

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) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/24/3078

Re: Property at 165/3 Ferry Road, Edinburgh, EH6 4NJ (“the Property”)

Parties:

Miss Geraldine Kimm, Wyndales Lodge, Symington, ML12 6JU and Miss Jodie Findlay, 4 Willow Place, Blairgowrie, PH10 6UY (“the Applicants”) and

Mr Jason Singh, 88 Dudley Avenue, Edinburgh, EH6 4PW (“the Respondent”)

Tribunal Members:

G McWilliams (Legal Member)

D Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that orders for payment by the Respondent to each of the Applicants, in the sum of £825.00, in terms of Regulation 10 (a) of the 2011 Regulations, should be made.

Background and Case Management Discussion on 5th June 2025

1. This Application was brought in terms of Rule 103 (Application for order of payment where Landlord has not paid the deposit into an approved scheme) of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the 2017 Regulations”). The parties’ tenancy agreement began on 1st June 2022 and ended on 30th June 2024. The Applicants each paid £550.00 towards an aggregate deposit amount of £1100.00 at the commencement of the tenancy and this was lodged with Safe Deposits Scotland Limited (“SDS”) on 9th February 2023. SDS paid £100.00 to the Respondent on 3rd October 2024 and returned £500.00 to each Applicant on 29th October 2024, by agreement of all parties.
2. The Application was initially refused as a result of all parties’ non-attendance at a Case Management Discussion (“CMD”) on 22nd November 2024. After the Application was re-instated a further CMD proceeded by remote telephone

conference call at 2pm on 5th June 2025. Reference is made to the Notes on that CMD.

Hearing on 7th October 2025

3. An evidential Hearing proceeded by remote telephone conference call at 10am on 7th October 2025. Both of the Applicants, Miss Kimm and Miss Findlay, attended. The Respondent, Mr Singh, did not attend and was not represented. The Tribunal noted that Mr Singh had sent emails to the Tribunal's office both before and, on one occasion, after the CMD which proceeded on 5th June 2025. In particular, Mr Singh had sent an email to the Tribunal's office on 9th June 2025 attaching copy correspondence from SDS in respect of their payments to the parties. The Tribunal also noted that the Tribunal's office had intimated the details of the Hearing in an email sent to Mr Singh on 21st August 2025. The Tribunal were satisfied that Mr Singh was aware of the importance of these proceedings and the details of the Hearing. There was no explanation for his absence. In the circumstances the Tribunal considered that it was fair and just to carry on with the Hearing.
4. Miss Kimm gave evidence on behalf of both Applicants. She referred to the Application and said that the Applicants sought that the Tribunal determine the appropriate sanction to impose on Mr Singh in respect of his late lodging of the deposit with SDS. She said that she and Miss Findlay had received an email from solicitors instructed by Mr Singh, regarding possible settlement of their claim, on 25th June 2025. Miss Kimm stated that she replied to the lawyers, on behalf of both Applicants, and said that they wish the Tribunal to determine the sanction against Mr Singh.

Findings in Fact and Reasons for Decision

5. The Application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.
6. Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:
“(1) 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.”
7. Regulation 10 of the 2011 Regulations provides as follows:

“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.”

8. The Tribunal found in fact that the Respondent, as landlord was required to pay the Applicants’ deposit monies into an approved scheme within 30 working days of 1st June 2022. This was not done until 9th February 2023. The Tribunal found in law that the Respondent did not comply with the duty under Regulation 3 of the 2011 Regulations.
9. Accordingly, the Tribunal has to order the Respondent to pay the Applicants an amount not exceeding three times the amount of the tenancy deposit.
10. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh, in relation to Regulation 10(a) of the 2011 Regulations, was of the opinion that there had to be a judicial analysis of the nature of the non-compliance in the circumstances of the case and a value attached to reflect a sanction which was fair, proportionate and just given those circumstances. Sheriff Welsh was of the opinion that, when determining the sanction value, the starting point was not the maximum award to be discounted by mitigating factors. He considered that this would be inconsistent with the exercise of balanced, judicial discretion.
11. In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, the Court of Session reiterated that the amount of any payment in terms of Regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
12. In determining a fair, proportionate and just sanction in this Application, the Tribunal have been restricted in that the Respondent has not made representations setting out the circumstances of, and reasons for, his late lodging of the deposit. At the CMD he stated that he would send an email to the Tribunal in this regard. He did not do so.
13. Having exercised their judicial discretion, the Tribunal determined that the sum of £1650.00 is an appropriate sanction to impose. That sum is 1.5 times the amount of the parties’ tenancy deposit and is 50% of the total sanction sum that the Tribunal is empowered to award in terms of the 2011 Regulations. The Tribunal found that, in the absence of representations from the Respondent, this sum fairly, proportionately and justly applies a sanction in respect of the Respondent’s non-compliance with the Regulations. The Applicants’ deposit was not lodged in time. The deposit was unprotected for a relatively short period of time, of some 7 months. The Tribunal considered that a sum of 1.5 times the deposit amount is reasonable given the circumstances of this Application. The Tribunal find that this amount of monetary sanction fairly and reasonably takes account of upset and inconvenience caused to the Applicants as a result of the period of non-protection of their deposit.

Decision

14. Accordingly, the Tribunal have determined that orders for payment by the Respondent to each of the Applicants in the sum of £825.00, in terms of Regulation 10(a) of the 2011 Regulations, should be made.

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.

G McWilliams

7th October 2025

Tribunal Legal Member