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/25/1944

Re: 51/3 Lorne Street, Edinburgh EH6 8QJ ("the Property")

Parties:

Gareth Cook and Lisa Montague, 51/3 Lorne Street, Edinburgh EH6 8QJ ("Applicant")

Kate Podles, 40 Howe Street, Edinburgh EH3 6TH ("Applicant's Representative")

Faizul Baksh, 48 Grigor Avenue, Edinburgh EH4 2PG ("Respondent")

TC Young, Solicitors, 7 West George Street, Glasgow G2 1BA ("Respondent's Representative")

Tribunal Members:
Joan Devine (Legal Member)

Decision :
The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should pay to the Applicant the sum of £1,000.

Background and Documents Lodged

1. The Applicant made an application in Form G ("Application") dated and 2 May 2025 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("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"). The documents produced to the Tribunal by the Applicant were a tenancy agreement between the Applicant and the Respondent which commenced on 15 June 2016; a copy notice to leave dated 20 December 2024; a copy notice to quit and AT6 dated 9 April 2025 seeking possession of the Property on 15 June 2025; copy email from the Applicant to Duncan Hamilton dated 11 June 2024 and copy email from My Deposits

Scotland dated 24 February 2023 confirming the deposit paid by the Applicant had been protected.

2. A copy of the Application and notification of a Case Management Discussion fixed for 6 October 2025 was given to the Respondent by Sheriff Officer on 21 August 2025. On 10 September 2025 the Respondent's Representative lodged a written representation. On 19 September 2025 the Applicant lodged a written submission. On 26 September 2025 the Respondent's Representative lodged copy emails from the Applicant to the Respondent dated 21 February 2023 and 3 April 2025 along with copy authorities. On 2 October 2025 the Applicant's Representative lodge copy emails dated 9 April 2025, 11 June 2024, 18 September 2024, 26 December 2024, 23 January 2025 and 22 April 2025; copy letters dated 23 September 2025 and 21 July 2025 along with copy authorities.

Case Management Discussion ("CMD")

3. A CMD took place on 6 October 2025 by conference call. Gareth Cook of the Applicant was in attendance and was represented by Kate Podles. The Respondent was not in attendance but was represented by Claire Mullen of the Respondent's Representative. The Tribunal explained the terms of regulation 10 of the 2011 Regulations.

4. The Parties agreed that the tenancy commenced on 15 June 2016, that a deposit of £825 was paid by the Applicant to the Respondent on 15 June 2016, that the deposit was lodged with an approved scheme on 24 February 2023 and that the tenancy was ongoing.

5. The Tribunal noted that there was reference in the papers to a repairs application having been made by the Applicant. Ms Podles confirmed that was correct and said that a date had not yet been given for an inspection. Ms Mullen told the Tribunal that an application had been made for an eviction order but the case had not yet progressed through the sift.

6. The Tribunal noted the representations and documents lodged and asked Ms Podles if there was anything in particular she wished the Tribunal to take from the documents. She said that since 2020 Mr Cook had numerous conversations with the Respondent as the Respondent ignored texts and emails. Mr Cook told the Tribunal that the Respondent said that he would raise the rent. Mr Cook consulted with Ms Podles and she told him that was illegal. He said Ms Podles attended the Property and noted there were no smoke and heat alarms in place. She told him that the way the Respondent was operating was not correct. Mr Cook said that this was at the end of 2023 / beginning of 2024. He said that after this he communicated with the Respondent by email.

7. Ms Podles told the Tribunal that the Respondent was not a registered landlord, there was no provision for detection of smoke or heat in the Property and the deposit paid was not lodged with an approved scheme. She said that the Applicant repeatedly requested compliance as regards these matters. She said it was not correct to say that each of these matters was rectified. She said that the Respondent was registered as a landlord from 2 March 2023. She said that smoke alarms were fitted on 1 March 2023 and an EICR was provided on 1 March 2023. She said the electrician noted the fuse box was unsafe and it was replaced. She said that a gas safety certificate was provided in February 2023 but it was invalid as there was no carbon monoxide detector in the Property. She said that certification regarding legionella and an energy performance were provided on 23 June 2025 and that a PAT certificate was outstanding. She said it was disputed that the Respondent is an "amateur landlord".

8. Ms Mullen adopted the written submission which she had lodged. She said that there had been a breach of the 2011 Regulations by the Respondent but any award should be at the lower end of the scale. Ms Mullen confirmed that the Property is the only rental property owned by the Respondent. She said that any failure to comply with other legal obligations was irrelevant as there are other remedies available in respect of such matters. Ms Mullen referred to *Jenson v Fappiano* 2015 1 WLUK 625 at paragraph 17 and to *Pollock v Mitchell* dated 8 October 2020, a copy of which had been lodged by Ms Podles.

9. Ms Mullen noted the copy newspaper articles lodged on behalf of the Applicant and submitted that they were irrelevant. She said that they did not evidence knowledge on the part of the Respondent. She also noted that none of them made reference to the regulations regarding tenancy deposits. She submitted that the letters lodged from Autism Initiatives Scotland, the NHS and Community Renewal were also irrelevant. She submitted that the letters were not unbiased as the writer of the letters was not aware of the background. She noted that the letter from Community Renewal referred to various matters at paragraph 2 including the threat of eviction but it did not refer to failure to comply with tenancy deposit regulations. Ms Mullen referred to paragraph 15 of *Jenson v Fappiano* and submitted that any sanction must not be measured subjectively but should have an objective basis and a rationale to the sanction. She noted that the letter from Autism Initiatives Scotland did not refer to breach of the tenancy deposit regulations. She noted that the letter referred to "repeated eviction threats". She submitted that the service of notices was not a "threat".

10. Ms Mullen referred to the copy emails lodged from Mr Cook dated 21 February 2023 and 3 April 2025. She referred to the first email at page 1 /4 of the inventory of productions, paragraph 1 which referred to the Respondent wishing to move a relative into the Property and 6 month's notice being given. She

submitted that this was not threatening but an informal request for the Applicant to find a new home. She referred to page 1 /5 of the inventory where Mr Cook put forward a proposal he was "happy with" which involved the Applicant staying in the Property for a further 2 years from February 2023. Ms Mullen referred to the second email at page 2 /1 of the productions where Mr Cook referred to aiming to secure accommodation by September 2024 and to paragraph 5 where Mr Cook referred to the Applicant being "fully aware of our rights and responsibilities as tenants, including the recourse to appeal any eviction through the appropriate channels, such as the First-tier Tribunal, should the need arise". Ms Mullen submitted that these comments suggested the Applicant was not threatened or intimidated.

11. Ms Mullen submitted that the documents lodged indicated that the first time the Applicant intimated to the Respondent a breach of the 2011 Regulations was on 21 February 2023 by email. She also noted that the application referred to the Applicant becoming aware of the requirement for a deposit to be protected in 2023. She referred to section 7 (c) of the application which referred to the Applicant being unaware of their rights until 2023.

12. Ms Mullen submitted that the Tribunal should take into account a number of mitigating factors being the Respondent is an amateur landlord, the Respondent is not a serial non-complier, the breach is not flagrant and the Applicant will have the benefit of the deposit being lodged in an approved scheme at the end of the tenancy.

13. Ms Mullen referred to the authorities which she had lodged. She referred to *Tenzin v Russell* 2015 Hous LR 11 and to *Wood v Johnston* FTS/HPC/PR/18/3634 where only £50 was awarded. She referred to *Fraser v Meehan* 2012 SLT (Sh Ct) 119 where the highest sanction was made but no mitigating factors were put forward. She referred to paragraph 7. She submitted that this case was not analogous to the present case. She submitted that *Jensen v Fappiano* and *Wood v Johnston* were the most analogous.

14. The Tribunal asked Ms Podles when, in her submission, the Respondent was made aware of the 2011 Regulations by the Applicant. Mr Cook said that the issue was raised in conversation in October or November 2022. Ms Podles said that the emails from Mr Cook lodged on behalf of the Respondent and referred to by Ms Mullen were sent without supervision. She said that the Respondent did not communicate by email and preferred face to face discussions. Ms Podles noted that the Applicant had lived in the Property for 7 years without appropriate alarms and with a boiler that did not function. She submitted that the Respondent runs a successful business. She agreed that the Property is the only rental property owned by the Respondent.

15. The Tribunal noted that Ms Podles had lodged copies of 6 decisions of the First-tier Tribunal regarding the 2011 Regulations and asked if there were any in particular she wished to highlight. Ms Podles said that *Myburgh v Atlantis-A Ltd* FTS/HPC/PR/25/1048 dated 25 June 2025 was the most similar to the current application.

16. Ms Mullen submitted that *Myburgh v Atlantis-A Ltd* differed to the current application as the landlord in that case was a commercial landlord who could not deny knowledge of the 2011 Regulations. The tenancy agreement in that case referred to the 2011 Regulations which is not the situation in the current case.

17. The Tribunal expressed the view that it had sufficient information to proceed to make a decision without the need for a further Hearing. The Parties stated that they were content for the Tribunal to make a decision on the basis of the information presented.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a tenancy agreement which commenced on 15 June 2016.

2. The tenancy is ongoing.

3. The Applicant paid to the Respondent a deposit of £825 on15 June 2016.

4. The deposit was not paid to the administrator of an approved scheme in compliance with the 2011 Regulations until 24 February 2023.

5. The Property is the only rental property owned by the Respondent.

Findings in Fact and Law

6. The Respondent breached Regulation 3 of the 2011 Regulations.

Relevant Legislation

18. Regulation 3 of the 2011 Regulations provides *inter alia* :

"*(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……

19. Regulation 10 of the 2011 Regulations provides *inter alia* :

"*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"

Reasons for the Decision

20. 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 until 23 February 2023. It was not disputed that the Property is the only rental property owned by the Respondent.

21. The Applicant submitted that the Respondent had failed to comply with his obligations as a landlord in that he was not registered as a landlord until 2 March 2023 and had failed to ensure the Property met the repairing standard set out in the Housing (Scotland) Act 2006. Ms Podles told the Tribunal that the Applicant has now made an application to the Tribunal regarding the repairing standard. The failure to register as a landlord has been rectified and the Applicant is now taking steps to pursue the remedy available to them as regards the repairing standard. The Tribunal did not consider these matters to be relevant as noted in *Jenson v Fappiano* and *Pollock v Mitchell*.

22. The Applicant had lodged various newspaper articles regarding landlord's duties in support of a submission that the Respondent must have known the nature of his obligations under the 2011 Regulations. None of the articles however referred to the 2011 Regulations. Further, there was no evidence to show that the Respondent was aware of these articles.

23. Mr Cook told the Tribunal that he raised the issue of compliance with the 2011 Regulations with the Respondent in October or November 2022. The Respondent had lodged a copy email dated 21 February 2023 in which the matter was specifically raised. This was consistent with the statement made by

the Applicant in the application where they stated they became aware of the requirement for a deposit to be protected in 2023. Whether the matter was raised with the Respondent in late 2022 or early 2023, the Respondent took steps to protect the deposit with effect from 24 February 2023. It was not however the responsibility of the Applicant to inform the Respondent of his responsibilities under the 2011 Regulations. The Respondent should have been aware of those obligations. Ignorance of the 2011 Regulations is not a valid excuse for non-compliance.

24. It was the Applicant's position that the Respondent had made repeated eviction threats and had acted in an aggressive manner. Ms Mullen's position was that the emails lodged did not support this and that the allegation of aggressive behaviour was denied. The Tribunal had been told that notices to terminate the tenancy had been served and an application for an eviction order was now with the Tribunal. Those issues may be of relevance in the eviction application but they are of little relevance to the current application. The Tribunal considered the letters lodged from Autism Initiatives Scotland, the NHS and Community Renewal and determined that they would be relevant in an application for an eviction order but little weight should be attached to them in the current application.

25. The amount to be awarded by way of compensation in respect of breach of the 2011 Regulations is a matter for the discretion of the Tribunal having regard 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."

26. The Respondent was unaware of the need to lodge a deposit in a scheme until late 2022 at the earliest and February 2023 at the latest. Ignorance of the law is not however, an excuse for non-compliance. The deposit was lodged with an approved scheme on 24 February 2023. The Applicant will therefore have the benefit of the scheme in the event of the tenancy coming to an end and there being a dispute regarding return of the deposit.

27. The Respondent admitted there had been a failure and has engaged in the Tribunal process which lessens fault. There was no evidence of fraudulent intention or actual loss being suffered by the Applicant. It was agreed that the Property is the only rental property owned by the Respondent.

28. Whilst the admission of failure lessens fault, the deposit was unprotected for a significant period of time. The Tribunal considered that was an aggravating factor. The Tribunal considered the authorities lodged by both Parties. Ms Mullen submitted that *Jenson v Fappiano and Wood v Johnston* were the most analogous to the current application. In Jenson the deposit was paid in July 2013 and was lodged in an approved scheme in January 2014. The award made was one third of the deposit. In *Wood* the award was £50. Ms Podles submitted that *Myburgh v Atlantis-A Ltd,* where the award made was two times the deposit, was the most similar to the current application. Of the six authorities lodged on behalf of the Respondent, in four of them the deposit was never protected. In *Myburgh* the deposit was lodged 9 months late and the landlord was considered to be experienced. The decision was made in the absence of the landlord who did not attend the hearing. In those circumstances no mitigating factors were put forward. The second authority lodged on behalf of the Applicant where the deposit was protected although late was *Dresel v McHugh* FTS/HPC/PR/25/0973 dated 14 August 2025. In that case the deposit of £425 was lodged only 6 days late by a letting agent acting for the landlord. The award made was £100. In *Rollet v Mackie*, referred to above, the award made was two times the deposit although no aggravating factors were found to be present. It is apparent from a review of the various cases that the sanctions imposed vary greatly.

29. As noted in *Jenson v Fappiano* the sanction is not to be measured by loss or prejudice suffered by the Applicant. This is not a case of non-compliance that results in purpose of the scheme being frustrated in that the deposit is now protected. It is however a case where the deposit was unprotected for a significant period.

30. The Tribunal considered that it would be appropriate to make an award of compensation at the lower end of the scale. The Tribunal determined that the

sanction should be £1,000 in the particular facts and circumstances of this case. The Tribunal considered that figure to be fair and proportionate.

Decision

The Tribunal granted an Order for payment of £1,000 in terms of Regulation 10(a) of the 2011 Regulations.

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.

Joan Devine

Legal Member **Date: 6 October 2025**