

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/PR/25/1688

Re: Property at 11/7 St Clair Avenue, Edinburgh, EH6 8JS (“the Property”)

Parties:

Mr Matthew Walker, 16/13 Drumdryan Street, Edinburgh, EH3 9LA (“the Applicant”)

Places For People Scotland - Residential, 4 Hay Avenue, Edinburgh, EH16 4RW (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. By Lease dated 24 April 2024 and 17 June 2024 the Applicant and another person leased the Property from the Respondent.
2. The start date of the tenancy was 1 May 2024.
3. A tenancy deposit of £832.36 was paid on 21 April 2024.
4. The tenancy deposit was not lodged timeously with an approved tenancy deposit scheme. It was lodged on 15 October 2024.

5. The tenancy ended on 20 February 2025. Thereafter, the deposit was returned to the tenants, in full.
6. On 21 April 2025 the Applicant presented an application to the Tribunal seeking to have a penalty imposed on the Respondent in terms of Rule 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The TDS Regs");
7. Prior to the Case Management Hearing the Respondent's representatives lodged written submissions with the Tribunal accepting that there had been a breach of the TDS Regs, accepting that the deposit had not been lodged timeously and that the prescribed information had not been provided to the Applicant.

THE CASE MANAGEMENT DISCUSSION

8. The Applicant participated personally in the Case Management Discussion. The Respondent was represented by Miss L Kennard of Touchstone Property Management.
9. The Applicant moved the Tribunal to make an order in terms of the TDS Regs. His application sought a penalty equivalent to three times the level of the deposit, that being a sum of £2,497.08.
10. Miss Kennard, on behalf of the Respondent, accepted that there had been a breach of the TDS Regs. She, however, was of the view that the penalty imposed should be significantly less than the maximum permitted.
11. In relation to the breach of the TDS Regs themselves, Miss Kennard explained the following:-
 - A responsible property manager within her organisation had made arrangements for the deposit to be paid to Safe Deposits Scotland during May 2024. It should have been paid on 29 May 2024.
 - Within the organisation, however, there are additional checks which require to be undertaken thereafter. Prior to the funds being transferred, the matter needs to be referred to their accounts team where a member of that team approves and confirms the payment.
 - On this occasion, there was an administrative oversight in that the payment was not approved when it should have been.
 - The oversight was not noted until October. When it was noted, steps were taken immediately to lodge the funds with Safe Deposits Scotland.
 - No good explanation could be provided for the delay in the oversight being noted. It was suggested that the matter "must have

been lost in the system” but, as stated, was noted and attended to in October 2024.

- The Respondents representatives manage 3,200 properties. On average, they do 50 “move ins” per month. They have systems in place for the lodging of deposits with Safe Deposits Scotland which normally work well.
- Since this oversight was noted, their systems have been revised and improved. The organisation now makes checks to ensure that all “move in reports” have a DAN (deposit account number) allocated to it by Safe Deposits Scotland.
- They now have additional checks to cross reference the move in reports and DAN number with Safe Deposits Scotland’s “awaiting payments” system. Those checks are now done on a weekly basis.
- The deposit was always available, was lodged and was returned in full, with no claim being made on it by the Respondent.
- While the information prescribed within the TDS Regs was not provided to the Applicant, an email had been forwarded to him on 29 May 2024 advising the funds were to be lodged with Safe Deposits Scotland.

12. The Tribunal asked the Applicant to address it in relation to the level of penalty which ought to be imposed. The Applicant stated that he was seeking a penalty of three times the amount of the deposit, suggesting this was a serious breach of the TDS Regs. He pointed out:-

- There were two breaches, a failure to lodge the deposit and a failure to provide the prescribed information.
- The Respondents agents are a large organisation and should have systems in place.
- The deposit was unprotected for a long period of time.

13. In responding to submissions which had been made by the Respondent’s representative, the Applicant made the following further submissions:-

- He acknowledged that the representatives have admitted a breach of the Regulations.
- He accepted that the failure to comply with the TDS Regs was an administrative error.
- He accepts there was no ill intent on the part of the Respondent’s representatives.
- While accepting there was no ill intent, he stated, correctly, that there does not need to be for there to be a breach of the TDS Regs.
- While accepting he had not suffered any financial loss, he again pointed out, correctly, that there does not need to be for there to be a breach of the TDS Regs.

14. The Applicant stated to the Tribunal that, while he had requested a penalty of three times the amount of the deposit, having reviewed other cases dealt with

by the Tribunal previously, he considered that a penalty of 1.5 – 2 times the level of the deposit would be appropriate in this case. He did not refer in detail to any other cases. The Tribunal notes, however, that each case requires to be determined on its own facts and circumstances and limited assistance can be drawn from other cases previously dealt with by the Tribunal.

15. Having considered the information before it, the Tribunal imposed a penalty of £500.00 on the Respondent.

REASONS FOR DECISION

16. Contrary to the position adopted by the Applicant, the Tribunal, having considered the facts, which were not in dispute, considered the breach of the TDS Regs in this instance to be at the low end of any scale of such breaches. The Tribunal, of course, often deals with cases where deposits are not lodged at all, are not returned at the end of a tenancy, where the landlords are dishonest or evasive about the failure to lodge and the reasons for the same, and occasions when there are repeated breaches by the same landlords or agents. None of those features apply in this case. Indeed, the Applicant acknowledged and accepted that the error in this case was an administrative error which was corrected while the tenancy was still subsisting and that the funds were returned, in full, at the end of the tenancy.

17. In making its decision, the Tribunal considered the following:-

- The failure to lodge the deposit was due to an administrative error rather than a deliberate, conscious decision.
- The deposit was available to be lodged and had not been misused nor disbursed by the Respondents.
- When the error was noted the deposit funds were lodged with an approved scheme.
- The Respondent's representatives were candid in admitting the breach.
- The Respondent's representatives have since upgraded their own procedures to reduce or remove the risk of a similar situation arising in the future.
- The deposit funds were lodged with an approved scheme during the currency of the tenancy.
- The deposit funds were returned to the tenants, in full, at the end of the tenancy, no claim having been made on it by the Respondent.

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of FIVE HUNDRED POUNDS (£500.00) STERLING to the Applicant:

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.

Virgil Crawford

26 September 2025

Legal Member/Chair

Date