Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Regulations") and The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/25/0318

Re: Property at 94 Gilmore Place, Edinburgh, EH3 9PF ("the Property")

Parties:

Ms Bojana McLean, 94 Gilmore Place, Edinburgh, EH3 9PF ("the Applicant")

Mr Stuart McLeod, 37 Polwarth Gardens, Edinburgh, EH11 1LA ("the Respondent")

Tribunal Members:

Nicola Weir (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment in the sum of £900 should be made by the Respondent to the Applicant.

Background

1. By application received on 27 January 2025, the Applicant applied to the Tribunal for an order for payment against the Respondent in respect of failure to carry out his duties as landlord in relation to a tenancy deposit. The failure alleged was a failure to lodge the deposit within an approved scheme within the required time limit (30 working days) in terms of the 2011 Regulations. The Applicant sought compensation of the maximum amount permitted by the legislation, namely three times the deposit amount on the basis that her deposit had not been protected for around 3 years. Supporting documentation was lodged in respect of the application, including a copy of the tenancy agreement, proof of payment of the deposit of £555 by the Applicant to the Respondent and confirmation from the three tenancy deposit schemes confirming that the

tenancy was not lodged with them. The tenancy was a Private Residential Tenancy which had commenced on 28 February 2022 and was ongoing.

2. Following initial procedure, on 29 January 2025, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.

3. On 22 September 2025, a copy of the application papers and details of the Case Management Discussion ("CMD") to take place were served on the Respondent by Sheriff Officer. Any written representations by the Respondent were to be lodged with the Tribunal by a specified date.

4. On 30 September 2025, the Respondent lodged written representations, to which the Applicant responded on 6 October 2025, and to which the Respondent further responded on 16 October 2025. Both parties also lodged documentation in support of their respective positions.

Case Management Discussion

5. The CMD took place by telephone conference call on 30 October 2025 at 2pm. Both the Applicant, Ms Bojana McLean and the Respondent, Mr Stuart McLeod were in attendance.

6. After introductions and introductory remarks by the Legal Member, during which she explained the purpose of the CMD, there was detailed discussion regarding the application and Mr McLeod's response to the application. As per his initial written representations, Mr McLeod admitted the breach of the tenancy deposit regulations and had put forward an explanation as to how this had come about. He stated that when the tenancy started and he had received the deposit from Ms McLean, he was still awaiting references for her, so had delayed lodging the deposit in a scheme until he had received the references. He did not ever receive the references. Athough he was aware that he had not lodged the deposit, and was worried about that, his understanding was that if he were then to try and lodge the deposit, it would be 'non-compliant' due to being lodged late and the tenancy deposit scheme would issue formal notification of that to both himself and Ms McLean. He stated that he had found Ms McLean quite difficult to deal with throughout the tenancy on several matters. Subsequently, after a dispute had arisen regarding payment of the utility bills, Mr McLeod confirmed that he had tried to rectify the situation by having the tenant sign up to a new tenancy agreement, adding in some new clauses about the utility bills. He explained that he proposed to return the original deposit to her and then charge a lesser deposit of £500 in respect of the new tenancy, which he would then lodge with the scheme on time and essentially get him 'back on track' with matters. However, Ms McLean refused to sign up to the new tenancy so this never happened. Mr McLeod confirmed that he has therefore never paid Ms McLean's deposit into a scheme, but stressed that he does hold it securely in a bank account so that it could immediately be returned to Ms McLean, when required.

7. The Legal Member asked whether Mr McLeod had considered paying the deposit into a scheme once this application was raised against him, as that is generally considered by the Tribunal to mitigate the breach, given that the deposit is then protected, albeit lodged late. It was explained that the main purpose of the tenancy deposit regulations is so that parties have the reassurance that, if a dispute arises at the end of the tenancy regarding return of the deposit to the tenant, the parties have access to the free adjudication procedures provided by the scheme. Mr McLeod explained that he had thought initially that he could not lodge the deposit late at all and then, subsequently, that if he did lodge it late, it would be 'non-compliant'. He appeared to be under the misapprehension that if he were to lodge the deposit now, this could prompt a further claim of breach of the regulations by Ms McLean. The Legal Member explained that this was not the case but that the Tribunal cannot provide him with advice on the matter. It was stated that he should consider taking some independent advice on the matter, or seeking guidance from the scheme itself, their website or the Tribunal website or other online sources of advice and information. Mr McLeod confirmed that he would now consider lodging the deposit in a scheme following the CMD.

8. Ms McLean was asked for her response to what Mr McLeod had said. She confirmed that her deposit has not been protected now for a period of around three and a half years. She raised the matter with him in December 2024, having been informed by the other tenant that he had lodged her deposit late. He had not told her the truth at that point and simply said that he would provide her with a note of the relevant certificate number for the scheme where her deposit was. She thinks that his attempt to create another contract was a deliberate attempt to avoid having to disclose the situation regarding the tenancy deposit. Ms McLean explained that this was her first private tenancy in Scotland and that she had relied upon the good faith of Mr McLeod to deal with the deposit properly and lodge it with Safe Deposits Scotland, as had been stated in the tenancy agreement. She feels that he took advantage of her lack of knowledge of the system. She considered that Mr McLeod has already had a lot of time to seek advice on the matter and that he should have admitted what had happened sooner. She was worried about the situation because of what she had been told by the other tenant who moved in in October 2024, whose own deposit had been lodged late. She confirmed that it would reassure her if Mr McLeod were to lodge the deposit now, although still thinks this should have been done much quicker.

9. Mr McLeod stated, as regards the other tenant, that he had lodged the deposit late for several reasons and had been issued with an email by SDS telling him this was 'non-compliant'. For the reasons stated above, he had requested the deposit back and paid it back to the other tenant, before collecting a 'new' deposit from her and paying it back into the scheme. It was then regarded as compliant as it was lodged within 30 days of a new tenancy agreement being entered into with the other tenant. He explained that this was why he had proposed to do the same with Ms McLean. As to the meeting in December 2024 when Ms McLean had asked him about her own deposit, he explained that the meeting had been mainly to do with the energy bills and had not really known what to do for the best. He explained that he had not wanted to cause Ms

McLean more worry about the deposit by informing her it was not held in a scheme.

10. The Legal Member indicated that it is clear that there has been a breach of the tenancy deposit regulations by Mr McLeod and that he had admitted this, albeit that he had offered explanation in mitigation of the matter. It was confirmed that an order would therefore be made against Mr McLeod. The parties were then asked for their comments on the appropriate level of penalty to be imposed.

11. Ms McLean confirmed that she maintained that the penalty should be the maximum available of three times the deposit amount, namely £1,665. She stated that this was not the first time that Mr McLeod had breached the regulations as the same had happened with the other tenant's deposit being lodged late. She was also concerned as she had witnessed Mr McLeod dealing with a previous tenant's return of deposit orally and informally, rather than through a scheme, and had deducted a portion of the deposit for redecoration costs which both the previous tenant and Ms McLean considered unreasonable. Mr McLeod has been renting out this property for a number of years and should have dealt with the deposit properly in the first place. He should also have admitted the true situation straight away when asked in December 2024. He has now had three and a half years to rectify the position but has failed to do so. He should not have made the lodging of the deposit conditional on her providing references and had no need for references as she has been a good tenant and has always looked after the property well. The impact on Ms McLean was a lot of stress. She had thought the deposit was protected and he was not truthful about this when she first raised the matter with him in December 2024. She had followed this request up by email and did not receive any response. She then contacted the three tenancy deposit schemes and was worried when she found out her deposit had not been lodged at all. Having seen what had happened to the previous tenant, she had no reassurance that the deposit would be dealt with properly when she moves out. She reiterated that this was not a 'one-time' mistake on the part of Mr McLeod.

12. Mr McLeod explained that he had let out this property for around five years after his daughter previously lived there. He has one other let property which is managed on his behalf by a letting agency who deal with everything, including the tenancy deposits. He confirmed that he had recently thought of using the letting agency in the management of this property too, particularly due to the difficulties he has experienced with Ms McLean. He has never had any other such Tribunal claims made against him. He has always used SDS as his tenancy deposit scheme and intends to continue doing so. Whilst he understands Ms McLean's concerns, he does not consider that she should have been overly concerned he has always held her deposit safely and feels that he has treated her fairly as a landlord and that she has a lovely room in a well-maintained, safety compliant property. He would have fairly sorted out the return of the whole deposit to her and had planned to so as part of entering into a new tenancy agreement, which would have involved the payment of a reduced deposit amount of £500. He wished that she had given him the opportunity to sort things out, rather than referring the matter to the Tribunal. As regards the previous tenant mentioned by Ms McLean, Mr McLeod stated

that he had only made a small deduction from that deposit. He does not consider that a penalty of three times the deposit amount is justified and states that only a small payment should be required. He pointed out that there has been no financial loss to Ms McLean, although understands the anxiety aspects of her claim. As regards the length of time he has been in breach of the regulations, Mr McLeod reiterated his explanation for this.

13. In summing up, Ms McLean stated that the comments Mr McLeod had made about her not producing references was immaterial in relation to this claim. It has no bearing on the legal position and is not an excuse for his failure to comply with the deposit regulations, She confirmed that she was the one who had had to gather all the information and make this claim to the Tribunal given that he had not responded appropriately to her request for information regarding the deposit at the meeting in December 2024, nor to her further email following this up.

14. Mr MacLeod referred to the difficulties he has experienced dealing with Ms McLean during the tenancy and considers her to be quite a strong, dominating person. She has a good tenancy and has not lost out financially in any way. He disputes the suggestion in her written representations to the Tribunal that he has threatened her with eviction. The deposit has always been available and is held securely by him on a bank account. He does intend to put it into a scheme now and apologised for the anxiety caused to Ms McLean, He reiterated that he considers she should, however, have raised the matter with him again before coming to the Tribunal as he would have sorted it all out.

15. Following the discussions, the Legal Member reiterated that she was satisfied that there was a clear breach of the 2011 Regulations, which was admitted by the Mr McLeod and that, in terms of those Regulations, a payment order would accordingly be made in favour of the Applicant. The Legal Member confirmed that she would fully consider the representations made by both parties as to the appropriate sanction and would issue a written decision shortly, specifying the amount of the payment order, explaining the reasons for same and providing information on the appeals process. Parties were thanked for their attendance and the CMD concluded.

Findings in Fact

1. The Respondent is the owner and landlord of the Property.

2. The Applicant is the tenant of the Property by virtue of a Private Residential Tenancy commencing on 2 March 2022, which is still ongoing.

3. The Applicant paid to the Respondent a tenancy deposit of £555 shortly after the outset of the tenancy.

4. The Respondent has never lodged the deposit in a tenancy deposit scheme, despite the tenancy agreement specifying that the deposit would be lodged with

Safe Deposits Scotland within 30 working days of the commencement of the tenancy.

5. The tenancy deposit has therefore been unprotected for over three and a half years.

6. Some issues have arisen between the parties during the tenancy in respect of various matters, some of which appear to remain unresolved.

7. The Applicant first sought confirmation from the Respondent regarding her tenancy deposit in December 2024 and was informed by him that he would provide her with the relevant deposit certificate number.

8. The Respondent did not then do so and did not respond further to the Applicant concerning the matter.

9. The Respondent admits the breach of the 2011 Regulations.

Reasons for Decision

1. The application was in order and had been submitted timeously to the Tribunal in terms of Regulation 9(2) of the 2011 Regulations [as amended to bring these matters within the jurisdiction of the Tribunal], the relevant sections of which are as follows:-

"9.—(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(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 sheriff 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."

Regulation 3 duties referred to above, are as follows:-

"3.—(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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A "relevant tenancy" for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a)in respect of which the landlord is a relevant person; and

(b)by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions "relevant person" and "unconnected person" have the meanings conferred by section 83(8) of the 2004 Act."

2. The Legal Member was satisfied from the documentation before her and the oral representations made at the CMD that the Respondent was under the duties outlined in Regulation 3 above and had failed to ensure that the deposit paid by the Applicant was paid into an approved tenancy deposit scheme within 30 working days of the start of the tenancy, contrary to Regulation 3 of the 2011 Regulations. This was admitted by the Respondent, as were the pertinent facts. The Legal Member was therefore satisfied that the application did not require to be continued to an Evidential Hearing and that, in terms of Regulation 10 above that a sanction must be imposed on the Respondent in respect of this breach of the 2011 Regulations.
3. In determining the appropriate amount of the sanction to be imposed on the Respondent for payment to the Applicant, the Legal Member considered carefully all the background circumstances and the information received from both parties on the matter, both by way of their detailed written representations and their further oral submissions at the CMD. The Legal Member considered that the amount of the sanction should reflect the gravity of the breach. The Respondent had requested leniency. The Applicant considered that the maximum sanction should be payable. As the deposit here was £555, in terms of Regulation 10(a) above, the maximum possible sanction is £1,665. There is no minimum sanction stipulated in the 2011 Regulations.
4. The Legal Member considered that there were both aggravating factors and mitigating factors here, which required to be taken into account when assessing the appropriate penalty. The Legal Member considered the length of the tenancy to date of just over 3 years and 8 months and that the deposit had not yet been placed in a scheme. It had therefore been unprotected for just short of that period, as the deposit had been paid by the Applicant to the Respondent shortly after the tenancy commencement date. Although the Respondent had

provided a detailed explanation as to why he had not lodged the deposit in a scheme, he admitted having been aware of the situation throughout and also to not having been transparent regarding the issue when the Applicant first raised it with him in December 2024. In the circumstances, the Legal Member considered this a relatively serious breach of the 2011 Regulations.

5. Both parties, however, clearly had some grievances with the other related to other aspects of the tenancy which were outwith the scope of this application. This explained, to some extent, why the Respondent had chosen to try and deal with matters in the way he had and also why the Applicant had the concerns she had regarding his non-lodging of the deposit. She was aware of what had happened with regard to a previous tenant's deposit and also the late lodging of her current joint tenant's deposit by the Respondent. Her concerns were understandably compounded when the Respondent was not forthcoming with the information she had requested regarding her own deposit and her subsequent discovery that he had not lodged her deposit in any of the three tenancy deposit schemes. The Respondent countered this by explaining that he had held the deposit securely throughout in a bank account and fully intended to return the deposit to the Applicant whom he considered should have approached him again regarding the matter before referring the matter to the Tribunal. The Legal Member was not persuaded in this regard as the Applicant had no way of knowing what the Respondent's intentions were and clearly had some understandable concerns based on her knowledge of what had transpired with other tenants previously.

6. It was conceded by the Applicant that she had not experienced financial loss to date in connection with the non-lodging of the deposit. It was accepted by the Respondent that the Applicant had been caused some anxiety, for which he apologised. The Legal Member was of the view, as expressed during the CMD, that the Respondent could have taken steps to mitigate the situation by seeking the appropriate advice at the appropriate time and arranging to lodge the Applicant's deposit, albeit late, with a tenancy deposit scheme. He would still not necessarily have been able to escape liability in respect of his breach of the 2011 Regulations but this proactive action would have shortened the period during which the deposit was unprotected and also the length of time that the Applicant experienced stress and anxiety regarding the matter. Had she known that the deposit had been lodged in a scheme, albeit late, the Applicant would at least have had the reassurance that she would have access to the scheme's processes regarding return of the deposit at the end of her tenancy, as opposed to the Respondent keeping control of the deposit and unilaterally deciding whether it should be returned in full or deductions made from it. The Legal Member considered the length of time the Respondent had been a landlord, that he let out another property in addition to this one and that he already employed a letting agent in respect of the management of his other property from whom he could no doubt have taken advice. Whilst the Legal Member did not consider it established that the Respondent's motivation had been fraudulent or to deprive the Applicant of her rights in respect of the tenancy deposit, nor that he was a 'repeat offender' as alleged by the Applicant, nor did the Legal Member consider this to be a case of mere inadvertence on the part of the Respondent. He had admitted that he was aware of his obligation throughout this tenancy to lodge the Applicant's deposit in a scheme. The Legal

Member did accept his explanation about misunderstanding the position as to the potential consequences of lodging the deposit late, but ignorance of the legal position is not an acceptable excuse. The Regulations have been in place since 2011 and the Respondent has been a landlord for some years. If he was unclear about the position, he should have taken appropriate advice at a much earlier stage and lodged the deposit in a scheme, rather than trying to find a 'workaround' solution himself and keep the information about the deposit from the Applicant. The Legal Member accepted the Applicant's position that she had been inconvenienced and caused some unnecessary stress and anxiety as a consequence of discovering the Respondent's continuing failure to lodge her deposit in a scheme and providing her with misleading information when she first raised the issue of her tenancy deposit with him. The purpose of the penalty provisions in the 2011 Regulations is not to enrich tenants at the expense of landlords but rather to further the public interest in having a robust system in place to enforce the legal duties landlords are under in respect of tenancy deposits, to have a deterrent effect and to encourage compliance amongst landlords. Weighing all of these factors, the Legal Member determined that £900 was the appropriate, fair and proportionate amount of the sanction to be paid by the Respondent to the Applicant, which is between one-and-a half and two times the amount of the deposit.

7. The Respondent had stated the intention to lodge the deposit of £555 in a scheme following the CMD and it is hoped that he would now take any necessary advice and do so. Parties are reminded that if a dispute arises at the end of a tenancy regarding return of the tenancy deposit to the tenant, and the deposit has not been lodged in a scheme, there is the potential for a further right of action for the tenant through the Tribunal for payment of the deposit/part of the deposit by the landlord to the tenant.

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.

N.Weir

Legal Member/Chair **30 October 2025**
Date