

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the 2017 Rules)

Chamber Ref: FTS/HPC/PR/25/0568

Re: Bedroom with shared facilities, 27 Easter Drylaw Drive, Edinburgh, EH4 2QT (the Property)

Parties:

Mr Michael Osewe Inede, 5/45 Westfield Avenue, Edinburgh, EH11 2TN (the Applicant)

Ms Lorna Dunlop, 27 Easter Drylaw Drive, Edinburgh, EH4 2QT (the Respondent)

Tribunal Member:

Ms. Susanne L. M. Tanner K.C., Legal Member and Chair

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal): (i) determined that the Respondent did not comply with the duty in Regulation 3 of the 2011 Regulations to pay the Applicant's deposit into an approved scheme and to provide the tenant with the information required under Regulation 42; (ii) it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit in terms of Regulation 10 of the 2011 Regulations; and (iii) made an order requiring the Respondents to pay to the Applicants the sum of TWO THOUSAND TWO HUNDRED AND FIFTY POUNDS (£2250.00) Sterling

Procedural background

1. On 11 February 2025, the Applicant made an application to the tribunal against the Respondent in terms of Rule 103 of the 2017 Rules and Regulation 9 of the 2011 Regulations, namely an application for an order for payment where the

landlord has failed to carry out duties in relation to a tenancy deposit (the Application).

2. The Applicant attached to the Application:
 - 2.1. Paper apart with details of claim;
 - 2.2. Proof of deposit payment;
 - 2.3. Copy Private Residential Tenancy (PRT) tenancy agreement;
 - 2.4. Correspondence with MyDepositsScotland.co.uk;
 - 2.5. Email and what's app correspondence with the Respondent.
3. On 12 February 2025, the tribunal's administration checked the Scottish Landlord Register and found that the Property is not on the register. No properties are registered at that address.
4. The Application was considered by a legal member acting under the delegated powers of the President. On 14 February 2025, the Application was accepted for determination by the tribunal.
5. A Case Management Discussion (CMD) teleconference was fixed for 23 July 2025 at 1400h by teleconference and parties were notified of the date, time and details of the CMD, which both parties were required to attend. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application. Parties were advised that if they did not attend the CMD, this would not stop a decision or order from being made by the tribunal if the tribunal considered that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations she wished by 3 May 2025. The Application paperwork and notification of the hearing was served on the Respondent by Sheriff Officers on 16 April 2025.
6. The Respondent lodged written submissions on 29 April 2025 (which were originally marked '*without prejudice*', which following a response from the tribunal's administration she then removed), in which she admitted that the deposit had not been lodged but submitted that she "*acted in good faith under the guidance on mygov.scot which states ... you do not need to use a deposit protection scheme if you live on [sic] the property*". The Respondent did not produce a copy of the guidance referred to, or any applicable legislation. She produced photographs said to be taken at the conclusion of the tenancy and a calculation showing that she had made deductions and retained the balance of the deposit other than £108 which was returned to the Applicant.
7. On 8 May 2025, the Applicant lodged a written response to the Respondent's written submissions, within which he stated that the Applicant had made a false

claim of residence in the house within which the Property was located during his tenancy. The Applicant provided copies of screenshots of messages between himself and the Respondent in relation to deposit deductions.

Case Management Discussion (CMD) – 23 July 2025, 1400h – by teleconference

8. The Applicant attended the CMD.
9. The Respondent did not attend or make any contact with the tribunal. The tribunal was satisfied that notification of the CMD was provided to the Respondent and it proceeded in her absence under rule 24 of the 2017 Rules, on the basis of the material before it and the oral submissions of the Applicant only.
10. The tribunal chair explained the nature and purpose of the CMD to the Applicant.

The Applicant's submissions

11. The Applicant made oral submissions to supplement his written submissions and referred to documents which were lodged with the Application.
12. The Applicant provided further information about the tenancy. He said that he finished University in 2023 and secured a job in Edinburgh, so needed to get a house. He saw an advert online on spareroom.co.uk for a bedroom in a house, with shared facilities (the Property). A man called David contacted the Applicant on spareroom.co.uk. David arranged a viewing for the Applicant and the Property was shown to him by David.
13. The Applicant stated that the house in which the Property is situated has three bedrooms. One is the bedroom with shared facilities which was advertised. The other is a bedroom used by David with the same shared facilities. The third bedroom was locked and not in use. David did not explain anything about the locked room in the Property. The Applicant understood that there was no one living in the room and that it was filled with stuff. The Applicant did ask David if he was the owner of the house and David said that he was not and that there was a landlord (the Respondent). The Applicant understood that he would be living in the Property just with David. David told the Applicant that the house was 'bills inclusive' other than the electricity which they had to sort out themselves. David said that the lease had to be a minimum of six months.
14. The Applicant said that he was interested. The Applicant was dealing with David until he paid the deposit. David told the Applicant about the deposit, which was £750, and said that he would not make financial transactions with the Applicant

and that the Applicant had to deal with the Respondent himself. David told the Applicant that he would contact the Respondent and ask her to get in touch with the Applicant.

15. The Respondent contacted the Applicant and provided her bank details to the Applicant on Whats App.
16. The Applicant made the deposit payment on 30 December 2023. The deposit payment was £750.00. He referred to evidence lodged of the deposit payment.
17. The tenancy started on 10 January 2024.
18. The Respondent forwarded the Private Residential Tenancy agreement to the Applicant by What's App and email after the Respondent paid the deposit. The Applicant received the PRT agreement by what's app and by email on 15 January 2024. The Respondent had not signed it. The Applicant was not asked to sign the agreement. The Respondent simply said in her email that it was the tenancy agreement. In an email, the Respondent said that she would be in Edinburgh for a few days the next week.
19. The Applicant did not meet the Respondent until after he had moved into the house. On 15 January 2024, the Respondent sent a Whats App to say she was looking forward to meeting him. The Applicant saw the Respondent twice during the year or so that he lived there. The first occasion was in around February 2024, when the Respondent came to Edinburgh for an event and that was the first time he met her. They sat in the living room. She then stayed in the Property for one or two days. The Applicant thinks she stayed in the third bedroom in which a lot of stuff was stored.
20. The second time that the Applicant saw the Respondent was in around June 2024. She visited the Property. He met with her. At that time, he was looking to get a job in Aberdeen. The Respondent sent him a message to say that she had a friend with a property in Aberdeen. The Applicant does not know exactly how long she spent in the house. It was for more than a day but he cannot remember how many days it was. The Applicant said that the Respondent was not living in the house full time at any point during his tenancy of the Property.
21. The Applicant disputed the Respondent's written submission in which she appeared to suggest that she lived on [sic] the house. He said that he thought she resided in England as she made mention of it. Other than the two occasions mentioned above, the Respondent did not stay in the house during his tenancy of the Property.

22. The Applicant gave notice to leave and said he would like to terminate his contract on 10 January 2025. The Respondent refused and sent a copy of a clause from the PRT agreement saying that he needed to give her a specified time before he moved out and had to pay for the remaining days. The Applicant agreed to that. He moved out on 22 January 2025 and dropped the keys at the house.
23. After the end of the tenancy, the Respondent said to the Applicant that he was not getting his deposit back. He asked why. She said that it was gas bills, cleaning and rent. The Applicant was confused about the gas bills because the Property was bills inclusive other than electricity and he had not seen any other utility bills during the tenancy. The Applicant told the Respondent that there was a clause in the PRT agreement that obligated him to pay for electricity and gas. He said that he had been there for a year and had never been asked to pay a gas bill. The Applicant said that she deducted 'a huge chunk' of his deposit and backed it up with clauses from the PRT agreement. They went back and forth. She sent screenshots of the tenancy agreement to him. During the tenancy she had not sent any copies of utility bills but after he asked she sent screenshots of the gas bills.
24. The Respondent said that the Applicant was not getting any money back and then said he was getting £108.00. In February 2025 she sent £108.00 out of £750.00 (a deduction of £642). The deduction was for gas bills, rent for the notice period and cleaning, all of which he said the Respondent attempted to back up by highlighting sections of the tenancy agreement. He referred to the lodged productions which show the messages which were exchanged between them.
25. The Applicant said that the Respondent has at no point provided any proof that the deposit was lodged in a tenancy deposit protection scheme. The tenancy agreement said that it would be lodged with MyDepositsScotland. The Applicant asked the Respondent for the Deposit Protection Certificate after the Respondent said that she was making deductions. The Applicant contacted MyDepositsScotland and it was not lodged. He referred to the documents lodged with the Application which show this, including an admission by the Respondent that it was not lodged.
26. The Respondent has now admitted in these proceedings that it was not lodged.
27. The Applicant disputes that the Respondent was residing in the Property as her only or main residence during his tenancy which lasted just over a year. In further response to the Respondent's position that she was living in the house during the Applicant's tenancy of the Property, the Applicant said that if it was the case, why would she have included details of the deposit protection scheme in the tenancy

agreement. If she had thought that she was resident, the Applicant submitted that there would not be any need for her to provide that clause in the agreement.

28. The only sum returned to the Applicant by the Respondent is £108.00 and she has retained £642.00.
29. The Applicant seeks a payment order for three times the amount of the deposit (£2250.00). He said that he feels everything was intentional on the part of the Respondent. He submitted that the Respondent was just trying to retain his funds. He stated that she used the same tenancy agreement to try to justify the deductions but did not lodge the tenancy deposit as stated in the agreement. His deposit was not protected. He thinks it was a premeditated attempt to retain his funds. If the deposit had been lodged in a deposit protection scheme he would have challenged her proposed deductions and he think that he would have got a fair hearing but she did not do that and he was denied the opportunity. She made all the deductions, she did what she wanted to do. He said that they should have been dealing with a third party neutral through the scheme who would have made a decision.
30. Having heard the submissions by the Applicant, the tribunal adjourned to consider the Application, written submissions by both parties, oral submissions by the Applicant, and relevant evidence and made its decision.

Findings in Fact

31. The Respondent is the landlord of the Property, which was a bedroom with use of shared facilities in a three bedroomed house.
32. The Property was advertised online on spareroom.co.uk.
33. The Applicant responded to the advert and he was contacted by a man called David who arranged a viewing of the Property and conducted the viewing.
34. During the viewing, the Applicant understood that he would be sharing the house with David, who had use of another bedroom in the house and access to the same shared facilities.
35. During the viewing, the Applicant understood that the third bedroom was kept locked and was used for storage.
36. The Applicant was told by David that bills were included in the rent.
37. The Applicant said that he wished to take the Property.

38. The Applicant was told by David that the deposit was £750.00 and that the financial transaction to pay the deposit would be handled by the landlord, the Respondent.
39. The Respondent contacted the Applicant and provided her bank details for payment of the deposit of £750.00.
40. The Applicant paid the deposit of £750.00.
41. The Applicant had a private residential tenancy the Property from 10 January 2024 to 22 January 2025.
42. The private residential tenancy agreement included a term specifying that the tenancy deposit would be lodged in a tenancy deposit protection scheme, namely MyDepositsScotland.
43. The third bedroom was generally kept locked during the tenancy and used for storage of items, other than on two occasions when it was used by the Respondent to stay for one or two days on each occasion, in around February 2024 and June 2024.
44. The Applicant's tenancy deposit was unprotected for a period of around 1 year and one month, throughout the duration of the tenancy.
45. Following the conclusion of the tenancy, the Respondent unilaterally made deductions from the Applicant's deposit amounting to £642.00.
46. The Respondent relied on provisions of the tenancy agreement to justify the deductions which she made.
47. The Applicant opposed the proposed deductions.
48. The Applicant requested sight of the Deposit Protection Certificate.
49. Because the Applicant's deposit had not been lodged in an approved scheme, he was denied the opportunity to raise a dispute within the deposit protection scheme and to have an adjudicator appointed under the scheme.
50. The Respondent only returned £108.00 of the Applicant's deposit.
51. The Respondent has accepted that the deposit was not lodged in a tenancy deposit protection scheme.

52. The choice not to lodge the deposit in an approved scheme was intentional on the part of the Respondent.
53. During the tenancy the house in which the Property was situated was not the only or main residence of the Respondent.

Findings in fact and Law

54. The Applicant's tenancy deposit should have been lodged with a deposit protection scheme within 30 working days of the being paid to the Respondent.

Discussion

55. The material fact that the Applicant's deposit was not lodged in a deposit protection scheme was not in dispute. Similarly, the deductions the Respondent herself made were admitted (of £750, she retained £642 and £108 was returned to the Applicant).
56. However, the Respondent in her written submissions (a single page on an email) relied on a statement said to be attributed to a Scot.gov website which included the phrase "*if you live on the property*". No copy of the guidance or any legislation relied on was produced. She did not explicitly state that she was used the house as her only or main residence but taken at its highest that can be inferred from her submission. She did not, however, produce any evidence that she used the house in which the Property was situated as her only or main residence during the Applicant's tenancy. The Respondent did not appear at the CMD to advance her submission which taken at its highest may have amounted to a preliminary issue about the jurisdiction to the tribunal to deal with the Application. The tribunal concluded on the available evidence (from the Applicant), on the balance of probabilities, that the house was not the Respondent's only or main residence during the tenancy.
57. As such, although the Respondent admitted that she took the Applicant's deposit, did not lodge the deposit and made deductions of £642 from the deposit, she did not admit the failure to comply with Regulation 3 of the 2011 Regulations.
58. The tribunal was satisfied on the balance of probabilities that there had been a failure to comply with Regulation 3 of the 2011 and that it must make an order for payment.
59. The Applicant's submissions at the CMD included factors which the Applicant submitted should be considered as aggravating factors in relation to the tribunal's

discretionary decision about the amount of the order to be made in terms of Regulation 10 of the 2011 Regulations.

60. The tribunal took account of the Applicant's oral submissions, as well as the parties' written submissions and the tribunal's findings in fact.

61. The tribunal had regard to Upper Tribunal authorities in similar cases, in particular *Rollett v Mackie* [2019] UT 45 and *Ahmed v Russell* [2023] UT 7.

62. In *Rollett*, above, Sheriff Ross said [at para 9] that:

'Each 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. Comparison with other cases is therefore of minimal assistance in the present case. The general principles of the law apply and these include that for a discretionary decision to be overturned it must be one which no reasonable tribunal could make.'

63. And further [at para 13]:

'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 also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the fact and tends to lessen culpability'.

64. In *Ahmed*, above, Sheriff Cruickshank outlined the purpose and policy objectives of the Regulations [at para. 19] and referred to Sheriff Ross's *'helpful summary'* *Rollett*, above [at para. 29], stating:

'Furthermore, in Rollett, Sheriff Ross considered that in assessing the level of sanction the question was one of culpability. When it came to the level of sanction the question was one of degree and provided examples of the factors which could lessen or increase the level of culpability' [at para. 30].

65. In the present case, the tribunal took the approach of establishing the facts and then considering aggravating and mitigating factors to determine culpability of the Respondents and decide on the appropriate level of sanction.

66. The tribunal considers the following to be aggravating factors:

- 66.1. The Respondent produced a Private Residential Tenancy agreement in respect of the Applicant's tenancy of the Property, which included a clause stating that the deposit was £750.00 and that it would be lodged in a tenancy deposit protection scheme, namely MyDepositsScotland. At no point prior to or during the tenancy did the Respondent indicate to the Applicant that she considered that she had any exemption from lodging the deposit or that she had not done so, nor that the agreement should be varied.
- 66.2. The Applicant's deposit was unprotected for a period of just over 1 year, throughout the entirety of the tenancy.
- 66.3. It is not known whether the Applicant's deposit was held by the Respondent and if so, where. In any event, were it held in a bank account of the Respondent, it would still be unavailable to the Applicant.
- 66.4. After the end of the tenancy, the Respondent unilaterally made deductions amounting to £642.00 from the deposit of £750.00, relying on various clauses of the tenancy agreement as a basis for so doing, but without reference to her obligation to have lodged the deposit in a scheme;
- 66.5. The Applicant was denied the opportunity to challenge the deductions made by the Respondent through the tenancy deposit protection scheme and to have the matter determined by a neutral adjudicator;
- 66.6. Even when the matter was drawn to the attention of the Respondent, by the Applicant asking shortly after the conclusion of the tenancy for the Deposit Protection Certificate, she failed to lodge the deposit to allow the matter to be determined fairly by a neutral adjudicator;
- 66.7. The Applicant has only received £108.00 of his unprotected deposit back from the Respondent; and
- 66.8. The breach appears on balance of probabilities to have been intentional given the Respondent's written submissions in which she appears to suggest that she was living on [sic] the house in which the Property was situated during the Applicant's tenancy and took a decision based on a statement in a website that she did not require to lodge the tenancy deposit, despite the terms of her own tenancy agreement.

67. The tribunal does not consider that there are any mitigating factors. The Respondent's submissions were one page in an email and taken at its highest she appeared to submit that she lived on [sic] the house during the Applicant's tenancy of the Property. No evidence was produced by the Respondent of that, or any other mitigating factors and she did not appear at the CMD.

68. For the reasons outlined, the tribunal considered that the breach was at the upper end of the scale of seriousness and decided to make an order for payment by the Respondent to the Applicant of the sum of £2250.00, which is three times the

tenancy deposit which was paid. That sum was considered by the tribunal to be reasonable in all the circumstances.

69. The tribunal told the Applicant its decision and reasons orally at the CMD and explained that a written decision with statement of reasons would be produced and sent to both parties.

70. It is noted that the Respondent's address was stated on the PRT to be the house in which the Property was situated. The Applicant has not been provided by the Respondent with any other address and the Respondent has not registered as a landlord for the Property, or the house, with the Scottish Landlord Register. The Applicant therefore used the house address on the Application and that is the address which will be included on this decision and on the order for payment to be issued by this tribunal.

Permission to Appeal

71. 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.

Ms. Susanne L. M. Tanner K.C.

23 July 2025

Ms. Susanne L M Tanner K.C.
Legal Member/Chair