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) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011/176

Chamber Ref: FTS/HPC/PR/25/0269

Re: Property at 152 Balgraybank Street, Balornock, Glasgow, G21 4XW ("the Property")

Parties:

Audrey Duncanson, Flat 2/2, 4 Smeaton St, Glasgow, G20 9LF ("the Applicant")

Michelle Forrest, 143 Glenbuck Avenue, Robroyston, Glasgow, G33 1DT ("the Respondent")

Tribunal Members:

Joel Conn (Legal Member)

Decision

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

1. This is an application by the Applicant for an order for payment where a landlord has not complied with the obligations regarding payment of a deposit into an approved scheme or provision of prescribed information under regulation 9 (court orders) of the *Tenancy Deposit Schemes (Scotland) Regulations 2011/176* in terms of rule 103 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended ("the Rules").

2. The tenancy in question was a Private Residential Tenancy ("PRT") of the Property by the Respondent to the Applicant dated 22 December 2017 and commencing on that date. The Applicant stated that the Tenancy ended on 30 October 2024. No issue arose as to the end date of the Tenancy.

3. The application was dated 22 January 2025 and lodged with the Tribunal on that day. The application relied upon evidence that a deposit of £787.50 was due in terms of the Tenancy, and that it was paid to the Respondent in advance

of the commencement of the Tenancy but not lodged with MyDeposit Scotland until 1 March 2018, being 21 calendar days later than permitted by the Regulations. The Applicant also stated in the application that she "couldn't recall receiving an account or certificate from any of the deposit protection schemes". The application sought £2,262.50, being the maximum award permitted (of three times the deposit sum).

4. In advance of the case management discussion ("CMD") the Respondent's agent provided evidence of prescribed information having been provided to the Applicant at the outset of the Tenancy (and signed by the Applicant in acknowledgement). The Respondent accepted the deadline for lodging the deposit had been 7 February 2018 but that it was lodged on 1 March 2018.

5. It was clear from the application papers and the Respondent's response that the deposit was protected long before the conclusion of the Tenancy and the deposit was returned to the Applicant through MyDeposit Scotland's processes at the conclusion of the Tenancy.

The Case Management Discussion

6. On 11 July 2025 at 10:00, at a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote conference call, there was appearance by the Applicant and by Caroline McGinley, director, Premierlet (Glasgow) Ltd for the Respondent. The Respondent was not in attendance personally.

7. I took the parties through the papers that each had lodged and sought further clarification on matters. The Applicant provided the following oral submissions:
   a. Generally her Tenancy at the Property was "fine" though there were issues in the final year. She accepted that these issues were long after the deposit was protected. She did not give any detail as to these issues nor did she imply that they were related to the compliance with the Regulations.
   b. She accepted that she received and signed a document at the commencement of the Tenancy which provided information required under Regulation 42.
   c. She accepted that the email address that she provided at the start of the Tenancy was a work email. She was certain that she had not received any communication from MyDeposit Scotland to that address, nor had she received any notification that an email from them had been blocked by a firewall or spam filter. She said that she did receive emails from the system offering to allow her to release blocked emails. She had not however checked with the IT administrators of that workplace whether any emails had been sent to her by MyDeposit Scotland at the time.
   d. She had previously been a tenant with a protected deposit at another property in 2014 and so knew that a certificate was to be sent to her by the deposit scheme provider. (Her recollection was that she and the landlord required to sign the certificate. This point was disputed by the Respondent's agent. It does not conform to the Tribunal's understanding either. The certificate from MyDeposit Scotland lodged in the papers has

no place for parties to sign. It is a certificate signed and issued by the provider alone.)

e. She had not noticed that she had not received the certificate, as she had other concerns at the time relating to a family member's ill-health. She never thought about the deposit again and never chased for the certificate during the Tenancy. She next considered the deposit at the end of the Tenancy when she found out that it was protected. She accepted that she had the benefit of the deposit protection at the conclusion of the Tenancy when it was required by her.

When asked why she believed that the maximum award should be granted, the Applicant referred to facts of the case but did not provide any analysis as to why this was in the most serious category of breaches.

8. The Respondent's agent provided the following oral submissions:
   a. She conceded the deposit was lodged late but could not explain why. She said that at the time they had a less strong computer system, and the lodging of deposits often relied on memory and written notes being taken to remind the agents to lodge deposits. She said that her office now had a new system which was "fail safe".
   b. She recalls that in December 2017 her office had recently had a change in their systems, plus PRTs were new and some tenancies were being changed over to them. She did not expressly blame such additional pressures for any oversight.
   c. The Respondent, to the best of the agent's knowledge, owned only the Property as a rental property. The Respondent relied upon the agent's office to ensure that the deposit was timeously lodged, and bore no responsibility for its failure to be lodged on time (which responsibility was solely that of the agent's office).
   d. Her calculation was that the deposit was lodged 16 working days late. She accepted that this was 21 calendar days late.

   The Respondent did not propose an alternative figure for any award.

9. In response to this, the Applicant initially submitted that the deposit should have been lodged during January 2018 as she counted 30 calendar days from the start of the Tenancy. She accepted that 30 working days (which is the provision in Regulation 3(2)) meant the deposit was lodged 21 calendar days late. She accepted the Respondent's position that the deposit was taken with the intention to lodge it on time, but that it was lodged late for reasons that could not be explained.

10. I sought submissions from each party as to further procedure. Neither party sought a continuation for any reason nor wished any witness evidence heard. Both wished a decision made on the basis of the submissions already provided.

11. No motion was made for expenses or interest.

Findings in Fact

12. The Respondent, as landlord, let the Property to the Applicant under a Private Residential Tenancy dated 22 December 2017 and commencing on that date ("the Tenancy").

13. In terms of clause 1.10 of the Tenancy, the Applicant was obligated to pay a deposit of £787.50 by the date of signing of the Tenancy.

14. The Applicant paid a deposit of £787.50 to the Respondent's letting agent prior to the commencement of the tenancy.

15. The Respondent relied upon Premierlet (Glasgow) Ltd as her letting agent to attend to timeous lodging of any deposit received.

16. The Respondent's agent placed the deposit for the tenancy into an approved Tenancy Deposit Scheme, MyDeposits Scotland, on 1 March 2017.

17. The Respondent's agent provided MyDeposits Scotland with the Applicant's then work email, being the contact email address the Applicant had specified at the commencement of the Tenancy.

18. The Respondent provided prescribed information on the tenancy deposit to the Applicant at the commencement of the Tenancy. The said information contained prescribed information on the deposit required under Regulation 42 with the exception of Regulation 42(2)(b) in that the information, provided prior to the lodging of the deposit, lacked the date on which the tenancy deposit was paid to the scheme administrator.

19. The Property is the only property that the Respondent rents out for residential tenancies.

20. The Applicant was afforded access to the adjudication scheme under Tenancy Deposit Scheme at the conclusion of the Tenancy.

21. The Applicant made no enquiries as to the lack of a certificate of lodging or the date of lodging until a period shortly prior to the end of her Tenancy.

Reasons for Decision

22. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. In light of the submissions by the parties, I was satisfied both that the necessary level of evidence had been provided through the application, further papers, and orally at the CMD, and that it was appropriate to make a decision under regulation 10 of the 2011 Regulations at the CMD.

23. There was little dispute between the parties on the material points. I was satisfied that the evidence provided by both parties was credible and reliable on the material issues of this application.

24. It was a matter of concession that the Respondent held a deposit from before the commencement of the Tenancy and that it was not lodged until 1 March 2024. This was 21 calendar days late. Further, the Respondent's agent clearly relied upon the certificate by MyDeposit Scotland to provide the final piece of prescribed information (the date of lodging). The Respondent did not take any steps to check this had been issued.

25. It could not be disputed that there was late lodging of the deposit but by a very short period and the lodging was undertaken routinely, though late, by a letting agent. The Respondent was not responsible for the lateness and no doubt expected that her agent would timeously lodge the deposit.

26. In regard to the prescribed information, I do not accept that the Applicant would either have received the email from MyDeposit Scotland or would have received notification of it being blocked. Email systems have other variations and the Applicant accepted she had not checked with her former employer as to whether emails had been received. Further, though she was certain at the CMD that she had not received the certificate, her application was in less certain terms ("I couldn't recall…"). No evidence was provided to me that the certificate was sent (thus completing the provision of the prescribed information) but, given the routine nature of the issuing of such certificates, nor was I satisfied on the balance of probabilities that it was not sent. I do not find that there was a failure to provide the prescribed information.

27. There has been a clear breach of the lodging requirements of the 2011 Regulations and so an award must be made. The money was protected shortly after the deadline for lodging. The Applicant was not inconvenienced nor concerned in any way. It was a technical breach. The only unsatisfying matter is the lack of information as to why the breach occurred and whether it could have been avoided, but I acknowledge that the Respondent's agent was candid that she simply could not give an explanation but gave background as to the possibilities for human error and oversight within her office in early 2018.

28. In coming to a decision, I reviewed decisions from the Upper Tribunal for Scotland. In *Rollett v Mackie, [2019] UT 45*, *2019 Hous LR 75*, Sheriff Ross notes that "the decision under regulation 10 is highly fact-specific to each case" and that "[e]ach case has to be examined on its own facts, upon which a discretionary decision requires to be made by the FtT. Assessment of what amounts to a 'serious' breach will vary from case to case – it is the factual matrix, not the description, which is relevant." (paragraph 9)

29. In regard to that "factual matrix", Sheriff Ross reviews with approval the reasoning of the Tribunal at first instance in that case (at paragraph 10). Generalised for my purposes, the Tribunal made consideration of:
    a. the purpose of the 2011 Regulations;
    b. the fact that the tenant had been deprived of the protection of the 2011 Regulations;
    c. whether the landlord admitted the failure and the landlord's awareness of the requirements of the Regulations;

d. the reasons given for the failure to comply with the 2011 Regulations;
e. whether or not those reasons affected the landlord's personal responsibility and ability to ensure compliance;
f. whether the failure was intentional or not; and
g. whether the breach was serious.

Applying that reasoning, the Tribunal held – and the Upper Tribunal upheld – an award of two times the deposit. In analysing the "factual matrix" in that case, Sheriff Ross noted:

> *In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer* [of the letting agent in *Rollett*] *also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.*
>
> *Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present.* (paragraphs 13 and 14)

30. The Upper Tribunal considered a case where the Tribunal regarded a low level of culpability in *Wood v Johnston, [2019] UT 39*. The Tribunal at first instance had awarded £50 (though it is not possible from the UT's opinion to determine what this was as a multiplier of the original deposit). Sheriff Bickett noted that parties to the appeal were agreed that "the award is a penalty for breach of Regulations, not compensation for a damage inflicted" (paragraph 6) and, like Sheriff Ross in *Rollett*, analysed the nature of the breach, though in briefer terms. In *Wood*, it was noted that the Tribunal at first instance had made the award in consideration that "the respondent owned the property rented, and had no other property, and was an amateur landlord, unaware of the Regulations. The deposit had been repaid in full on the date of the end of the tenancy." Sheriff Bickett refused permission to appeal and thus left the Tribunal's decision standing.

31. The approach in these two cases is accepted in other UT cases: by Sheriff Fleming in *Hinrichs v Tcheir, [2023] UT 13*, *2023 Hous LR 54* (which considered *Rollett*), and by Sheriff Cruickshank in *Ahmed v Russell, 2023 UT 7*, *2023 SLT (Tr) 33* (considering both *Rollett* and *Wood*). In the latter case, Sheriff Cruikshank made the additional observation (at paragraphs 32 to 33) that there is no difference in law between how the "amateur" and "professional" landlord is to be treated but:

> *It will be a matter of fact in each case what the letting experience, or level of involvement, of a landlord is and it might, or might not, be a factor which aggravates or mitigates a sanction to be imposed under the 2011 Regulations. Indeed, by way of a general observation, with the increasing passage of time since the 2011 Regulations became operative, the letting experience of a landlord, and his working knowledge of the regulatory requirements, may hold less weight in mitigating a penalty than it previously did.* (paragraph 33)

32. Applying Sheriff Ross's reasoning in *Rollett* to the current case, the purposes of the 2011 Regulations are to ensure that a tenant's deposit is insulated from the risk of insolvency of the landlord or letting agent, and to provide a clear adjudication process for disputes at the end. In the case before me, both were achieved within a month of the required deadline. The Respondent was reliant on her agent and has no culpability for the slight delay. As for her agent, there is certainly no suggestion of intentionally breaching the Regulations and I was assured that there was no chance of any repeat of the issue as the Respondent's new computer system is much improved on that used in 2018. In considering Sheriff Bickett's reasoning in *Wood*, the Respondent owns no other property for rent and the deposit was protected. Considering the comments of Sheriff Cruickshank in *Ahmed*, I accept that the Respondent treated her obligations with sufficient seriousness by employing a letting agent to attend to the deposit. I regard this as a significant mitigating factor.

33. In the circumstances, I am satisfied that this falls in the lowest range of breaches and I am awarding £120 under regulation 10 of the 2011 Regulations, being just over 15% of the deposit amount. I hold this as an appropriate award in consideration of the law and all the facts.

Decision

34. I am satisfied to grant an order against the Respondent for payment of the sum of £120 to the Applicant.

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.Conn

11 July 2025

Legal Member/Chair **Date**