



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit
Scheme (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/25/3055

Re: Property at 1/2 590 Kinfauns Drive, Glasgow, G15 7NW (“the Property”)

Parties:

Miss RUVIMBO ISHEANESU DZUMBIRA, Flat 3, 43 Kent Road, Glasgow , G3 7BY
 (“the Applicant”)

**Mr HO CHUEN TONG, whose present whereabouts are to the applicant
unknown, (“the Respondent”)**

Tribunal Members:

James Bauld (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should be ordered to make payment to the Applicants of the sum of ONE THOUSAND, EIGHT HUNDRED AND SEVENTY FIVE POUNDS (£1,875) with interest thereon at the rate of 8% per annum running from the date of the decision of the First-tier Tribunal to grant this order, being 8 January 2026, until payment.

Background

1. By application dated 15 July 2025 the applicant sought an order in terms of Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) in respect of an alleged failure by the respondent to comply with those regulations.

2. The application was accepted by the Tribunal on 22 July 2025 and referred for determination by the tribunal.

Case Management Discussion

3. A Case Management Discussion (CMD) took place on 8 January 2026 by telephone case conference. The applicant attended personally and was also represented and assisted by her representative Mrs Chiedza Ajoiboye. The respondent was neither present nor represented.
4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters. The tribunal asked various questions of the applicant with regard to the application.
5. The tribunal explained to the applicant the maximum award which could be made in terms of the 2011 Regulations
6. The tribunal indicated that it would be entitled to utilise the power within regulation 17 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the tribunal rules”) and that the tribunal could make a final decision at the case management discussion without remitting the matter to a further full hearing.
7. The applicant confirmed that the tenancy had commenced on 1 May 2023 and had ended on 17 May 2025.
8. The applicant found the property on an advertisement on the “Spare Room” website
9. She confirmed a deposit of £625 has paid to the landlord’s agent prior to the tenancy commencing
10. The applicant signed an agreement which was headed as a “lodger agreement” showing Mr Edmund Asamoah as the landlord.
11. The applicant was told by Mr Asamoah that he was only acting as an agent for the true landlord, the owner, Mr Ho Chuen Tong.
12. Although the agreement was headed as a “lodger agreement”, the applicant occupied the property on her own throughout the period of the tenancy. She occupied it as her principal home while studying
13. The applicant paid a monthly rent of £1300.
14. When the tenancy had ended, the applicant enquired about the return of the deposit. She discovered that it had not been lodged in any deposit scheme. Evidence was produced from each of the three approved schemes confirming no deposit was held by them.

15. The applicant exchanged messages with the landlord's agent via social media seeking return of the deposit.
16. The applicant confirmed that the deposit has never been repaid to her.
17. The applicant and her representative invited the tribunal to make an award in respect of the failure to lodge the deposit at the maximum allowable level. The deposit has been unprotected for the entire period of the tenancy which exceeded two years, and it has still not been paid to her eight months after the tenancy has ended.

Findings in fact

18. A tenancy agreement was entered into between the parties which commenced on 1 May 2023.
19. The landlord was named as Edmund Asamoah, but he was in fact the agent for the owner and respondent, Mt Ho Chuen Tong.
20. Although the agreement was headed as a "lodger agreement", the applicant occupied the property as she principal home on her own throughout the period of the tenancy, and the tenancy was thus a private residential tenancy under and in terms of the Private Housing (Tenancies) (Scotland) Act 2016
21. A deposit of £625 paid by the applicant and was taken on behalf of the respondent.
22. The deposit was never paid into an approved tenancy deposit scheme
23. The tenancy ended on 17 May 2025.
24. The deposit has never been repaid by the respondent or his agent to the applicant

Decision

25. This application related to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy. In this case it was clear that the Landlord had failed to do so. Accordingly, he was in breach of the duties contained in Regulation 3 of the 2011 Regulations. Those duties are twofold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties.

26. Regulation 9 of the 2011 Regulations indicates that if a Landlord does not comply with any duty in regulation 3 then the Tribunal must order that a Landlord makes payment to the Tenant of an amount “not exceeding three times the amount of the tenancy deposit”.

27. Accordingly in this case the Tribunal is required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment.

28. In this case the Tribunal carefully considered the evidence which had been produced by the applicant. The tribunal accepted that Ms Dzumbira’s evidence was both credible and reliable. There was clear evidence that the respondent had failed to pay the tenancy deposit into the appropriate scheme for the whole period of the tenancy (a period of over two years). The deposit has never been lodged in accordance with the requirements of the 2011 Regulations. At the date of the CMD it has still not been repaid to the applicant.

29. The Regulations were introduced to safeguard deposits paid by Tenants. They were introduced against a background of Landlords abusing their position as the holder of deposit moneys. The Scottish parliament decided that it should be compulsory to put the deposit outwith the reach of both the Landlord and the Tenant to ensure that there was a dispute resolution process accessible to both Landlord and Tenant at the end of a tenancy and which placed them on an equal footing. The Regulations make it clear that the orders to be made by Tribunals for failure to comply with the Regulations are a sanction or a penalty

30. In this case, the Respondent was in clear breach of the 2011 Regulations.

31. The tribunal notes that in an Upper Tribunal decision, (**Ahmed v Russel** UTS/AP/22/0021 2023UT07) Sheriff Cruickshank indicates (at Para 38) that **“previous cases have referenced various mitigating or aggravating factors which may be considered relevant. It would be impossible to ascribe an exhaustive list. Cases are fact specific and must be determined on such relevant factors as may be present”**. The amount awarded should represent **“a fair and proportionate sanction when all relevant factors have been appropriately balanced”**.

32. The sanction to be imposed is intended to mark the gravity of the breach which has occurred. It should reflect the level of overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations. The tribunal is required to determine a fair and proportionate sanction based on the facts as recorded.

33. The Tribunal noted that in an earlier Upper Tribunal decision (reference 2019 UK 39 UTS/AP/19/0023) that Sheriff David Bickett sitting on the Upper Tribunal had indicated that it was appropriate for the Tribunal to differentiate between Landlords who have numerous properties and run a business of letting properties as such, and a Landlord who has one property which they

own and let out. The Sheriff indicated in the decision that it would be "inappropriate" to impose similar penalties on two such Landlords.

34. In the current application the respondent is registered as a private landlord with Glasgow City Council .He should therefore be aware of the requirements of the 2011 Regulations.
35. Prior to the jurisdiction to determine these applications becoming part of the jurisdiction of the First-tier Tribunal, the applications were determined in the Sheriff Court. There were numerous Sheriff Court decisions which have been reported.
36. In many of these cases, the Sheriff Courts have indicated that the Regulations were introduced to address what was a perceived mischief and that they will be meaningless if not enforced.
37. In a decision by Sheriff Principal Stephen at Edinburgh Sheriff Court in December 2013, the Sheriff Principal indicated that the court was "entitled to impose any penalty including the maximum to promote compliance with Regulations". (***Stuart Russell and Laura Clark v. Samdup Tenzin 2014 Hous.L.R. 17***)
38. In this case, the Respondent was in clear and blatant breach of the 2011 Regulations. The tribunal considered whether it should make an award at the maximum range. The respondent had not attended the CMD and had failed to provide any representations setting out any mitigation of his failure to lodge the deposit in accordance with the Regulations.
39. The tribunal accordingly considered that this was a significant breach of the regulations which required to attract a penalty towards the higher end of the available range. No explanation or mitigation had been offered to the tribunal by the landlord or his agent. It appeared he and his agent had simply and deliberately ignored the provisions of the Regulations.
40. The tribunal considered whether the award should be made at the maximum level available to the tribunal which based on the deposit being £625 would have been £1,875. The tribunal took the view that this case involves an egregious failure by the landlord, compounded by the ongoing failure to repay the deposit some eight months after the termination of the tenancy. In the absence of any mitigating factors, the award requires to be at a significant level.
41. Having considered the submissions from the applicant and her representative and taking into account the guidance from Upper Tribunal cases, the tribunal has decided that the appropriate award should be the maximum amount of £1,875 reflecting the very serious failure by the landlord and his agent in this case. This case involves a significant breach of the relevant regulations. The landlord and his agent have simply, and apparently wilfully, ignored the Regulations. The deposit was unprotected for the entire length of a tenancy which lasted over two years. It has still not been repaid to the applicant

42. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

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.

Jim Bauld

8th January 2026

Legal Member/Chair

Date