



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/PR/25/0452**

**Re: Property at Flat 4, 20 Salamander Place, Edinburgh, EH6 7JW (“the  
Property”)**

**Parties:**

**Mr Samer Abdelnour, 2nd Floor, 22 Madeira Street, Edinburgh, EH6 4AL (“the  
Applicant”)**

**Mr Alan Wellburn, Flat 4, 20 Salamander Place, Edinburgh, EH6 7JW (“the  
Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the Respondent failed to comply with his duty as a  
Landlord in terms of Regulations 3 of the Tenancy Deposit Schemes  
(Scotland) Regulations 2011 (“the 2011 Regulations”) as amended by The  
Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing  
to pay the Applicant’s Tenancy Deposit to the scheme administrator of an  
Approved Tenancy Deposit Scheme grants an Order against the Respondent  
for payment to the Applicant of the sum of SEVEN HUNDRED AND FIFTY  
POUNDS (£750) Sterling payable by twelve monthly instalments.**

**Background**

1. This is an application for an order for payment for where it is alleged the Respondent has not paid a deposit into an approved scheme under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Application is made under Rule 103 of the First-tier

Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The Application was accompanied by a Private Residential Tenancy Agreement between the parties commencing 1 October 2020, various text messages between the parties, an email dated 27 December 2024 from the Respondent to the Applicant, an email dated 31 January 2025 from Safe Deposits Scotland, an email dated 31 January 2025 from Letting Protection Scotland and an email dated 3 February 2025 from My Deposits Scotland.
3. The Respondent lodged written submissions on 3 April 2025.
4. The Applicant lodged further written submissions on 17 May 2025.

### **Case Management Discussion**

5. A Case Management Discussion (“CMD”) proceeded by way of teleconference call on 10 June 2025. The Applicant appeared on his own behalf. The Respondent appeared on his own behalf.
6. There was very little disagreement between the parties on the relevant points. Mr Wellburn acknowledged that he had received a deposit of £2000 and had not placed it in an approved scheme. There was agreement that the tenancy commenced on 1 October 2020 and terminated on 1 January 2025. Mr Wellburn had submitted in his written submissions that this was a genuine oversight on his part. He was not a professional landlord. He did not intend to misuse the deposit which he placed into an account. The deposit had been paid in full to the Applicant. He concluded by stating he regretted his oversight and asked the Tribunal to be lenient in its decision. The Tribunal explained the maximum penalty was three times the tenancy deposit.
7. Mr Abdelnour explained that when he found out at the end of the tenancy that the deposit had not been placed with a scheme administrator it had caused him stress and an amount of uncertainty as to whether he would get his deposit returned to him. His application confirmed the deposit had been returned to him in full although from the Applicant’s viewpoint that was not without its difficulties. He submitted that he would like to donate any award made by the Tribunal to charity and would leave it to the Tribunal to determine what was reasonable. The Tribunal made it clear that it could not compel Mr Wellburn to do so. Mr Abdelnour confirmed he would therefore donate any sum awarded to charity himself if paid by Mr Wellburn.
8. The Tribunal queried with Mr Wellburn whether he would be able to pay Mr Abdelnour. Mr Wellburn explained he was in some financial hardship and would like time to pay off any sum awarded. He worked as a delivery driver.

## **Reasons for decision**

9. The parties were in agreement that they entered into a tenancy commencing 1 October 2020 and that the Applicant had paid a deposit of £2000. Further the Respondent accepted that he had not paid this into a scheme administrator. Parties were also in agreement that the deposit had been repaid in full after the tenancy terminated on 1 January 2025.
10. For the purpose of Regulation 9(2) of the 2011 Regulations, an application where a landlord has not paid a deposit into a scheme administrator must be made within three months of the tenancy ending. The Tribunal found that the application was made in time, the application being made on 3 February 2025.

11. Regulation 3 (1) and (2) of the 2011 Regulations provides –

*“(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.*

The tenancy in this case was a “relevant tenancy” for the purposes of the Regulations. The Respondent accepts the deposit paid of £2000 was not paid to a scheme administrator. This was due to a genuine oversight. The deposit remained unprotected throughout the tenancy.

12. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy. They were designed to prevent any perceived “mischief” by giving a landlord control over the return of the deposit at the termination of a tenancy.
13. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, taking into account both aggravating and

mitigating circumstances, having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional Landlord such as the Respondent. The obligation is absolute on the Landlord to pay the deposit into an Approved Scheme.

14. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations.
15. The Tribunal considered the Respondent had admitted his failure to comply with the 2011 Regulations. The Respondent had explained this was down to an oversight on his part. He wholly accepted he was at fault. However, the deposit had accordingly been unprotected throughout the four and a quarter years of the tenancy.
16. Despite the Tribunal being satisfied that the Respondent had failed to comply with his duties under Regulation 3 (1) of the 2011 Regulations, the purpose of the 2011 Regulations had not been defeated. The deposit had been repaid after the tenancy ended. The Respondent had not attempted to deduct anything from the deposit, despite the Respondent's claim that there was extensive damage to the Property. However, the Tribunal did not consider that was relevant. Had the Respondent complied with his duty as a landlord to place the deposit with a scheme administrator he would have protected his own position and would have been able to make submissions regarding the return of the deposit which may have resulted in him retaining part of the deposit.
17. The Respondent must have known about the 2011 Regulations as the lodging with a scheme administrator is covered in Clause 11 of the tenancy agreement. It is not relevant that the Respondent was not a "professional" landlord. However, the purpose of the Regulations had not been defeated as the Respondent had paid the deposit back to the Applicant in full.
18. In all the circumstances the Tribunal considered that this was not a case which lies at the upper end of the sanction range. The Tribunal considers a fair, proportionate and just amount to be paid to the Applicant by way of sanction is £750.

### **Decision**

19. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicant of £750 and made a time to pay order for twelve monthly payments of £62.50.

### **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.

Shirley Evans

10 June 2025

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Legal Member

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Date