



**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 on an application made under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/24/5570**

**Re: Property at Flat 1/4, 36 Main Street, Kilsyth, G65 0AQ (“the Property”)**

**Parties:**

**Mrs Alison Hegarty, 38 Bogside Road, Kilsyth, Glasgow, G65 0LR (“the Applicant”)**

**Mr Norrman Innes, Floor 5, Argyll Chambers, Buchanan Street, Glasgow, G2 8BD (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £2,490.**

**Background**

1. By application, dated 2 December 2024, the Applicant sought an Order for Payment in respect of the failure of the Respondent to comply with Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Applicant’s complaint was that the Respondent had failed to lodge her deposit of £830 in an approved tenancy deposit scheme.
2. The application was accompanied by a copy of a Short Assured Tenancy Agreement, commencing on 26 August 2011 at a rent of £550 per month, with a further £25 per month as a management charge. The landlord was stated in the Agreement to be Stone 3 (Southern) Limited, and it was

signed on behalf of the landlord by a James Rafferty. The tenants were the Applicant and Mr Stuart Hegarty.

3. The Tenancy Agreement did not specify a deposit but stated that if the landlord required an initial deposit the tenants bound and obliged themselves to make such a deposit not exceeding the equivalent of one month's rent.
4. The Tenancy Agreement was in the form of an offer to take the Property on lease, with a portion at the end to be signed by or on behalf of the landlord, accepting the offer and creating a binding contract. The copy provided by the Applicant had her and Mr Hegarty's signatures at the foot of each page. The acceptance portion was signed by James Rafferty on behalf of the landlord.
5. The Applicant provided the Tribunal with a copy of a receipt from Forth & Clyde Letting, Kilsyth, dated 11 July 2011. It was for a cash deposit of £550 and a pet deposit of £280. It was signed by James Rafferty, Letting Agent. She also provided evidence by way of copy emails from Safe Deposits Scotland (30 October 2024), Mydeposits Scotland (31 October 2024) and Letting Protection Service Scotland (31 October 2024), confirming that no deposit had been lodged with them.
6. The Applicant included with her application copies of emails between her and the Respondent's later letting agents, Kelvin Valley Property Services, in which they stated that, whilst they were not involved at the start of the tenancy, the landlord was checking with his accountants about the deposit and "assuming the property is left in good order that will be fully refunded (by your landlord, not us)". They attached to another email of 3 May 2024 an email to them from the Respondent, saying they will, regardless of the sum's location, pay back the deposit. The Applicant supplied a copy of a further email of 4 October 2024, arranging the check-out inspection, to check that the Property will be left "in the best possible condition and in turn receive a full refund if your deposit."
7. On 30 July 2025, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 20 August 2025.
8. On 15 August 2025, the Respondent made written submissions to the Tribunal. He contended that the application was lacking essential legal clarity and should be dismissed. It was directed to several different parties. The lease was with Stone 3 (Southern) Limited, and the document was addressed to Rock DCM Limited. He did not have a deposit logged in the company's system or bank, nor was there any mention of it in the original lease. He also said that his letting agents had raised concerns over the authenticity of the submitted Deposit Receipt. He attached an email from Kelvin Valley Property Services in which they said all the notes suggested that the Applicant never paid a deposit and the Respondent never took one

and that his decision not to chase her for the final month's rent had been on the basis that there might be a slight chance that she had paid a deposit to the Respondent over a decade ago. This, they said, was more an act of kindness than anything else. The paperwork the Applicant had produced with the Forth & Clyde Letting logo was not from Kelvin Valley Properties, nor was the address of the rental property correct on it. This should mean that "it is simply discarded".

9. The Respondent provided the Tribunal with his copy of the Tenancy Agreement. It was identical in terms to the version produced by the Applicant, but the acceptance portion had been incorrectly signed by the tenants. It appeared, however, that the Respondent had written "Landlord" at the foot of the page, had signed it and added "(N.W.Innes)" beside the signature.
10. The Applicant responded on 3 September 2025 that the deposit was accepted by James Rafferty on behalf of Forth & Clyde Letting, 23 Main Street, Kilsyth. Regardless of its location, the deposit was paid and was never placed in an approved tenancy deposit scheme. The property address in the Receipt was stated to be "Flat 2, Main Street Apartment", because it was at the time in the process of being registered with Royal Mail.

### **Case Management Discussion**

11. A Case Management Discussion was held by means of a telephone conference call on the morning of 10 September 2025. The Applicant was present. The Respondent was not present or represented.
12. The Applicant told the Tribunal that two copies of the Tenancy Agreement were signed in the office of the letting agents, Forth & Clyde Letting. She and Stuart Hegarty were given one copy, and the agents retained the other one. She explained that the Property is part of a renovated building which now comprises retail units on the ground floor, with residential flats on the floor above. Entry to the Property is via a stone stair off a close. The stair leads to a terrace, which has two flat doors on it, the Property being the second one. At the time of paying the deposit, the Post Office had not assigned a postal address to the newly-created flats, so it was described as Flat 2. The Applicant contacted the Post Office, who then assigned the address given in the Tenancy Agreement.

### **Findings in Fact**

- The Landlord under the tenancy was Mr Norman William Innes.
- The Applicant paid a deposit of £830 on 11 July 2011.
- The Respondent's letting agents issued a receipt for the deposit.
- The Respondent did not lodge the deposit with an approved tenancy deposit scheme.

## Reasons for Decision

13. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to determine the application without a Hearing.
14. Under Regulation 3(1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”), a landlord must, within 30 working days of the beginning of the tenancy pay the deposit to the scheme administrator of an approved scheme. Under Regulation 10, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal **must** order the landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit. Regulation 42 of the 2011 Regulations requires a landlord to provide certain information to tenants, including the name and contact details of the scheme administrator of the tenancy deposit scheme to which the deposit has been paid.
15. The Tribunal considered the two copies of the Tenancy Agreement and was satisfied that, following usual practice at the time, two copies would have been signed by the tenants, one for them to keep and one for the landlord. The landlord was not present when the tenants signed the documents, so the acceptance portion on their copy was signed on his behalf by his letting agent, Mr James Rafferty. The acceptance portion on the landlord’s copy was not signed by Mr Rafferty and was presumably sent by him to the Respondent, who then added his own name and signature as landlord.
16. A search at Register House shows the Proprietor of the Property to be Norman William Innes. No evidence of his having leased the Property to Stone 3 (Southern) Limited, making the Applicant’s tenancy a sub-tenancy, or any suggestion that any such lease was in place, having been offered, the Tribunal determined that the Respondent is the landlord in the Tenancy Agreement. Rock DCM Limited were not named anywhere as landlords.
17. The Tribunal’s searches of Companies House records show that Mr Rafferty was a Director of Forth & Clyde Letting Limited and that he was also a Director of Kelvin Valley Properties Limited. The Respondent is a Director of both Rock DCM Limited and Stone 3 (Southern) Limited.
18. Mr James Rafferty, on behalf of the Respondent, signed the Tenancy Agreement given to the Applicant. He also signed the Receipt for the deposit. The Tribunal had no difficulty in concluding that Forth & Clyde Letting Limited were the Respondent’s letting agents in 2011 and that they took a deposit of £830 from the Applicant and Mr Hegarty. The Tribunal was satisfied with the Applicant’s explanation of the apparent discrepancy

in the Property address between the Deposit Receipt and the Tenancy Agreement and saw no evidence to suggest that the Receipt was not authentic. The Tribunal determined, therefore, that it is genuine. The Tenancy Agreement may not have specified a deposit but as a matter of fact, the Respondent's letting agents took a deposit of £830 and he was, therefore, bound to comply with the 2011 Regulations.

19. The Applicant provided evidence that the deposit was never lodged with any of the three approved tenancy deposit schemes. Accordingly, the Tribunal determined that the Applicant has failed to comply with Regulation 3(1) of the 2011 Regulations.
20. The Tribunal noted that the deposit was in two parts, with £280 being a pet deposit. The Tribunal determined that the full £830 is a tenancy deposit as defined in Section 120 (1) of the Housing (Scotland) Act 2006, as both elements were to be held in security for the performance of the Applicant's obligations in connection with the tenancy.
21. Having decided that the Respondent had been under a duty to lodge the deposit in an approved Tenancy Deposit Scheme and had failed to do so, the Tribunal then considered the amount that it should order the Respondent to pay to the Applicant under Regulation 10 of the 2011 Regulations. The view of the Tribunal was that the Respondent's failure to lodge the deposit with an approved tenancy deposit scheme was very serious. The Applicant's deposit was at risk for the entire duration of the tenancy, and it has not been refunded to her many months after the tenancy ended. The Tribunal acknowledged that, if the Respondent genuinely believes no deposit was taken, he would not have been inclined to make payment to the Applicant, and the Tribunal has no knowledge of what happened to the deposit moneys after they were made over to Forth & Clyde Letting Limited, but, instead of accepting the Receipt as clear evidence that a deposit had been paid, he chose to attempt to discredit the Applicant by suggesting the Receipt was not authentic, when it must have been clear to him that, wherever the money now was, his letting agent, Mr Rafferty, had taken the deposit and had issued a receipt. In so doing, the Respondent caused the Applicant unnecessary additional anxiety and distress. The Tribunal could not ignore the Respondent's conduct in determining the amount that he should be ordered to pay.
22. Having taken into account all the facts and circumstances of this particular case, the Tribunal decided a fair, reasonable and proportionate amount that the Respondent should be ordered to pay to the Applicant would be the maximum permissible sum, namely £2,490, being three times the amount of the deposit.

## **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

George Clark

Legal Member/Chair

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10 September 2025

Date