



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the 2017 Rules)

Chamber Ref: FTS/HPC/PR/24/5259

Re: Property at 54 Solway Road, Bishopbriggs (the Property)

Mrs Jaime Steel, 70 Gallowhill Road, Lenzie, G66 4AJ (the Applicant)

Lumloch Properties Limited, Wester Lumloch Farm, Auchinairn Road, Bishopbriggs, G64 1UR (the Respondent)

Tribunal Member:

Ms. Susanne L. M. Tanner K.C., Legal Member and Chair

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal): (i) determined that the Respondent did not comply with the duty in Regulation 3 of the 2011 Regulations to pay the Applicant's deposit into an approved scheme within 30 working days of the start date of the tenancy; (ii) it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit in terms of Regulation 10 of the 2011 Regulations; and (iii) made an order requiring the Respondent to pay to the Applicant the sum of FIVE HUNDRED POUNDS (£500.00) Sterling

Statement of Reasons

Procedural background

1. On 12 November 2024, the Applicant made an application to the tribunal against the Respondent in terms of Rule 103 of the 2017 Rules and Regulation 9 of the 2011 Regulations, namely an application for an order for payment where the

landlord has failed to carry out duties in relation to a tenancy deposit (the Application).

2. The Applicant produced the following with the Application:
 - 2.1. Copy bank statements;
 - 2.2. Deposit prescribed information letter;
 - 2.3. Evidence of tenancy end date; and
 - 2.4. Written confirmation from tenancy deposit protection schemes.
3. The tribunal's administration checked the Scottish Landlord Register and found that the Respondent is the registered landlord.
4. The Application was considered by a legal member acting under the delegated powers of the President. The Application was accepted for determination by the tribunal.
5. A Case Management Discussion (CMD) teleconference was fixed by teleconference and on 22 March 2025 parties were notified of the date, time and details of the CMD, which both parties were required to attend. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application. Parties were advised that if they did not attend the CMD, this would not stop a decision or order from being made by the tribunal if the tribunal considered that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations she wished by 12 April 2025. The Application paperwork and notification of the hearing was served on the Respondent by Sheriff Officers.
6. The Respondent lodged a written defence to the Application. Within the written submissions she accepted that the deposit had been lodged late on 1 October 2015 and provided reasons for the late lodging. She also made submissions about the length of time for which the deposit had been protected until the end of the tenancy in September 2024.
7. The CMD was postponed twice, once on the application of each party. The CMD was re-fixed for 12 January 2026 at 1400h and both parties were notified.

Case Management Discussion (CMD) – 12 January 2026, 1400h – by teleconference

8. The Respondent's Director, Mrs Eleanor Loughlin, attended the CMD.

9. The Applicant did not attend at 1400h. The tribunal clerk attempted to contact her by phone on the number she had provided on the Application but it went to voicemail. The CMD started in her absence under rule 29 of the 2017 Rules, on the basis of the material before it and the oral submissions of the Respondent only.
10. The Applicant joined the CMD at 1418. She stated that she had been engaged in a work meeting and apologised for joining late. The CMD continued with both parties.
11. The tribunal chair explained the nature and purpose of the CMD to the parties.

The Applicant's submissions

12. The Applicant stated that she had considered the Respondent's written submissions and that she is still insisting on the Application.
13. She stated that the deposit of £850.00 was paid on 27 June 2014 and that it was not lodged at that point. She agrees with the Respondent's position that the deposit was paid into a scheme on 1 October 2015, which the Applicant submitted was around 15 months late, as it should have been protected within 30 working days of the start of the tenancy on 5 July 2014. She accepts that when it was lodged she received the certificate and a letter of apology from the Respondent. She stated that her deposit was returned in full after the end of the tenancy which ended on or about 24 September 2014. She stated that she had had no legal support with her application and had just lodged it.

The Respondent's submissions

14. Mrs Loughlin stated that her position is as stated in her written submissions. She accepts that the deposit was not paid in time but states that it was paid on 1 October 2015. The reason for late payment was that Mrs Loughlin was going through a difficult period personally at the time it was received. When the deposit was lodged on 1 October 2015, the Respondent sent the certificate and information and a letter of apology to the Applicant. The Applicant did not raise that issue of late protection in 2014, or 2015, or at any time during the further 9 years of the tenancy. The Applicant's deposit was protected for 9 years returned to her in full after the conclusion of the tenancy. Mrs Loughlin stated that the deposit was not in jeopardy for those 9 years of the tenancy.
15. Mrs Loughlin stated that she had looked at some relevant case law. She invited the tribunal to exercise its discretion to reflect the fact that although the deposit

was lodged late, it was protected for a further nine years of the tenancy and was returned in full to the Applicant after the end of the tenancy. Mrs Loughlin stated that she accepted that there would be a penalty. She invited the tribunal to consider a pro rata apportionment for the period of non protection versus the period of protection.

Findings in Fact

16. The Respondent company is the landlord of the Property.
17. The Applicant had a private residential tenancy of the Property which started on or about 5 July 2014.
18. The Applicant paid the tenancy deposit of £850.00 to the Respondent on or about 27 June 2014.
19. The Respondent's director was in difficult personal circumstances at the time the deposit was received, which affected her wellbeing, mental and emotional health.
20. The deposit was lodged with Safe Deposits Scotland on or about 1 October 2015.
21. In or about October 2014, the Respondent's director sent the deposit protection certificate and statutory information to the Applicant after the deposit was lodged, together with a letter of apology.
22. The tenancy ended on or about 24 September 2024.
23. The deposit remained in a deposit protection scheme from on or about 1 October 2015 until after the end of the tenancy.
24. The deposit was returned in its entirety to the Applicant via the deposit protection scheme after the end of the tenancy within the time periods provided in the deposit protection scheme.

Discussion

25. It was agreed that the tenancy started on or about 5 July 2014 and finished on or about 24 September 2024. It was agreed that the deposit was paid into a statutory protection scheme on 1 October 2015, when it should have been lodged within 30 working days of the start of the tenancy, on or around 15 August 2014.

26. The tribunal was satisfied that there had been a failure to comply with Regulation 3 of the 2011 and that it must make an order for payment.

27. The maximum amount of any such order is three times the amount of the deposit, which in this case would be three times £850.00, a maximum of £2550.00.

28. The tribunal took account of the agreed facts and both parties' written and oral submissions.

29. The tribunal had regard to Upper Tribunal authorities in similar cases, in particular *Rollett v Mackie [2019] UT 45* and *Ahmed v Russell [2023] UT 7*.

30. In *Rollett*, above, Sheriff Ross said [at para 9] that:

'Each 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. Comparison with other cases is therefore of minimal assistance in the present case. The general principles of the law apply and these include that for a discretionary decision to be overturned it must be one which no reasonable tribunal could make.'

31. And further [at para 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 fact and tends to lessen culpability'.

32. In *Ahmed*, above, Sheriff Cruickshank outlined the purpose and policy objectives of the Regulations [at para. 19] and referred to Sheriff Ross's '*helpful summary*' *Rollett*, above [at para. 29], stating:

'Furthermore, in Rollett, Sheriff Ross considered that in assessing the level of sanction the question was one of culpability. When it came to the level of sanction the question was one of degree and provided examples of the factors which could lessen or increase the level of culpability' [at para. 30].

33. In the present case, the tribunal took the approach of establishing the facts and then considering any aggravating and mitigating factors to determine culpability of the Respondent and decide on the appropriate level of sanction.

34. The tribunal considers that the following is an aggravating factor:

34.1. The fact that the deposit was unprotected for the initial period of around 14 months.

35. The tribunal does not consider that there are any other aggravating factors other than the breach itself.

36. The tribunal considers that the following are mitigating factors:

36.1. after it was lodged in October 2015, the deposit was protected for a further 9 years;

36.2. the Respondent apologised to the Applicant at the time of lodging for the late lodging;

36.3. The deposit was returned in full to the Applicant through the deposit protection scheme after the end of the tenancy.

36.4. The Respondent's director's difficult personal circumstances at the time the deposit was received, which affected her wellbeing, mental and emotional health.

37. For the reasons outlined, the tribunal considered that the breach was at the lower end of the scale of seriousness and decided to make an order for payment by the Respondent to the Applicant of the sum of £500.00. That sum was considered by the tribunal to be reasonable in all the circumstances and to appropriately reflect the level of culpability.

38. The tribunal told the Applicant its decision and reasons orally at the CMD and explained that a written decision with statement of reasons would be produced and sent to both parties.

Permission to Appeal

39. 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.

12 January 2026

**Ms. Susanne L. M. Tanner K.C.
Legal Member/Chair**