



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/3925

Re: Property at 35 Dundonald Crescent, Auchengate, Ayrshire, KA11 5AX (“the Property”)

Parties:

Mr Scott Bradley, 35 Dundonald Crescent, Auchengate, Ayrshire, KA11 5AX (“the Applicant”)

DICN Limited, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members: Ruth O’Hare, Legal Member

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with the duties under regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 in respect of the Applicant’s tenancy deposit.

The Tribunal therefore determined to make an order for payment in the sum of **Three thousand pounds (£3000) Sterling** against the Respondent under Regulation 10(a) of the 2011 Regulations.

The Tribunal further ordered the landlord to pay the Applicant’s tenancy deposit of £1000 to an approved scheme under Regulation 10(b)(i) of the 2011 Regulations within twenty eight days of the date of this decision.

Background

- 1 The Applicant applied to the Tribunal seeking an order for payment as a result of the Respondent’s failure to lodge their deposit in an approved tenancy deposit scheme under Rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”).

- 2 The application was referred to a Case Management Discussion (“CMD”) to take place by teleconference on 13 March 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules and invited them to make written representations in advance of the CMD.
- 3 Sheriff officers attempted on three occasions to serve the notification letter upon the Respondent but were unable to gain access to the address provided. A business card was left for the Respondent but the Respondent did not make contact.
- 4 No written representations were received from the Applicant.

The CMDs

- 5 The CMD took place on 13 March 2025 at 10am by teleconference. Neither party joined the call. The Tribunal kept the conference call open until 10.15am to give them the opportunity to attend.
- 6 The Tribunal noted that service of notice of the CMD upon the Respondent had been unsuccessful. The Tribunal therefore determined to adjourn the CMD. The purpose of the adjournment was twofold: to enable service of notification upon the Respondent by advertisement on the Tribunal website, and provide both parties with a further opportunity to attend the CMD.
- 7 The Tribunal proceed to serve notice of the CMD upon the Respondent by advertisement on the Tribunal’s website under Rule 6A of the Rules between 10 July 2025 and 27 August 2025. The Tribunal sent an email to the Respondent on 10 July 2025 with a link to the advertisement.
- 8 The second CMD took place on 27 August 2025 by teleconference. The Applicant joined the call. The Respondent did not attend. The Applicant advised that he had spoken with David Njoku, a director of the Respondent, a few weeks ago and had reminded him of the CMD. The Applicant did not expect the Respondent to attend. The Tribunal therefore delayed the start time of the CMD for a short period before determining to proceed in the Respondent’s absence, noting that they had been given notice of the CMD under Rule 6A of the Rules.
- 9 The Tribunal had the following documents before it:-
 - (i) Form G application form;
 - (ii) Private residential tenancy agreement between the parties;
 - (iii) Screenshots from the approved tenancy deposit schemes; and
 - (iv) Bank statement.
- 10 The Tribunal explained the purpose of the CMD and the legal test. The Tribunal proceeded to hear submissions from the Applicant. The following is a summary of the key elements of the submissions and does not constitute a verbatim account.

- 11 The Applicant confirmed that he paid a tenancy deposit of £1000 to the Respondent in two instalments of £500 prior to the commencement of the tenancy. He has asked the Respondent on numerous occasions to provide him with the information regarding his deposit, and where it is being held, but has been ignored by the Respondent. The Applicant has confirmed with all three deposit schemes that his deposit is not held with any of them. The screenshots produced confirm this. The Respondent has also failed to comply with their statutory duties in terms of the repairing standard. The Respondent has failed to provide the Applicant with the required certification for the gas and electrics. The Respondent's director, Mr Njoku, lived in London. He comes up to the property on occasion unannounced to try and carry out inspections. The Applicant has carried out various works to the property to improve it, including replacing locks and garden maintenance. The Respondent has invested nothing in the property. The Applicant believes the Respondent may be a rogue landlord. The Respondent has given the Applicant no information as to where the deposit is being held. The Applicant confirmed that he is still residing in the property.

Findings in fact

- 12 The Applicant entered into a tenancy agreement with the Respondent, which commenced on 22 December 2023.
- 13 The tenancy between the parties is a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 14 In terms of clause 12 of the tenancy agreement the Applicant agreed to pay a tenancy deposit of £1000 to the Respondent.
- 15 The Applicant paid the deposit in two instalments of £500 on 15 December 2023 and £500 on 22 December 2023.
- 16 The Respondent did not pay the deposit into an approved deposit scheme. The Respondent did not provide the Applicant with any information regarding his deposit.
- 17 The Applicant continues to reside in the let property.
- 18 The Respondent has failed to comply with other statutory duties incumbent upon them as landlord, including the duty to ensure the let property meets the repairing standard under section 14 of the Housing (Scotland) Act 2006.

Reasons for decision

- 19 The Tribunal determined the application having regard to the application paperwork and the submissions from the Applicant at the CMD. The Tribunal was satisfied that it had sufficient information to make relevant findings in fact in order to reach a decision in the absence of a hearing under Rule 18 of the Rules. The Respondent had been given the opportunity to participate in the proceedings but

had not sought to produce any contradictory evidence to counter the information submitted by the Applicant.

- 20 Regulation 3 of the 2011 Regulations states that *“a landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy (a) pay the deposit to the scheme administrator of an approved scheme; and (b) provide the tenant with the information required under regulation 42”*.
- 21 The Tribunal was satisfied that the tenancy between the parties was a relevant tenancy for the purpose of Regulation 3. The Tribunal also accepted based on the evidence before it that the Applicant had paid a tenancy deposit of £1000 to the Respondent, and the Respondent had failed to pay the deposit into a tenancy deposit scheme. The Tribunal therefore found the Respondent to be in breach of regulation 3.
- 22 Regulation 10 of the 2011 Regulations states *“if satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and (b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to- (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42”*.
- 23 Accordingly, having been satisfied that the Respondent had failed to comply with the duties in regulation 3, the Tribunal went on to consider what sanction to impose having regard to the particular facts and circumstances of the case. The application of the sanction must seek to act as a penalty to landlords and ensure compliance with their statutory duties in relation to tenancy deposits.
- 24 The Tribunal had regard to the decision of Sheriff Cruickshank in *Ahmed v Russell (UTS/AP/22/0021)* which provides helpful guidance on the assessment of an appropriate sanction. In doing so the Tribunal must identify the relevant factors, both aggravating and mitigating, and apply weight to same in reaching its decision. The Tribunal is then entitled to assess a fair and proportionate sanction to be anywhere between £1 and three times the sum of the deposit, which in this case is £3000. As per Sheriff Cruickshank at paragraph 40 of his decision in *Ahmed*:

“The sanction which is imposed is to make 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.”
- 25 In terms of aggravating factors, the Tribunal took into account the fact that the deposit has remained unprotected since the start of the tenancy. The Applicant has repeatedly sought information from the Respondent as to where the deposit is being held. The Respondent has ignored these requests. This, compiled with the Respondent’s general disregard for their landlord responsibilities as

evidenced by their approach to their repairing obligations, is a significant cause for concern. The Applicant has paid the Respondent a large sum of money and would be rightly concerned about the Respondent's failure to protect the deposit. The Applicant has repeatedly reminded the Respondent about their duties in relation to tenancy deposits therefore the Respondent cannot claim to be unaware of their obligations. There is no reasonable explanation as to why they have failed to lodge the deposit with an approved scheme. The Tribunal gave significant weight to these as aggravating factors.

- 26 The Tribunal also gave weight to the fact that, were the tenancy to come to an end, the Applicant would not have access to the dispute adjudication process offered by the approved deposit schemes. This would leave the Respondent in a position whereby they could make unilateral decisions about the return of the deposit, thereby contravening the purpose of the 2011 Regulations, which is to ensure deposits are returned quickly and fairly, particularly where there is any dispute.
- 27 The Tribunal considered whether there were any mitigating factors. However, the Respondent had failed to participate in the proceedings and the Tribunal could not identify anything in the evidence before it that would constitute mitigation against the breach of regulation 3.
- 28 Accordingly, the Tribunal concluded that the level of culpability was serious based on the Respondent's conduct of the tenancy, and dealings with the Applicant, along with their apparent disregard for their responsibilities as a landlord in Scotland. The Tribunal therefore concluded that an award at the highest end of the scale was justified in this case and determined that a fair and proportionate sanction would be £3000.
- 29 The Tribunal therefore made an order for payment in the sum of £3000.
- 30 The Tribunal further determined to order the landlord to pay the deposit to an approved scheme as the tenancy between the parties is ongoing. This will ensure the Applicant has assurance that his deposit is secured, and can be adjudicated via the scheme's dispute resolution process at the end of the tenancy, if required.

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.

Ruth O'Hare

29 August 2025

Legal Member/Chair

Date