



**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 (the 2011 Regulations)**

Chamber Ref: FTS/HPC/PR/24/4010

Re: Property at 20A Torphicen Street, Edinburgh, EH3 8JB (“the Property”)

Parties:

**Mr Ben Lomako, Mr Caelan Bains, 20/3 Glencairn Crescent, Edinburgh, EH12
5BT (“the Applicant”)**

**Mr Narendranath Narayanan, 63 St Andrews Gardens, Cobham, KT11 1HQ
 (“the Respondent”)**

Tribunal Members:

Yvonne McKenna (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment is made in favour of the
Applicant due by the Respondent in the sum of £3015.50 (THREE THOUSAND
AND FIFTEEN POUNDS AND FIFTY PENCE ONLY).**

Background

1. The Applicant made an application in Form G ("application") dated and lodged on 28 August 2024 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations").

2. The documents produced to the Tribunal by the Applicant were:

- Copy screenshots from pages of the Applicant's bank account showing payments made to the Respondent on 17 June 2023 of £10, 20 June 2023 of £1828.50, and on 19 June 2023 of £10.

- Copy screenshots from Safe Deposits Scotland, Mydeposits Scotland and Letting Protection Scotland all stating that the Property deposit was not protected under any of these schemes.

3. The Application was accepted by the Tribunal on 25 September 2024.

4. The application and relevant paperwork were served on the Respondent by Sheriff Officers on 18 February 2025.

5. Following service, the Respondent lodged written representation on 4 March 2025, stating that the application had been served on him with the wrong spelling of his name.

6. In terms of Rule 13 of the Rules, an amended application was lodged by the Applicant on 5 March 2025, specifying the Respondent's correct name.

The First Case Management Discussion 4 April 2025

7. A Case Management Discussion ("CMD") took place on 4 April 2025 by teleconference at 2pm. Parties were in attendance.

8. The Tribunal explained the procedure and the background.

9. The Tribunal said that no proof of the deposit payment had been provided. The Applicant said that this could be submitted straight away, and a short 10 minute break was granted to allow this to be uploaded to the Tribunal administration, and circulated.

10. The Applicant provided a screenshot showing payments being made from the first Applicant for a one half share of the deposit only. The Applicant then had difficulty re-joining the conference call.

11. Eventually the Tribunal Clerk managed to contact the Applicant and they participated by speakerphone dialling in to the Clerks mobile. The sound was not ideal.

12. The Tribunal explained that the CMD would be continued, in order to allow the Applicant to participate properly, and to enable the Applicant to provide proof of the payment of the full deposit in a legible format. A separate Direction was issued in that regard.

13. The Tribunal confirmed that the only live matter before the Tribunal is the application in terms of Rule 103, namely an order for payment, where the landlord has failed to carry out duties in relation to tenancy deposits.

The Second Case Management Discussion 1 September 2025

14. A second CMD took place by teleconference on 1 September 2025. The date and time of the hearing together with the dial in details were intimated to both parties on 16 July 2025. Only the Applicant attended.

15. Following the first CMD, the Applicant had complied with the Tribunal's Direction, and on 16 July 2025 had lodged with the Tribunal confirmation of the payment of the deposit to the Respondent in the sum of £2077.

16. The Applicant said that the deposit had still not been returned to them by the Respondent. The Respondent had initially said that this could be returned less some cleaning dues he had incurred. He had then subsequently said that he would return the full amount of the deposit to the Applicant. The Applicant said in response to the Respondent that they were unsure how that would impact on the Tribunal application and that the deposit had therefore still not been returned to them.

17. The Applicant said that when the Property had originally been advertised for rent that this was through a letting agency. Thereafter there had been no dealing with an agent, and all of their interactions with the Respondent landlord were with him directly. Any inspections were carried out by friends of the Respondent and not by any official letting agents. They had never met the Respondent personally.

18. The Applicant has received no direct communication with the Respondent since the last CMD. No other applications have been lodged with the Tribunal regarding the return of the deposit, or in relation to any other matters arising from this tenancy.

19. The Applicant said that they were seeking a decision regarding the application. They want the Respondent to be aware that a deposit needs to be protected so that if things go wrong matters can be easily determined and resolved at the end of the tenancy. If their deposit had been protected they would have been able to resolve their issues under the adjudication scheme, rather than the efforts they have had to resolve matters direct with the Respondent. At the end of the tenancy, when the Respondent had raised issues regarding the cleaning of the Property and deductions which he said should be made from the deposit, the Applicant had suggested the matter be dealt with by the deposit protection scheme. The Respondent was fully aware at that time that he had not put the deposit into a scheme. He told the Applicant that he had placed the deposit into an insured scheme which had cost him more money than the tenancy deposit protection scheme.

20. The Applicant said that there had been an underpayment of rent due to the Respondent at the end of the tenancy in the amount of £100 and asked that any award could be reduced by that amount to take account of that sum due.

Findings in Fact

21. The parties entered into a Private Residential Tenancy ('PRT') in respect of the Property that commenced on 1 July 2023 and which ended on 30 June 2024.

22. A tenancy deposit of £2077 was paid to the Respondent by the Applicant at the commencement of the tenancy.

23. The deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy.

24. The PRT provided at clause 10 thereof that the deposit would be place under the Letting Protection Service Scotland deposit protection scheme and provided contact details for that scheme.

25. The Respondent did not provide all the prescribed information on the tenancy deposit to the Applicant under Regulation 42 of the 2011 Regulations.

26. The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

27. The deposit has not been returned to the Applicant at today's date.

Reasons for Decision

28. There is no defence raised to the application.

29. 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, the Tribunal was satisfied both that the necessary level of evidence had been provided through the application, further papers, and orally at the two CMDs, and that it was appropriate to make a decision under regulation 10 of the 2011 Regulations at the second CMD.

30. There was little dispute between the parties on the material points. The Tribunal was satisfied that the evidence provided by both parties was credible and reliable on the material issues of this application. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. In this case the Respondent did not lodge the deposit with an approved scheme or provide the prescribed information within the 30 working day period.

31. 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.

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 Page 5 of 6 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.'

32. 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'.

33. 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].

34. In the present case, the Tribunal took the approach of establishing the facts and then considering any aggravating and mitigating factors to determine culpability of the Respondent and decide on the appropriate level of sanction.

35. The Tribunal considers the fact the Respondent had stated in his written representations to the Tribunal, that he had suffered the loss of his father in February 2023 to be a mitigating factor. In addition, he said that the marketing/letting agent who had normally assisted him for over a decade had undergone surgery, and these were personal stressors for him at the time of the tenancy commencing and throughout the duration of the tenancy.

36. However he suggested that there was some element of confusion at his end regarding the deposit payments stating;

'It is around this timeline, there appears to be some confusion in the deposit vs rent. In my interaction with other agents, normally the agencies deduct the deposit and other applicable fees from the first rental amount and then transfer the rest to the landlord. However, in this instance the claimants have transferred the full amount including the deposit.'

37. The Tribunal does not consider this to be a mitigating factor. The Respondent should have been able to see clearly what payments he was receiving directly from

the Applicant and if there was any doubt what they related to he should have queried these directly.

38. In addition the Respondent told the Applicant at the conclusion of the tenancy, when issues arose regarding the return of the deposit, that the deposit had not been protected in a relevant statutory scheme. He was therefore aware of this. The deposit was unprotected for the whole duration of the tenancy which is a period of 12 months.

39. The amount to be awarded is a matter for the discretion of the Tribunal having regard to the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

"[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 facts, and tends to lessen culpability.

[14] 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."

40. 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. The Tribunal is satisfied that this case falls in the medium or midpoint range of the scale of seriousness of breaches, and is awarding one and a half times the deposit amount, under regulation 10 of the 2011 Regulations. This is an appropriate award in consideration of the law and all the facts. The Tribunal took account of the Applicant's position that the sum of £100 is due by way of rent underpaid and accordingly deducted that from the sum due. The Tribunal accordingly decided to make an order for payment by the Respondent to the Applicant of the sum of £3015.50. That sum was considered by the Tribunal to be reasonable in all the circumstances.

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.

Yvonne McKenna

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Legal Member/Chair

1 September 2025

Date