



**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/25/1127

**Re: Property at 4/12 HERMITAGE PARK LEA, EDINBURGH, EH6 8DY (“the
Property”)**

Parties:

**MISS MYA McMAHON, MISS ANNIE TORRANCE, 10 MACLEAN WAY,
DUNFERMLINE, FIFE, KY11 8SW; 11 ENDRICK DRIVE, BEARSDEN, GLASGOW,
G61 2EA (“the Applicant”)**

**MS KAREN GRIEVE, 8 HARVEY AVENUE, WALLYFORD, MUSSELBURGH,
EH21 8FA (“the Respondent”)**

Tribunal Members:

Yvonne McKenna (Legal Member)

Decision

**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 £209 (TWO HUNDRED and NINE
POUNDS).**

Background and Documents Lodged

1. The Applicant made an application in Form G ("Application") dated and lodged on 12 March 2025 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 Private Tenancy Agreement ('PRT') entered into between the parties with a start date of 12 August 2024.
 - E-mails exchanged between the Applicant and the Respondent's Letting Agent on 9 August 2024 confirming receipt of the deposit
 - Information under the 'DocuSign Platform' regarding the specifics of the deposit
 - Emails from Safe Deposit Scotland to the Applicant dated 11 and 12 October 2024 confirming the deposit for the Property was protected from 10 October 2024
 - E-mail from the Letting Agent to the Applicant confirming the end of tenancy date of 10 December 2024
3. The Application was accepted by the Tribunal on 1 April 2025.
4. The application and relevant paperwork were served on the Respondent by Sheriff Officers on 11 June 2025.
5. The Respondent intimated that her Letting Agent would be representing her in relation to the application.
6. On 22 June 2025 the Applicant lodged further written representation with the Tribunal regarding the issue of the Letting Agents having contacted the Applicants' respective Guarantors in relation to the application.

The Case Management Discussion

7. A Case Management Discussion ("CMD") took place on 1 August 2025 by teleconference. The Applicant Ms McMahon was present and represented the Applicant's joint position. The Respondent was present together with her representative Mr Chris Duffy, of CP Property, Letting Agents for the Property.
8. Both parties accepted that they were in a position to address the Tribunal regarding the tenancy deposit claim, and that there was no requirement for any further procedure by way of a Hearing to be scheduled.
9. Parties were in agreement that;
 - The tenancy commenced on 12 August 2024.

- The deposit was paid by the Applicant to the Respondent's Letting Agent at the commencement date.
- The tenancy ended on 10 December 2024.
- The deposit in terms of the PRT amounted to £1395.
- The deposit was not paid in to the relevant scheme with Safe Deposit Scotland until 10 October 2024.
- The 30 working days from the commencement of the tenancy ended on 23 September 2024. The period of **within 30 working days** accordingly ended on 22 September 2024.
- This meant that the deposit was paid into the relevant scheme 18 days late.
- The relevant prescribed information in terms of Regulation 12 of the 2011 Regulations was not made by the Respondent within the 30 working day time period

Position of the Respondent

10. Mr Duffy said that he acknowledged that the Letting Agents had made a mistake. Ordinarily they lodge deposits on time. He understands that the 2011 Regulations are in place to protect tenants from rogue landlords. He said that this situation was very much a one off. He confirmed that the deposit was returned to the Applicant at the end of the tenancy. He said that the Applicant had not been adversely affected. They had enjoyed possession of the Property without any issues with the Respondent.
11. Currently the Letting Agents hold 259 deposits in an approved scheme without any issue Mr Duffy did not dispute the period the deposit had been unprotected. He said that this was due to a data input issue, that the deposit had not been input into the system correctly. He said that it would be unfair to penalise the Respondent as it was not her fault. And this had nothing to do with her. It had been entirely the fault of the Letting Agent.
12. He suggested that for the Applicant to claim an amount which was three times the deposit was very unfair. There had been a genuine mistake made by a small business namely the Letting Agent. The business is called CP Properties. The initials stand for Chris and Phil. The business looks after their own portfolios and a small number of clients. Ordinarily deposits are sent over to Safe Deposit Scotland every week, using a computerised system. Unfortunately, this was one payment which his partner had missed. The money had been in their client account and had not been paid over. Mr Duffy suggested that a penalty of one month's deposit would be nearer to the mark, to bring matters to a conclusion.
13. He said that there were adequate practices and procedures in place. The system works. His partner Phil had been experiencing some personal issues, and Mr

Duffy had been micromanaging the business himself at the time the error occurred.

14. Ms Grieve said that she had been a landlord for a 10 year period. She had engaged the services of the Letting Agents for the past 8 years. She had always found them to be very respectful and helpful. There had never been a single issue arisen over the period she had engaged their services. During the three months that the tenancy was ongoing, she had provided responsible responses to the Applicant, and had deducted money from their rent as a result of minor issues with the freezer turning itself off and on. She did not consider herself to be a rogue landlady. She said that Phil had a very difficult family situation at the time the deposit payment had not been protected.
15. Her position was that at the time that she had secured the services of the Letting Agent that she had ensured that they provided a service level agreement. This was a full service, and the Letting Agents were to look after everything for her and to take care of everything in relation to the deposit payment and prescribed information.

Position of the Applicant

16. Ms McMahon said that she had not been provided with the prescribed information in relation to the deposit as set out in Regulation 42 of the 2011 Regulations from the Letting Agent or the Respondent. The Applicant had found out from Safe Deposit Scotland that the deposit was not secured until outwith the relevant period. She accepted that the 2011 Regulations provided for the tenancy to be paid into an approved scheme within 30 working days as opposed to within 30 days.
17. She said that there had been no information provided by the Letting Agent or indeed the Respondent regarding the fact that the deposit was not paid over until outwith the prescribed period.
18. She had been under the belief that this claim would allow her to bring the Letting Agent into the case as well.
19. The tribunal pointed out that in terms of the legislation that there was an onus on the Landlord in terms of the 2011 Regulations and not the Letting Agents, and that any cause she had for concern regarding the dealings of the Letting Agent could not be dealt with in the context of this particular application.
20. Ms McMahon was prepared to leave the quantification of what an appropriate penalty should be, at the discretion of the Tribunal.

Findings in Fact

21. The parties entered into a PRT in respect of the Property that commenced on 12 August 2024 and which ended on 11 January 2025.
22. A tenancy deposit of £1395 was paid to the Respondent's Letting Agent 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 deposit was lodged with an approved tenancy deposit scheme on 10 October 2025.
25. The Respondent relied upon CP Property as her Letting Agent to attend to timeous lodging of any deposit received, and to provide the prescribed information under Regulation 42 of the 2011 Regulations.
26. The Respondent did not provide all the prescribed information on the tenancy deposit to the Applicant under Regulation 42 of the 2011 Regulations.
27. The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

Reasons for Decision

28. 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 CMD, and that it was appropriate to make a decision under regulation 10 of the 2011 Regulations at the CMD.
29. 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. It was a matter of admission that the Respondent did not lodge

the deposit with an approved scheme or provide the prescribed information within the 30 working day period.

30. 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."

31. 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 the tribunal, both were achieved within a month of the required deadline. The Respondent was reliant on her agent and has no culpability for the slight delay. As for the Letting Agent, there is certainly no suggestion of intentionally breaching the 2011 Regulations and the tribunal was assured that there was no chance of any repeat of the issue. The tribunal accepts that the Respondent treated her obligations with sufficient seriousness by employing a Letting Agent to attend to the deposit. This is regarded this as a significant mitigating factor.

32. In the circumstances, the tribunal is satisfied that this falls in the lowest range of breaches and is awarding £209 under regulation 10 of the 2011 Regulations, being 15% of the deposit amount. This is an appropriate award in consideration of the law and all the facts.

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

Legal Member/Chair

1 August 2025

Date