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 Rule 30 (Recall of Decision), 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/24/3386

Re: Property at 42/15 East Main Street, Armadale, EH48 2NS ("the Property")

Parties:

Miss Morgan Ure, 613 Leyland Road, Bathgate, EH48 2GU ("the Applicant")

Mr Russell Beresford, 52 Birniehill Cresent, Bathgate, EH48 2RS ("the Respondent")

Tribunal Members:

Nicola Weir (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that (1) the Tribunal's previous Decision to dismiss the application dated 7 July 2025 be Recalled and (2) an Order for payment in the sum of £750.00 should be made by the Respondent to the Applicant.

Background

1. By application received on 13 July 2024, 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 in respect of this failure. Supporting documentation was lodged in respect of the application. A tenancy agreement had been entered into in the joint names of the Applicant and another tenant on 1 September 2021 and a subsequent tenancy agreement entered into with the Applicant as sole tenant on 1 June 2023. A deposit of £500 had been paid to

the Respondent on 3 September 2021, at the outset of the joint tenancy and the Applicant claimed this had not ever been paid into a tenancy deposit scheme by the Respondent. The Applicant had vacated the Property around 30 May 2024.

2. A separate payment application by the Applicant against the Respondent for return of the tenancy deposit to her was also lodged, conjoined with this application and both proceeded together through the Tribunal process until 7 July 2025 when both applications were dismissed.

3. Following initial procedure, on 9 August 2024, 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 and the application was notified to the Respondent by Sheriff Officer on 12 February 2025. Written representations were lodged by the Respondent on 25 February 2025, which dealt with both applications. In respect of this application, he stated as follows:-

   "I have been a landlord for several years and I take the responsibility seriously and when I first started as a landlord as previously stated I was part of the private leasing scheme, and it wasn't required. When I leased the property myself again this wasn't required, I should have been more vigilant with the new rules coming into play, and I can only apologise for.

   There were also a few years that we did not take deposits from tenants due to them being known to myself."

4. A Case Management Discussion (CMD) took place before a different Legal Member of the Tribunal on 18 March 2025. Both parties were in attendance and discussion took place. The CMD was continued to a further CMD, in respect of both applications to allow clarification on whether the Application was to proceed in the sole name of the Applicant and for parties to consider their position in relation to whether the tenancy dated 1 September 2021 had been terminated and what the status of the later tenancy of 1June 2023 was. A CMD Note was issued to the parties following the CMD explaining the above.

5. On 21 April 2025, the Applicant lodged some written representations, attaching a signed mandate from her former joint tenant authorising her to proceed with these applications in her sole name, although he was supportive of them.

6. A further CMD was scheduled to take place on 7 July 2025 and details were intimated to both parties. This again took place before the previous Legal Member. The Respondent attended but the Applicant did not appear and was not represented, with no explanation. Both applications were accordingly dismissed in terms of Rule 27(2)(b) of the Regulations and Decisions to this effect were issued to parties following the CMD.

7. On 18 July 2025, the Applicant lodged an application for Recall dated 9 July 2025 of the Decision dated 7 July 2025 in respect of this application only. It was intimated to the Respondent but no representations were lodged by him. The previous Legal Member considered the application and decided that a further CMD should be fixed for the application for Recall to be considered by a fresh Tribunal. This Decision was dated 7 August 2025 and intimated to both parties.

8. A third CMD was thereafter scheduled to take place on 21 November 2025 and details were notified to parties. No further written representations were lodged by either party in advance of the CMD.

Case Management Discussion – 21 November 2025

9. The CMD took place by telephone conference call on 21 November 2025 in front of the new Legal Member. Both parties were in attendance.

10. Following introductions and introductory remarks by the Legal Member, she explained the procedural background to the matter and the purpose of this CMD.

11. The Application for Recall by the Applicant of the previous Tribunal Decision to dismiss this application dated 7 July 2025 was discussed first. Miss Ure explained her non-attendance at the CMD on 7 July 2025, as explained in her application for Recall. Her explanation was that she had been unable to attend the CMD as her gran had a medical emergency that morning and Miss Ure had required to assist her. It was noted by the Legal Member that, on the day of the CMD on 7 July 2025, at 12.59, Miss Ure had emailed the Tribunal explaining why she had been unable to attend the CMD earlier. She had followed this up with a further email on 8 July 2025 and had subsequently lodged her application for Recall within the time limit permitted. Miss Ure was also asked about her failure to provide further information to the Tribunal, following the first CMD, regarding the two tenancy agreements and the status of her former joint tenant. She explained that she thought she had complied with what had been asked by the Tribunal by lodging copies of the two tenancy agreements, explaining the background to the initial joint tenancy and subsequent sole tenancy and lodging a mandate from her former joint tenant following the first CMD, confirming that he was happy with this application proceeding in the Applicant's sole name. Miss Ure confirmed that the former joint tenant was her former partner and that he had moved out of the Property prior to her signing up to the sole tenancy.

12. The Respondent, Mr Beresford, was asked for his comments and he confirmed the position regarding the two tenancy agreements was as had been stated by Miss Ure. It was accepted that the tenancy deposit had been paid at the outset of the joint tenancy in 2021 and had just been 'carried over' in respect of the later tenancy.

13. Having considered the position, the Legal Member confirmed that she was satisfied that, in these circumstances, it was in the interests of justice to Recall

the previous Decision to dismiss the application and to allow the application to be considered anew. Mr Beresford was asked whether he wished the matter adjourned to give him further time to prepare but he indicated that he would prefer the matter to be dealt with at the CMD and brought to a conclusion. Miss Ure was also keen to have the matter resolved at this CMD. The Legal Member accordingly then proceeded to hear parties in respect of the application.

14. Mr Beresford stated that he had 'held his hands up' at the time of the first CMD and that he had not lodged this deposit in a tenancy deposit scheme. His explanation was that he is a responsible, experienced landlord and had held the deposit securely throughout the tenancy. He did not particularly agree with the tenancy deposit scheme system because of the types of dispute that can arise at the end of tenancy, such as this one. He stated that Miss Ure had accused him of various things, including that the flat was damp. He disagreed with this and stated that the condition of the property was due to Miss Ure's failures. He referred to the documents he had lodged with the Tribunal previously. This was why he had not returned the tenancy deposit of £500 to Miss Ure at the end of her tenancy. He alleged that he was owed much more than that due to the condition the property had been left in by Miss Ure. Mr Beresford confirmed that he had been a landlord since 2004 and that this was the only property he rents out. He stated that he has never been brought before the Tribunal before in this type of application. It was explained to Mr Beresford by the Legal Member that, as he has admitted a breach of the tenancy deposit regulations, a penalty would be imposed against him, as required by the legislation. When asked for any comments on the level of compensation, he stated that the penalty should be whatever the Tribunal deems necessary, given his explanation for his actions.

15. Miss Ure explained that she did not think that Mr Beresford had treated her fairly. She had required to move out of the property because of its condition. She was pregnant and also had a small child and it had been stressful due to Mr Beresford not attending to the to the damp and other issues. He had insinuated that she would get her deposit back when she moved out but then refused to pay her this and said he was getting the property assessed. Miss Ure stated that she had not been looking for a serious penalty to be imposed. She had really only ever wanted the full return of her deposit of £500. However, she stated that she had sustained some financial loss as a result of his failure to place the deposit in a scheme or pay the deposit back to her. She had no way of arguing against this. She explained that she had needed to put a deposit down on another private let to move into with her child and that this had been £800. As she did not have the £500 deposit back to put towards this, she had required to take out a loan, which she had then to pay back. She stated that she had also required to buy some new furniture due to the original furniture being damaged, due to damp, etc.

16. Mr Beresford stated, in response, that he did not think he should have to bear the financial burden of all of this, in the circumstances. He asked how much Miss Ure had had to pay back in respect of the loan and she stated this had been around £1,000.

17. The Legal Member stated that she would fully consider the representations made by both parties as to the appropriate sanction to be imposed and would then issue her written decision, specifying the amount of the penalty to be paid and explaining the reasons for this. There was brief discussion regarding the appeal period and the procedures which would follow. It was explained to Miss Ure that a payment order would be issued in her favour but that the Tribunal is not involved in collecting payments or enforcing orders, which would be a matter for her. It was recommended that she seek some independent advice in relation to that matter in due course, if necessary. Both parties were thanked for their attendance and the CMD was concluded.

Findings in Fact

1. The Tribunal had dismissed this application on 7 July 2025 and the Applicant had subsequently applied for Recall of that Decision by application dated 9 July 2025.

2. The Respondent was the landlord of the Property.

3. The Applicant was the tenant of the Property by virtue of a joint tenancy which had commenced on 1 September 2021, which had subsequently become a sole tenancy on 1 June 2023.

4. The Applicant had paid to the Respondent a tenancy deposit of £500 at the outset of the initial tenancy, on or around 3 September 2021.

5. The tenancy ended on or around 30 May 2024, when the Applicant vacated.

6. The Respondent had not lodged the deposit in a tenancy deposit scheme at any time, in breach of the 2011 Regulations.

7. A dispute had arisen between the parties and the Respondent refused to return the £500 deposit to the Applicant at the end of the tenancy.

8. The Respondent admits the breach of the 2011 Regulations but had put forward an explanation in and some mitigating circumstances.

9. The Applicant had been caused stress and sustained some financial loss as a consequence of the Respondent's failure to comply with the 2011 Regulations.

Reasons for Decision

1. The Applicant's application for Recall of the Tribunal's previous Decision of 7 July 2025 was considered by the Tribunal in terms of Rule 30 of the Regulations which states as follows:-

"Recall

***30.**—(1) In relation to applications mentioned in Chapters 4, 6, 8, 11 and 12 of Part 3 of these Rules, a party may apply to the First-tier Tribunal to have a decision recalled where the First-tier Tribunal made the decision in absence because that party did not take part in the proceedings, or failed to appear or be represented at a hearing following which the decision was made.*

(2) An application by a party to have a decision recalled must be made in writing to the First-tier Tribunal and must state why it would be in the interests of justice for the decision to be recalled.

(3) An application for recall may not be made unless a copy of the application has been sent to the other parties at the same time.

(4) Subject to paragraph (5), an application for recall must be made by a party and received by the First-tier Tribunal within 14 days of the decision.

(5) The First-tier Tribunal may, on cause shown, extend the period of 14 days mentioned in paragraph (4).

(6) A party may apply for recall in the same proceedings on one occasion only.

(7) An application for recall will have the effect of preventing any further action being taken by any other party to enforce the decision for which recall is sought until the application is determined under paragraph (9).

(8) A party may oppose recall of a decision by—

(a)lodging with the First-tier Tribunal a statement of objection within 10 days of receiving the copy as required under paragraph (3); and

(b)sending a copy of the statement to any other party,

at the same time.

(9) After considering the application to recall and any statement of objection, the First-tier Tribunal may—

(a)grant the application and recall the decision;

(b)refuse the application; or

(c)order the parties to appear at a case management discussion where the First-tier Tribunal will consider whether to recall the decision."

2. The previous Tribunal had initially considered the Recall application and decided to continue it to a further CMD, in terms of Rule 30(9)(c), for further consideration. This Tribunal considered the Recall application and determined that the procedural aspects of Rule 30 had been complied with by the Applicant; that she had shown good reason for her failure to attend the CMD on 7 July 2025, where the Decision to dismiss the application had been decided in her absence; that she had explained her position and lodged supporting documentation from her former joint tenant in respect of the two tenancy agreements and his status in terms of this application; that the Respondent had

not objected to the Recall; and that it was accordingly in the interests of justice for the previous Decision to be recalled and the application considered anew.

3. The Tribunal then considered the application itself. The Tribunal was satisfied that 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."

The Tribunal was satisfied from the documentation before it, the representations and supporting documentation from the Applicant, the written representations of the Respondent prior to the first CMD and the oral representations made at this CMD by both parties, 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. 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.

4. In determining the appropriate amount of the sanction to be imposed on the Respondent for payment to the Applicant, the Legal Member considered the information provided by both parties on the matter. The Legal Member considered that the amount of the sanction should reflect the gravity of the breach. The Respondent had stated that he was content to leave the assessment of the appropriate penalty to the Tribunal, although had provided explanation to the Tribunal as to his failure and the background behind his refusal to return the deposit to the Applicant at the end of the tenancy. The Applicant stated that she was not seeking a maximum penalty and had initially only really wanted return of her tenancy deposit of £500. However, she alleged having been caused some additional stress and financial loss as a consequence of the Respondent's failure to lodge her deposit in a scheme. As the deposit here was £500, in terms of Regulation 10(a) above, the maximum possible sanction is £1,500. There is no minimum sanction stipulated in the 2011 Regulations.

5. The Legal Member considered the length of the tenancy of just over two and a half years and the fact that the Respondent had not lodged the deposit in a tenancy deposit scheme at any time during that tenancy. He was quite candid in his admission at the CMD that this had been a deliberate decision and not an oversight. He was an experienced landlord and appeared to know that he may have been under an obligation to lodge the deposit in a scheme but had chosen not to do so as he did not really agree with the principles behind the schemes and seems to consider that the schemes can be detrimental to landlords, where disputes arise with tenants, such as in the present tenancy. The Tribunal considered these factors as aggravating factors in terms of the penalty to be imposed. The Tenancy Deposit Regulations 2011 had been in place for a number of years and, in the Tribunal's view, Mr Beresford should have known about, and complied with, his legal duty to lodge any tenancy deposit taken from a tenant in a scheme.

6. It was clear that both Mr Beresford and Miss Ure felt that they were in the right as to the dispute which had arisen over the condition and repair of the property. However, the Tribunal in this application was not adjudicating on that dispute or on the non-return of the deposit to Miss Ure, which were relevant to the other application which had been raised by the Applicant, the dismissal of which she had not sought to have recalled. What is of relevance to this application and the assessment of the penalty is that, by not placing the deposit in a scheme, the Respondent denied both parties the right to have the return of the deposit adjudicated on, free of charge, by the scheme at the end of the tenancy. He had instead retained complete control of the deposit and it appeared from what Miss Ure had said that he had not informed her, until after she had moved out and requested the deposit back, that he was refusing to return it. The Tribunal was satisfied from hearing what Miss Ure had said, that the Respondent's failure to lodge the deposit in a scheme had caused her additional stress, on top of an already stressful situation and had also caused her some financial loss and difficulties in respect of securing another tenancy as she had had to pay a further tenancy deposit. The Tribunal was, however, also in agreement with the Respondent's position regarding him not being responsible for the entire costs of the loan said to have been taken out by Miss Ure. Given that the new deposit was £800, there would still have been a shortfall for Miss Ure to meet, even if she had been able to secure the return of the whole £500 deposit via a scheme. The Tribunal was therefore not persuaded that she should be entitled to recover the whole costs of the loan, said to be around £1,000, including interest. There was no evidence produced by the Applicant regarding the new tenancy deposit, the amount borrowed by her or the overall costs of the loan. The Tribunal had not adjudicated on the Applicant's application for return of the tenancy deposit so there had been no findings on this matter or in relation to the other aspects of the dispute between the parties. The Tribunal did not therefore consider it could take into account Miss Ure's claim that she had required to purchase new furniture as there had been no Tribunal findings on which party was to blame for the condition of the property or any dampness.
7. Weighing all of these factors, the Legal Member determined that £750 was the appropriate amount of the sanction to be paid by the Respondent 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.

Nicola Weir

[redacted]

Legal Member/Chair

21 November 2025
Date