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 2011/176

Re: Property at Flat 1, 29 Bruntsfield Place, Edinburgh, EH10 4HJ ("the Property")

Chamber Ref: FTS/HPC/PR/25/2673

Parties:

Chloe Lund, 2/9 Lochrin Buildings, Edinburgh, EH3 9NB ("the First Applicant")

Isadora Sun, 14/3 Ravelston Terrace, Edinburgh, EH4 3TP ("the Respondent")

Chamber Ref: FTS/HPC/PR/25/2700

Parties:

Jessica Headley, 2f2, 3 Leopard Place, Edinburgh, EH7 5JW ("the Second Applicant")

Isadora Sun, 14/3 Ravelston Terrace, Edinburgh, EH4 3TP ("the Respondent")

Chamber Ref: FTS/HPC/PR/25/2701

Parties:

Olivia Wright, 2/9 Lochrin Bulidngs, Edinburgh, EH3 9NB ("the Third Applicant")

Isadora Sun, 14/3 Ravelston Terrace, Edinburgh, EH4 3TP ("the Respondent")

Tribunal Members:

Joel Conn (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

1. In each of these three applications the Applicant sought an order for payment where the landlord had not complied with the obligations regarding payment of a deposit into an approved scheme under regulation 9 (court orders) of the *Tenancy Deposit Schemes (Scotland) Regulations 2011/176* in terms of rule 103 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended ("the Rules").

2. The tenancies in question were Private Residential Tenancies ("PRT") of separate rooms in the Property by the Respondent to each of the Applicants with different start dates in August and September 2024. It was agreed that each of the Tenancies ended on 31 March 2025. Due to the three Applicants latterly being the only occupants of the Property, the similarity in their applications, and that they were acting as a group, the applications were conjoined though each had a separate PRT. Indeed, they had originally lodged a single joint application though subsequently lodged three separate applications.

3. The (resubmitted) applications were dated 7 July, 15 July and 17 July 2025 respectively. The applications relied upon evidence that a deposit of £820, £900 and £870 was respectively due in terms of the Tenancy, and that these were paid to the Respondent in advance of the commencement of each of their Tenancies but not lodged with a regulated provider (mydeposits Scotland) until 28 April 2025, substantially late under the Regulations as well as after the conclusion of the Tenancies. The applications each requested a payment equivalent to the deposit paid. (No issue was made in the applications – and none made at the case management discussion ("CMD") – regarding the provision of the information required under the Regulations though I note that there was no suggestion of provision of any required information until at least 28 April 2025.)

4. Some days before the CMD the Respondent provided submissions and supporting documentation, accepting that the deposits were lodged late and stating a number of points in mitigation. These documents were forwarded to myself and the Applicants on the morning of the CMD.

The Case Management Discussion

5. On 27 November 2025 at 10:00, at a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote conference call, there was appearance by each of the Applicants and by the Respondent. The Applicants agreed that the Third Applicant, Ms Wright, would act as their representative and she provided the bulk of submissions on their joint behalf. (I noted no issue on which the Applicants differed in their positions.)

6. The Applicants confirmed receipt of the Respondent's belated submissions and documents and did not seek any further time for consideration. I thus took the

parties through issues within the papers that each had lodged to seek further clarification and confirmation as to what matters were agreed. There was agreement between the parties on all material points of fact:

a. The First Applicant's Tenancy commenced on 7 September 2024. The First Applicant was to pay a deposit of £820 by that date, which she did.
b. The Second Applicant's Tenancy commenced on 1 August 2024. The Second Applicant was to pay a deposit of £900 by that date, which she did.
c. The Third Applicant's Tenancy commenced on 26 August 2024. The Third Applicant was to pay a deposit of £870 by that date, which she did.
d. The Respondent did not reside at the Property at all during the Tenancies of the First and Third Applicants. She stayed for around a week near the start of the Second Applicant's Tenancy, due to maintenance works being carried out. The Respondent had another main residence during this time.
e. The Applicants' deposits were not protected until 28 April 2025.
f. The tenancies were terminated by agreement on 31 March 2025.
g. From around 9 April 2025, the Respondent engaged with the Applicants on return of their deposits, but requested deductions from the deposits to cover issues of damage to items and condition of the Property.
h. During the correspondence about return of the deposit, around 12 April 2025, one of the Applicants queried where the deposits were lodged. No query about the lodging of the deposits had been raised previously.
i. The parties engaged in negotiations on return of the deposits and payment of a sum to each in respect of compensation for failure to lodge the deposits. These negotiations advanced but did not conclude in agreement.
j. The Applicants, subsequent to the deposits being lodged with mydeposits Scotland, requested return of the deposits through their procedures. The Respondent requested deductions in regard to the First and Second Applicants and, after the adjudication process, the majority of the First and Second Applicant's deposits were repaid, with a small amount of each being paid to the Respondent. The Third Respondent's request for return of her deposit was not opposed and she received full repayment.

7. The Respondent provided further oral submissions (which were not admitted by the Applicants, but not expressly denied):
   a. The Respondent said she had intended to request deductions from the Third Applicant's deposit but the intimation from mydeposits Scotland went into her junk folder and she did not see it until it was too late to oppose.
   b. The Respondent has let out the Property since 2021 but between 2021 and 2024 it was let on short-term letting for which the tenancy deposit regulations did not apply.
   c. The Respondent let out a room at her home address in 2020, but was residing there at the time, so the tenancy deposit regulations did not apply.
   d. The Respondent was not the landlord under any tenancy that fell under the tenancy deposit regulations until 2024, when she started to let out the Property on PRTs to tenants who preceded the Applicants. She did not place those deposits with any approved scheme, and retained them herself and returned them in full at the end of the tenancies.
   e. The Respondent currently lets out the Property on a PRT but has not taken a deposit from the current tenant.

8. In response to questions as to her state of knowledge of the tenancy deposit regulations, the Respondent gave conflicting responses. At first, she said that she had no knowledge of the requirement, and no recollection of having heard of it, until raised by the Applicants around 12 April 2025. She said that she then looked it upon the internet and, when she realised she needed to lodge the deposits, she did so straight away. In the Applicants' submissions, however, they pointed out that the Respondent had provided them with Tenancy Agreements which looked very similar to the usual style PRT agreement but with all pro-forma wording about the tenancy deposit regulations deleted. The Applicants posed the question as to how the Respondent came to delete that wording, yet remained ignorant of the existence of the tenancy deposit regulations.

9. In response to this the Applicant revised her position on her state of knowledge. She said that the Tenancy Agreements were the same as she had used when she had rented out to a lodger. She conceded that she must have known then that the tenancy deposit regulations did not apply to a lodger so deleted the wording, and then failed to review her style agreement when starting to use it with her later PRT tenants. She further conceded that when the Applicants raised the issue of lodging the deposits on 12 April 2025 it "refreshed my memory" as to the existence of the regulations.

10. In regard to submissions on an appropriate order, the Applicants relied on the above point regarding the Respondent's Tenancy Agreement having expressly deleted wording relating to the tenancy deposit scheme, implying that she must have been aware of the regulations. They further submitted (in their original application and in oral submissions):
    a. That the Respondent had been a registered landlord for four years during which time they believed she had had 15 tenants;
    b. That the Respondent "broke the law to serve herself" (though detail was lacking as to the meaning of this allegation);
    c. That, prior to the deposits being lodged and the Applicants being able to use the adjudication scheme, it had been a stressful process dealing with the Respondent. They had found her language in the exchanges about proposed deductions to be very forceful, implying that she was making the decisions on what the final outcome would be;
    d. That they wished to avoid any future tenants not having their deposits protected; but
    e. Overall, they accepted that the breach should attract an award at the lower scale of available awards, and they maintained their position that awards equal to the deposit amounts should be granted.

    The Respondent made the following submissions:
    f. She acknowledged that she lodged the deposits late but it was not a deliberate attempt to avoid compliance and, as soon as she realised that the deposits were supposed to be lodged, she did so;
    g. There had been no previous dispute with the Applicants about the deposit or any other matter;

h. She had been a good landlord, undertaking not only her obligations as landlord but also undertaking further maintenance that was not her responsibility (in regard to changing lightbulbs);
i. That the orders sought by the Applicants were “opportunistic gain”. She had previously made an offer to settle (offering full return of deposit plus £200 each) but that she believed the Applicants did not accept this, so as to put pressure on her and seek a higher payment;
j. The Applicants were never deprived of funds; and
k. She submitted £200 each remained a fair award.

11. I sought submissions from each party as to further procedure. No party sought a continuation for any reason nor wished any witness evidence heard. All wished a decision made on the basis of the submissions already provided.

12. No motion was made for expenses or interest in any of the three applications.

Findings in Fact

13. The Respondent, as landlord, let a room at the Property to the First Applicant under a Private Residential Tenancy commencing on 7 September 2024.

14. In terms of clause 9 of the Tenancy, the First Applicant was obligated to pay a deposit of £820 by the commencement of her tenancy.

15. The First Applicant paid her contracted deposit by the commencement of her tenancy.

16. The Respondent, as landlord, let a room at the Property to the Second Applicant under a Private Residential Tenancy commencing on 1 August 2024.

17. In terms of clause 9 of the Tenancy, the Second Applicant was obligated to pay a deposit of £900 by the commencement of her tenancy.

18. The Second Applicant paid her contracted deposit by the commencement of her tenancy.

19. The Respondent, as landlord, let a room at the Property to the Third Applicant under a Private Residential Tenancy commencing on 26 August 2024.

20. In terms of clause 9 of the Tenancy, the Third Applicant was obligated to pay a deposit of £870 by the commencement of her tenancy.

21. The Third Applicant paid her contracted deposit by the commencement of her tenancy.

22. The Applicants' tenancies terminated by agreement on 31 March 2025.

23. From on or about 9 April 2025, the Respondent engaged with the Applicants on return of their deposits (which were at that time still held by the Respondent) and

requested deductions from the deposits to cover issues of damage to items and condition of the Property for which that the Respondent believed the Applicants were responsible.

24. During the correspondence about return of the deposit, around 12 April 2025, one of the Applicants queried where the deposits were lodged. No query about the lodging of the deposits had been raised previously by any of the Applicants.

25. The Applicants' deposits were first lodged by the Respondent with mydeposits Scotland on 28 April 2025.

26. The parties thereafter engaged in negotiations on return of the deposits and payment of a sum to each in respect of compensation for failure to lodge the deposits. These negotiations did not conclude in agreement.

27. The Applicants were afforded access to the adjudication scheme under Tenancy Deposit Scheme from 28 April 2025 onwards.

28. At the time of taking the Applicants' deposits, the Property was the only property that the Respondent rented out for residential tenancies.

29. The Respondent first took deposits from tenants under PRTs in 2024. She did not place any deposits received prior to the Applicants with a tenancy deposit scheme provider.

Reasons for Decision

30. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. In light of the submissions by the parties, I was satisfied both that the necessary level of evidence had been provided through the applications, written submissions, and orally at the CMD, and that it was appropriate to make a decision under regulation 10 of the 2011 Regulations at the CMD in each of the applications.

31. There was little dispute between the parties on the material points. I was satisfied that the evidence provided by both parties was credible and reliable on the material issues of this application.

32. It was a matter of concession that the Respondent held deposits from the commencement of the tenancies and that these were not lodged until 28 days after the conclusion of the tenancies. It could not be disputed that there was substantial late lodging of the deposits. There has thus been a clear breach of the lodging requirements of the 2011 Regulations and so an award must be made. The Applicants were not, however, material inconvenienced. They may have found the communication with the Respondent "stressful" but the lodging of a deposit does not remove the possibility of contentious correspondence with your landlord. It is entirely appropriate for parties to seek to agree deductions in advance of resorting to the adjudication scheme. The Applicants may have found it particularly stressful when they suspected their deposits were not lodged, as

they may have been concerned that the Respondent may not return the deposits readily, but the Respondent promptly remedied this by lodging the deposits on 28 April 2025. Further, during the course of the Tenancy, the Applicants expressed no concern as to the delay in lodging.

33. Overall, though the delay has been substantial, the breach appears a technical one, rather than a flagrant attempt by the Respondent to avoid compliance. There are however unsatisfying issues regarding the Respondent's lack of engagement with compliance. She clearly was aware – at some point – that the tenancy deposit regulations existed and that they did not apply in all situations. Having entered a new type of letting in 2024, with her first PRT tenants, the Respondent's lack of regard for reviewing compliance cannot be overlooked. That said, the Respondent's relatively recent holding of deposits, and that she has only one rented property, is relevant to any disposal.

34. None of the parties referred me to any authorities. In coming to a decision, I reviewed the following decisions from the Upper Tribunal for Scotland:
    a. *Rollett v Mackie, [2019] UT 45*, *2019 Hous LR 75*
    b. *Wood v Johnston, [2019] UT 39*
    c. *Ahmed v Russell, 2023 UT 7, 2023 SLT (Tr) 33*
    d. *Hinrichs v Tcheir, [2023] UT 13, 2023 Hous LR 54*
    e. *Bavaird v Simpson, 2023 UT 19*

35. In *Rollett v Mackie,* Sheriff Ross notes that "the decision under regulation 10 is highly fact-specific to each case" and that "[e]ach case has to be examined on its own facts, upon which a discretionary decision requires to be made by the FtT. Assessment of what amounts to a 'serious' breach will vary from case to case – it is the factual matrix, not the description, which is relevant" (paragraph 9). In regard to that "factual matrix", Sheriff Ross reviews with approval the reasoning of the Tribunal at first instance in that case (at paragraph 10). Generalised for my purposes, the Tribunal made consideration of:
    a. the purpose of the 2011 Regulations;
    b. the fact that the tenant had been deprived of the protection of the 2011 Regulations;
    c. whether the landlord admitted the failure and the landlord's awareness of the requirements of the Regulations;
    d. the reasons given for the failure to comply with the 2011 Regulations;
    e. whether or not those reasons affected the landlord's personal responsibility and ability to ensure compliance;
    f. whether the failure was intentional or not; and
    g. whether the breach was serious.

36. Applying that reasoning, the Tribunal held – and the Upper Tribunal upheld – an award of two times the deposit. In analysing the "factual matrix" in that case, Sheriff Ross noted:

> *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 [of the letting agent in *Rollett*] *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.*

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. (paragraphs 13 and 14)

37. In *Wood v Johnston*, the Upper Tribunal considered a case where the Tribunal regarded a low level of culpability. The Tribunal at first instance had awarded £50 (though it is not possible from the UT's opinion to determine what this was as a multiplier of the original deposit). Sheriff Bickett noted that parties to the appeal were agreed that "the award is a penalty for breach of Regulations, not compensation for a damage inflicted" (paragraph 6) and, like Sheriff Ross in *Rollett*, analysed the nature of the breach, though in briefer terms. In *Wood*, it was noted that the Tribunal at first instance had made the award in consideration that "the respondent owned the property rented, and had no other property, and was an amateur landlord, unaware of the Regulations. The deposit had been repaid in full on the date of the end of the tenancy." Sheriff Bickett refused permission to appeal and thus left the Tribunal's decision standing.

38. The approach in these two cases is accepted in other UT cases: by Sheriff Fleming in *Hinrichs v Tcheir* (which considered *Rollett*), and by Sheriff Cruickshank in *Ahmed v Russell* (considering both *Rollett* and *Wood*). *Ahmed* itself was considered by the UT in *Bavaird v Simpson*. In *Ahmed*, Sheriff Cruikshank made the additional observation (at paragraphs 32 to 33) that there is no difference in law between how the "amateur" and "professional" landlord is to be treated but:

It will be a matter of fact in each case what the letting experience, or level of involvement, of a landlord is and it might, or might not, be a factor which aggravates or mitigates a sanction to be imposed under the 2011 Regulations. Indeed, by way of a general observation, with the increasing passage of time since the 2011 Regulations became operative, the letting experience of a landlord, and his working knowledge of the regulatory requirements, may hold less weight in mitigating a penalty than it previously did. (paragraph 33)

Sheriff Cruikshank's comments on the "gravity" of the breach are further of assistance:

The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose of the sanction is not to compensate the tenant.

> *The level of sanction should reflect the level of overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations.* (paragraph 39)

Finally, I note the comments on weighting two particular issues by Sheriff Jamieson in *Bavaird*:

> *In my opinion, significant weight ought to be attached to the appellant's ignorance of the scheme over the prolonged period of five years as a landlord. On the other hand, significant weight falls to be attached to the mitigating factors that the respondents' deposit was repaid in full immediately after the termination of the tenancy and that the respondents suffered no loss or inconvenience as a consequence of the appellant's failure to comply with the Regulations.* (paragraph 28).

In that case, the deposit was never protected but, in consideration of all issues, Sheriff Jamieson reduced the original award of £4,000 to £2,500 (where the maximum competent award in that application would have been £6,000).

39. Applying Sheriff Ross's reasoning in *Rollett* to the current case, the purposes of the 2011 Regulations are to ensure that a tenant's deposit is insulated from the risk of insolvency of the landlord or letting agent, and to provide a clear adjudication process for disputes at the end. In the applications before me, both were achieved but only after the end of the Tenancy, and only after the Applicants pushed the issue. There was however no suggestion of intentionally breaching the Regulations and there was a ready acceptance by the Respondent of some liability, going to the extent of having made a proposal in settlement (albeit a low figure which the Applicants did not accept). This works to lessen the Respondent's culpability, using the analysis in *Rollett*. Further, there is an absence of any of the aggravating factors reviewed in the case.

40. In considering points arising from the other decisions, the landlord's circumstances are similar to those in *Wood* as the Respondent owns no other properties for rental and the outcome was similar for the tenants. The passage of time, however, makes things less favourable to the Respondent than in *Wood*. *Wood* was 8 years after the date of the regulations. We are now 14 years on, and the Respondent has been operating as a landlord since 2020 and accepts that she must have engaged with the regulations previously. A similar view may be taken when assessing the guidance provided by *Ahmed*. That case comments about the diminishing power of lack of knowledge of the regulations. In considering the "the letting experience" discussed in *Ahmed*, the Respondent is not quite an "amateur" landlord but only became a PRT landlord holding deposits in 2024. I see no evidence of further awards against the Respondent and have no reason to disbelieve the Respondent's submission that there are no other issues. Further, I accept that the gravity of the breach, as it turned out, was very low.

41. Finally, in applying *Bavaird*, I would apply significant weight (in mitigation for the Respondent) to the Respondent urgently lodging the deposits as soon as she

became aware of the issue, so that the Applicants had use of the adjudication processes and no material inconvenience.

42. Reading across the decisions, I would draw one further conclusion relevant to these applications. Generally the return of the deposit at the end of the Tenancy weighs in favour of a lower award. It is thus logical to regard belated protection of the deposit (and so the adjudication scheme being available to the tenant) as weighing significantly in the landlord's favour.

43. In the circumstances, I am satisfied that the gravity of the breach is low and, in regard to culpability, there are greater points in mitigation than in aggravation. The principal aggravating factor is that the Respondent has been operating as a landlord, and requiring to engage with the regulations in various situations since 2020 (even if just to discount it as relevant until 2024), and yet only lodged the deposits when prompted by the Applicants.

44. I am thus of the view that the gravity of the breach is low and the culpability is low but not quite as low. Read together, this falls in the low range of possible awards and, under regulation 10 of the 2011 Regulations, I am awarding £615 to the First Applicant, £675 to the Second Applicant, and £652.50 to the Third Applicant, being 75% of their deposit amounts. I hold these to be appropriate awards in consideration of the law and all the facts.

Decision

45. I am satisfied to grant orders against the Respondent for payment of £615 to the First Applicant, £675 to the Second Applicant, and £652.50 to the Third 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.

Joel Conn

27 November 2025

Legal Member/Chair **Date**