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/25/0031

Re: Property at 87D West Johnstone Street, Alva, FK12 5BD ("the Property")

Parties:

Jordan Jack, 1 Cultenhove Road, Stirling, FK7 9BT ("the Applicant")

Zhangy's Properties Ltd, 38 Tern Crescent, Alloa, FK10 1SG ("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 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 10 and 11 September 2022 and commencing on 10 September 2022. The Applicant stated that the Tenancy ended on 9 October 2024. (No issue arose in the application as to the end date of the Tenancy.)

3. The application was dated 6 January 2025 and lodged with the Tribunal on that day. The application relied upon evidence that a deposit of £420 was due in terms of the Tenancy, and that it was paid to the Respondent in advance of the commencement of the Tenancy (on 13 August 2022) but not lodged with

SafeDeposits Scotland until 22 February 2023, being just under 4.5 calendar months later than permitted by the Regulations. The application stated "maximum compensation sought" which would in this case be £1,260. (No issue was made in the application – and none made at the case management discussion ("CMD") – regarding the provision of the information required under the Regulations.)

4. In advance of the CMD the Respondent's agent provided a letter of submissions, accepting that the deposit was lodged late. The submissions stated a number of points in mitigation which are reviewed further below.

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 SafeDeposits Scotland's processes at the conclusion of the Tenancy.

The Case Management Discussion

6. On 30 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 his representative, Sharon Nicolls (his aunt), and by Kenneth Marshall, solicitor, Moore Marshall for the Respondent. No one was in attendance personally from the Respondent.

7. I took the parties through the papers that each had lodged and sought further clarification on matters. The Respondent's agent provided some further oral submissions and I noted the following from the letter of submissions and the oral submissions:
   a. The Respondent now holds a portfolio of "around 20 properties" but at the commencement of the Tenancy, it held only two or three.
   b. The Respondent's director was "relatively inexperienced as a Landlord and had not set up a robust administration process" for tenancy deposits at the commencement of the Tenancy. The Respondent's agent was not able to provide details of the improved processes now in place but was unaware of any other issues with lodging of deposits or with the Respondent's tenanted properties in general.
   c. The Respondent lodged the Applicant's deposit immediately after becoming aware that it had not been lodged, but the Respondent's agent was unable to provide details as to how the original oversight occurred nor how the oversight came to light.
   d. The Respondent submitted that "the level of culpability is low and an appropriate sanction" was £100. Reference was made to the decision of the Tribunal in *Carruthers v Carpy, PR/24/4825*, of 17 April 2025, where £100 had been awarded (against a maximum competent award of £1,500). Reference is made within that application to the Upper Tribunal decision in *Ahmed v Russell, 2023 UT 7, 2023 SLT (Tr) 33* on which the Respondent further relied, in particular a comment within Ahmed (and quoted at paragraph 27 of *Carruthers*) that the sanction should "mark the gravity of the breach which has occurred". The Respondent submitted that

in this case the gravity was low as the Applicant's deposit had been protected.

8. I directed the Respondent's agent to the entry for the Property in the Scottish Landlords Register, which showed it to be unregistered. The Respondent's agent believed the Property was still tenanted and was unaware of any reason for why the Respondent should not be properly registered as a landlord in regard to the Property. (The Respondent's agent said he would investigate matters with the Respondent after the CMD and sought no adjournment of proceedings to do so.)

9. The Applicant's representative confirmed that it was accepted that the deposit was registered by the Respondent without prompting by the Applicant. The representative explained that this had been the Applicant's first tenancy and he was excited about moving in and did not concern himself with legal matters. The late lodging came to light later, at the representative's suggestion that the Applicant check his deposit had been properly protected. She explained that her suggestion arose from two particular concerns that she had about the Tenancy:
    a. That the previous tenant moved out the day that the Applicant moved in, so the Property was not cleaned before the Applicant moved in and thus not provided to the Applicant in a proper condition by the Respondent.
    b. That she found out that the Applicant had, on occasion, made payments of late fees to the Respondent when he had been a few days late in paying rent. The Applicant had explained to her that this was further to a handwritten additional term in the Tenancy Agreement charging £10 per day for any late payments. The representative believed that such fees were "illegal". (She provided her reasons for this view which are not relevant to this Decision so are not reviewed further here.)

    She explained that she had some experience in tenancy matters and these issues had led her to prompt the Applicant to consider the deposit further and that uncovered that the deposit had been lodged late. (She confirmed that the Applicant was not intending to raise an application in regard to the two points that she believed to be breaches of the Tenancy.)

10. The Applicant's representative confirmed that no issue was taken in regard to provision of the required information under the Regulations and that the application was solely in regard to the late lodging of the deposit. She accepted that the Applicant's deposit had been protected and that it had been processed and returned through the scheme provider. Notwithstanding, she maintained the Applicant's position that a maximum award should be granted for the following reasons:
    a. The Respondent had two or three properties at the time of taking the deposit and now had around 20. Even if the Respondent only had one property, it was required to know the law and steps should have been taken to lodge the deposit on time.
    b. The relative financial resources of the parties should be considered. The Respondent had a substantial property holding, whereas a maximum award would be of great assistance to the Applicant who was a young man.

c. In regard to the Respondent's submissions, she believed that a low award of £100 made a "mockery" of the Regulations. She was aware of cases where low awards had been made where the breach was a trivial issue, such as the deposit money being misallocated. She was also aware of cases where breaches had attracted a much higher award and she believed that a higher award was appropriate here. (I noted to the Applicant's representative that I was already aware of authorities discussing a spread of awards. I asked if she wished to an adjournment to provide specific authorities of her own and, in the circumstances, she declined the opportunity.)

11. 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.

12. No motion was made for expenses or interest.

Findings in Fact

13. The Respondent, as landlord, let the Property to the Applicant under a Private Residential Tenancy commencing on 10 September 2022 ("the Tenancy").

14. In terms of clause 11 of the Tenancy, the Applicant was obligated to pay a deposit of £420 by the commencement of the Tenancy.

15. The terms of clause 11 detailed that any deposit would be placed with SafeDeposits Scotland.

16. The Applicant paid a deposit of £420 to the Respondent prior to the commencement of the tenancy.

17. The Respondent placed the deposit for the tenancy into an approved Tenancy Deposit Scheme, SafeDeposits Scotland, on 22 February 2023.

18. At the time of taking the Applicant's deposit, the Property was one of two or three properties that the Respondent rented out for residential tenancies.

19. The Property is one of around 20 that the Respondent currently 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 lodging of the deposit or the date of lodging during the period of the Tenancy.

22. The Respondent is not currently listed as a registered landlord for the Property.

Reasons for Decision

23. 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, written submissions, and orally at the CMD, and that it was appropriate to make a decision under regulation 10 of the 2011 Regulations at the CMD.

24. 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.

25. 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 22 February 2023. This was over four calendar months late. It could not be disputed that there was late lodging of the deposit by some months. It was also not disputed that the Respondent always intended to lodge the deposit with SafeDeposits Scotland, and did so though late.

26. There has thus been a clear breach of the lodging requirements of the 2011 Regulations and so an award must be made. The money was not protected until over four months after the deadline for lodging but it was still protected long before the conclusion of the Tenancy. The Applicant was not inconvenienced nor, during the course of the Tenancy, concerned in any way as to the delay in lodging. It is a technical breach. There are however unsatisfying issues regarding the lack of information as to why the breach occurred, whether it could have been avoided, and how it was uncovered. Further, given the size of the Respondent's portfolio, there are causes for concern about the Respondent's unspecific assurances that processes have improved (which are provided in light of the lack of registration by the Respondent as a landlord for the Property at present).

27. In coming to a decision, I reviewed the decision in *Carruthers v Carpy* to which I was referred by the Respondent, though it is not binding upon me. Though I agree with the Respondent that there are some factual similarities (the deposit was lodged long before the end of the tenancy) there are further dissimilarities (the deposit was lodged sooner – though not much sooner, being around 3.5 calendar months late; the lodging occurred after the tenant chased the landlord for an update; and there was a claimed explanation for the failure to lodge – that Mr and Mrs Carpy each believed the other was lodging the deposit). I found the decision to be of limited assistance but it serves as an illustration of application of reasoning from the binding authorities.

28. I reviewed the following decisions from the Upper Tribunal for Scotland:
    a. *Rollett v Mackie, [2019] UT 45, 2019 Hous LR 75*
    b. *Wood v Johnston, [2019] UT 39*
    c. *Ahmed v Russell, 2023 UT 7, 2023 SLT (Tr) 33*
    d. *Hinrichs v Tcheir, [2023] UT 13, 2023 Hous LR 54*
    e. *Bavaird v Simpson, 2023 UT 19*

(During submissions at the CMD, I offered to provide the parties with the references to the Upper Tribunal authorities of which I was aware and which I intended to consider, and to provide them with an adjournment to consider the decisions and then make any final submissions. Neither sought such an opportunity.)

29. In *Rollett v Mackie,* 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). 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.

30. 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)

31. In *Wood v Johnston*, the Upper Tribunal considered a case where the Tribunal regarded a low level of culpability. 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.

32. The approach in these two cases is accepted in other UT cases: by Sheriff Fleming in *Hinrichs v Tcheir* (which considered *Rollett*), and by Sheriff Cruickshank in *Ahmed v Russell* (considering both *Rollett* and *Wood*). As I note above, *Ahmed* itself was considered by the Tribunal in *Carruthers v Carpy* (on which the Respondent relied) and is also considered again by the UT in *Bavaird v Simpson*. In *Ahmed*, 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)

Sheriff Cruikshank's comments on the "gravity" of the breach (relied upon by the Respondent) are further of assistance:

> *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.* (paragraph 39)

Finally, I note the comments on weighting two particular issues by Sheriff Jamieson in *Bavaird*:

> *In my opinion, significant weight ought to be attached to the appellant's ignorance of the scheme over the prolonged period of five years as a landlord. On the other hand, significant weight falls to be attached to the mitigating factors that the respondents' deposit was repaid in full immediately after the termination of the tenancy and that the respondents suffered no loss or inconvenience as a consequence of the appellant's failure to comply with the Regulations.* (paragraph 28).

In that case, the deposit was never protected but, in consideration of all issues, Sheriff Jamieson reduced the original award of £4,000 to £2,500 (where the maximum competent award in that application would have been £6,000).

33. 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 long before the end of the Tenancy. There was no suggestion of intentionally breaching the Regulations and there was a ready acceptance in the written submissions of liability. We are, however, ignorant as to the reason for the breach but it was clearly the Respondent's fault (as there was no letting agent nor any attempt to blame anyone else).

34. In considering points arising from the other decisions, the landlord's circumstances are dissimilar to those in *Wood* as the Respondent owns other properties and at the time was building up its portfolio, but the outcome is similar (the deposit was returned at the conclusion of the tenancy). Regarding *Ahmed*, it is difficult to assess whether the Respondent treated its obligations with sufficient seriousness at the time. I do not take much comfort in the assurances that such a breach would not be repeated given the lack of information as to the original breach, its discovery, or any changes in process, and especially given the lack of current registration as a landlord for the Property (which suggests a continued failure in the Respondent's compliance processes). That said, I see no evidence of further awards against the Respondent or its director and have no reason to disbelieve the Respondent's submission that there are no other known issues (other than the registration issue that I raised). Further, I accept that the gravity of the breach, as it turned out, was very low. I would however caution that it is difficult to assess how much comfort should be taken from this without knowing how the late lodging was uncovered and, thus, whether other late lodgings were uncovered at the same time. Finally, in applying *Bavaird*, I would apply significant weight (in mitigation for the Respondent) both from the Respondent clearly being aware of the need to lodge the deposits and ensuring that the deposit was lodged long before the end of the Tenancy.

35. Reading across the decisions, I would draw two further conclusions. First, generally the return of the deposit at the end of the Tenancy weighs in favour of a lower award. It is thus logical to regard belated protection of the deposit (and so the adjudication scheme being available to the tenant) as weighing yet further in the landlord's favour. Second, the relative financial strength of the parties is not a relevant consideration under the Regulations and nothing within the authorities gives any suggestion that should be. As stated in *Ahmed*, "the purpose of the sanction is not to compensate the tenant", and a consideration of relevant financial strength is akin to consideration of compensation.

36. In the circumstances, I am satisfied that the gravity of the breach is low and, in regard to culpability, there are greater points in mitigation than in aggravation. The principal aggravating factor is that the Respondent is a company clearly set up for the purposes of being a residential landlord. Even if only two or three

properties were owned at the date of the deposit, the Respondent may have been "inexperienced" but it was a dedicated landlord. The Applicant's submission that it should have known and followed the law is indisputable and nothing was provided that substantially mitigates against this responsibility. Further, the lack of detail as to what went wrong and what has been done to improve matters, and the doubts created by the lack of current registration as a landlord for the Property, mean that little credit can be provided to the Respondent for this being (as I am told) an isolated event. Even if it was an isolated event, this may be due to good luck rather than good compliance.

37. I am of the view that the gravity of the breach is low but the culpability is not. Read together, this falls in the low-middle of the range of possible awards and I am awarding £500 under regulation 10 of the 2011 Regulations, being just under 120% of the deposit amount. I hold this as an appropriate award in consideration of the law and all the facts.

Decision

38. I am satisfied to grant an order against the Respondent for payment of the sum of £500 to the Applicant.

Report to the local authority

39. In light of the Respondent's agent's understanding that the Property was still tenanted, and his failure to provide an explanation as to why the Respondent was not registered as a landlord in regard to the Property (at least as at the date of the production of my papers on 4 July and still as of today), in terms of section 72 of the *Private Housing (Tenancies) (Scotland) Act 2016*, I direct the Tribunal's clerk to refer this matter to the relevant department of Clackmannanshire Council in order to consider the apparent failure of the Respondent to register as a landlord, at least in regard to this Property by providing them with a copy of this Decision and highlighting to them the name and address of the Respondent and the address of the Property.

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.

Joel Conn

30 July 2025

Legal Member/Chair **Date**