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 Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/4248

Re: Property at 3/1 449 Gallowgate, Glasgow, G40 2DX ("the Property")

Parties:

Ms Caitlin MacInnes Irvine, 2/1 2 Belmont Street, Glasgow, G12 8EY ("the Applicant")

Ing Ing Tan, 12 Dunrossie Crescent, Montrose, DD10 9LT ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

At the Hearing which took place by telephone conference on Wednesday 3 September 2025 the Applicant was in attendance. The Respondent was not in attendance but was represented by her daughter, Ms May Gem Tan.

Mr David Grainge of McGoogans attended the Hearing as a witness for the Respondent.

Background

A CMD had previously taken place on 27 March 2025. That CMD was adjourned to the Hearing to allow queries arising out of an email from Mr Grainge dated 14 March 2025 to be answered to allow the Tribunal thereafter to determine the sanction payable by the Respondent to the Applicant in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations").

The Tribunal identified the following issues:-

i. What does assigning "*an incorrect flat position*" mean? Is this an error at McGoogans or at Safe Deposits Scotland? Documentary evidence to support this incorrect assignment is required.
ii. Was the deposit account "*set up*" with McGoogans or Safe Deposit Scotland? Documentary evidence is required.
iii. Where were the system upgrades being done? Were these at McGoogans or Safe Deposits Scotland? Documentary evidence is required.
iv. Who allowed extra time for deposits to be lodged and how much additional time was allowed? Documentary evidence is required.

The Tribunal stated that in order to finally determine this application evidence required to be heard and relevant documentation obtained from Mr Grainge or another representative of McGoogans.

The Hearing

At the Hearing the Tribunal heard evidence from Mr Grainge who stated as follows:-

i. The situation arising is down to his error.
ii. When a deposit is registered a postcode is required and a dropdown of the individual flat addresses is then offered. He selected the wrong flat.
iii. The deposit was therefore registered but with the wrong flat number.
iv. The deposit was registered within the 30 day period allowed.
v. When the error was identified the details were updated which is why a different payment date is shown.
vi. In response to the Tribunal asking if Mr Grainge could confirm the date of payment to Safe Deposits Scotland when the wrong flat was selected he said that he could need to check bank statements.t
vii. Safe Deposits Scotland would not know the wrong flat number had been selected.
viii. The Tribunal asked if a receipt would have been issued for the original payment with the wrong flat number and Mr Grainge said he would still have that.
ix. The Applicant would not receive a receipt for the original payment as the address was wrong.
x. The Tribunal asked whether the receipt would have been sent to the Applicant by email and he agreed.
xi. Safe Deposits Scotland had issues during COVID.
xii. He said Safe Deposits Scotland were upgrading and changing their system for a period and during that time he could not login. More time was therefore given for registering deposits. He would need to check the dates on that but said it did not affect what happened to the Applicant.
xiii. The deposit was paid back to the Applicant in full by Safe Deposits Scotland.
xiv. He manages around 250 properties and trades in his own right. He is the owner of the business and has been in the letting business for over 20 years.

The Applicant had no questions for Mr Grainge. She simply expressed frustration that the evidence previously sought by the Tribunal had still not been provided. She received no receipt from Safe Deposits Scotland. The deposit was paid back to the Applicant on 16 May 2024.

The Tribunal adjourned briefly to consider the position.

Adjournment and Additional Documents

Having still not been provided with any documentary evidence to vouch the deposit paid by the Applicant to Mr Grainge on behalf of the Respondent having been registered with Safe Deposits Scotland within the required 30 day period in terms of Regulation 3 of the 2011 Regulations - albeit under the wrong flat number - the Tribunal reluctantly determined to adjourn their determination to allow Mr Grainge until 10.00am on Friday 5 September 2025 to produce such documentary evidence.

At 10.01 on Friday 5 September 2025 Mr Grainge provided by email a Barclays Bank plc transaction entry showing a "Funds Transfer" of £595 to "SAFEDEPOSIT" on 22 June 2022. However, the transaction entry contained no details of the Property or any other flat within the same building and no details of the Applicant or the Respondent either. The Tribunal could not therefore be satisfied that the transaction entry related to the deposit paid by the Applicant.

On 12 September 2025 the Tribunal issued an email to Mr Grainge in the following terms:-

> "*Dear Mr Grainge*
> *Thank you for your email of 5 September with Barclays transaction statement attached.*
> *The Tribunal have carefully considered the Barclay's transaction statement. However, there is no evidence to connect the payment referred to therein to any of the flats within the property at 449 Gallowgate, Glasgow. The payment could be relative to another property entirely.*
> *Accordingly, in terms of Rule 21(1)(b) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 you are required to provide the following to the Tribunal by 5pm on Monday 15 September 2025 -*
> *Documentary evidence that establishes that the funds transfer of £595 made by McGoogans (Coatbridge) Ltd to Safe Deposits Scotland on 22 June 2022 was made in respect of the property at 449 Gallowgate, Glasgow for example the confirmation and Deposit Protection Certificate from Safe Deposits Scotland issued after the funds transfer had been made.*"

Mr Grainge did not reply. The Tribunal therefore proceeded to determine the application based on the evidence provided.

Findings in Fact
The Tribunal makes the following findings in fact:-

i. The Respondent is the heritable proprietor of the Property.
ii. The Respondent, per her Letting Agent, McGoogans (Coatbridge) Limited ("McGoogans"), leased the Property to the Applicant in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 1 June 2022.
iii. The deposit payable in terms of the PRT was agreed to be £595.
iv. On 18 May 2022 the Applicant paid to McGoogans on behalf of the Respondent a sum of £1190 representing the deposit together with rent due from 1 June 2022 to 30 June 2022, all due in terms of McGoogans' invoice to the Applicant dated 18 May 2022.
v. The Applicant vacated the property on 12 June 2024.
vi. The Applicant assumed the deposit had been paid into an approved deposit scheme per the PRT.
vii. It was only once the Applicant had given notice to terminate the PRT that she enquired as to the deposit. She asked via email on two occasions the name of the deposit scheme into which the deposit was paid. She received no answer.
viii. After the Applicant vacated the Property she contacted the three deposit schemes directly. She ascertained from Safe Deposit Scotland that the deposit had been lodged with them on 16 May 2024.
ix. The deposit was repaid to her in full.
x. The Applicant dealt with David Grainge of McGoogans throughout the tenancy.
xi. McGoogans was the agent of the Respondent throughout the PRT.
xii. The PRT is a relevant tenancy under the 2011 Regulations.
xiii. The Applicant's deposit was not paid to the scheme administrator of an approved scheme within 30 working days of the beginning of the PRT. This failure was the fault of McGoogans and Mr David Grainge in particular.

xiv. A sanction is therefore payable by the Respondent to the Applicant in terms of Regulation 10.
xv. The Respondent, being the disclosed principle of McGoogans, is liable for payment of the sanction.

Reasons for Decision

The factual background was largely not in dispute.

Mr Grainge accepted responsibility for the Applicant's deposit not being timeously registered against the Property.

Whilst Mr Grainge generally presented as a credible and reliable witness the Tribunal could not be persuaded on the balance of probabilities that, in the absence of documentary evidence to vouch the position, he had lodged the deposit timeously but erroneously against another flat within the building of which the Property formed part.

Despite giving him two further opportunities beyond the Hearing on 3 September to produce such evidence he failed to do so. The Tribunal was not persuaded that the Barclays Bank plc transaction entry of 22 June 2022 was sufficient. That entry could have been for any property with a deposit in the same amount.

Having failed to produce the evidence sought by the Tribunal which may have otherwise influenced the level of sanction determined to be appropriate for failing to comply with Regulation 3, the Tribunal took into account the following in coming to a final determination of the application:-

i. That, having regard to the requirement to lodge the deposit in an approved scheme within 30 working days of the beginning of the tenancy, the deposit was effectively unprotected for a period of around 23 months.
ii. Mr Grainge eventually lodged the deposit in full with an approved scheme such that it was protected from 16 May 2024.
iii. The Applicant recovered the deposit in full from Safe Deposits Scotland at the end of the tenancy.

In all the circumstances the Tribunal considered failure to pay the deposit into an approved scheme to be towards the higher end of the scale of sanctions available to it.

The Tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicant a sum of £1190 by way of a penalty for the failure to comply with the Regulations being two times the deposit. Such a penalty is proportionate, fair and just in the circumstances.

The penalty is payable by the Respondent. No doubt she will seek to recover the penalty charge from McGoogans.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should pay to the Applicant a penalty of £1190.

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.

[redacted]

17 October 2025
Date