. The deposit has been unprotected for the entire period of the tenancy which exceeded eight years and it had taken a period of over seven months after the tenancy for it to be repaid and that only happened after they raised this application.

### **Findings in fact**

21. A tenancy agreement was entered into between the parties which commenced on 28 August 2015
22. A deposit of £750 was taken by the then letting agent acting for the respondent
23. The deposit was never paid into an approved tenancy deposit scheme

24. The tenancy ended in May 2024.

25. The deposit was eventually repaid by the respondent to the applicants in December 2024

## **Decision**

26. This application related to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy. In this case it was clear that the Landlord had failed to do so. Accordingly he was in breach of the duties contained in Regulation 3 of the 2011 Regulations. Those duties are twofold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties.

27. Regulation 9 of the 2011 Regulations indicates that if a Landlord does not comply with any duty in regulation 3 then the Tribunal must order that a Landlord makes payment to the Tenant of an amount “not exceeding three times the amount of the tenancy deposit”.

28. Accordingly in this case the Tribunal is required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment.

29. In this case the Tribunal carefully considered the evidence which had been produced by the applicant. There was clear evidence that the respondent had failed to pay the tenancy deposit into the appropriate scheme for the whole period of the tenancy (a period of over eight years). The respondent had also failed to provide the prescribed information required by regulation 42 of the 2011 Regulations. The deposit has never been lodged in accordance with the requirements of the 2011 Regulations. It was only repaid to the applicants eight months after the tenancy had ended and after they had raised proceedings with the tribunal..

30. The Regulations were introduced to safeguard deposits paid by Tenants. They were introduced against a background of Landlords abusing their position as the holder of deposit moneys. The parliament decided that it should be compulsory to put the deposit outwith the reach of both the Landlord and the Tenant to ensure that there was a dispute resolution process accessible to both Landlord and Tenant at the end of a tenancy and which placed them on an equal footing. The Regulations make it clear that

the orders to be made by Tribunals for failure to comply with the Regulations are a sanction or a penalty

31. In this case, the Respondent was in flagrant breach of the 2011 Regulations.
32. The tribunal notes that in a recent Upper Tribunal decision, (*Ahmed v Russel* UTS/AP/22/0021 2023UT07) Sheriff Cruickshank indicates (at Para 38) that ***“previous cases have referenced various mitigating or aggravating factors which may be considered relevant. It would be impossible to ascribe an exhaustive list. Cases are fact specific and must be determined on such relevant factors as may be present”***. The amount awarded should represent ***“a fair and proportionate sanction when all relevant factors have been appropriately balanced”***.
33. The sanction to be imposed is intended to mark the gravity of the breach which has occurred. It should reflect the level of overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations. The tribunal is required to determine a fair and proportionate sanction based on the facts as recorded.
34. The Tribunal noted that in an earlier Upper Tribunal decision (reference 2019 UK 39 UTS/AP/19/0023) that Sheriff David Bickett sitting on the Upper Tribunal had indicated that it was appropriate for the Tribunal to differentiate between Landlords who have numerous properties and run a business of letting properties as such, and a Landlord who has one property which they own and let out. The Sheriff indicated in the decision that it would be “inappropriate” to impose similar penalties on two such Landlords.
35. In the current application the respondent advised the tribunal that he was a landlord who at that time had only one property available for rent. However, it was clear that he had been a landlord for a period in excess of eight years and the tenancy agreement itself mentions the 2011 Regulations at clause 6.
36. Prior to the jurisdiction to determine these applications becoming part of the jurisdiction of the First-tier Tribunal, the applications were determined in the Sheriff Court. There were numerous Sheriff Court decisions which have been reported.
37. In many of these cases, the Sheriff Courts have indicated that the Regulations were introduced to address what was a perceived mischief and that they will be meaningless if not enforced.
38. In a decision by Sheriff Principal Stephen at Edinburgh Sheriff Court in December 2013, the Sheriff Principal indicated that the court was “entitled to impose any penalty including the maximum to promote compliance with Regulations”. (*Stuart Russell and Laura Clark v. Samdup Tenzin 2014 Hous.L.R. 17*)
39. In this case, the Respondent was in clear and blatant breach of the 2011 Regulations. There was no factual disagreement between the parties relating to the creation of the tenancy and its subsequent history. The tribunal

considered whether it should make an award at the maximum range. The respondent had attended the CMD but had failed to provide any representations setting out any mitigation of his failure to lodge the deposit in accordance with the Regulations.

40. The tribunal accordingly considered that this was a significant breach of the regulations which required to attract a penalty towards the higher end of the available range. No proper explanation or mitigation had been offered to the tribunal by the landlord. It appeared he, or also his chosen letting agent had simply and deliberately ignored the provisions of the Regulations.
41. The tribunal considered whether the award should be made at the maximum level available to the tribunal which based on the deposit being £750 would have been £2250. The tribunal took the view that this case involves an egregious failure by the landlord, compounded by the ongoing failure to repay the deposit until some seven months after the termination of the tenancy. In the absence of any mitigating factors, the award requires to be at a significant level.
42. Having considered the submissions from the applicants and taking into account the guidance from Upper Tribunal cases, the tribunal has decided that the appropriate award should be the maximum amount of £2,250 reflecting the very serious failure by the landlord in this case. This case involves a significant breach of the relevant regulations. The deposit was unprotected for the entire length of a tenancy which lasted almost nine years. The respondent took no steps at the start of the tenancy to check that the deposit had been lodged. He managed the tenancy from its commencement. He failed to seek any legal advice on his duties and responsibilities. He has attempted to lay the blame with the letting agent. He failed to appreciate that the agent was chosen by him and that he is liable in law for his agent's actions or omissions. Even at the conclusion of the tenancy the respondent continued to try to avoid his responsibility. The tribunal indicated to the respondent during the course of the CMD that he may have legal recourse against his former letting agent for any liability which is now determined and which falls upon him. That is a matter upon which the respondent requires to seek appropriate legal advice. However, it is not a mitigating factor in this application. A landlord cannot hide behind their chosen agent.
43. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD. The decision of the tribunal was unanimous.

## 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.

# J.Bauld

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Legal Member/Chair

4 June 2025  
Date