



**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**

**Chamber Ref: FTS/HPC/PR/25/3042**

**Re: Property at 42 Millar Street, Glassford, Strathaven, ML10 6TD (“the Property”)**

**Parties:**

**Mr Ross Mackay, Mrs Maria Ventre, 8 Broadside Court, Denny, FK6 5GZ; 17 Rosebank Avenue, Denny, FK6 6FP (“the Applicant”)**

**Gracie Lettings, 11 Motherwell Street, Airdrie, ML6 7EJ (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of SIX THOUSAND NINE HUNDRED POUNDS (£6900).**

**Background**

1. By application dated 16 July 2025 the applicants seek an award under the Tenancy Deposit Schemes (Scotland) Regulations 2011. The applicants lodged with the application:

- Copy private residential tenancy agreement
- Correspondence with the letting agent
- Correspondence with Safe Deposits Scotland

A cmd took place via teleconference on 28 January 2026.

**Case management discussion (“cmd”) - teleconference – 28 January 2026**

2. Both applicants were in attendance. The respondent was not present or represented. Sheriff Officers had served papers on the respondent by letterbox service at his dwelling place on 5 December 2025. The Tribunal was satisfied that the respondent had received proper notice of the cmd and proceeded in his absence.
3. The applicants confirmed that the tenancy commenced on 11 May 2024. They referred to email correspondence that had been submitted. They stated that the tenancy agreement stated that the deposit was £3750 however this had been revised and the actual amount paid had been £3450 as was shown in correspondence that had been submitted between the parties. The applicants stated that the monthly rent in the property was £1150. This was also different from the amount of £1250 stated in the tenancy agreement.
4. The applicants stated that they had checked in July 2024 whether the deposit had been lodged in a tenancy deposit scheme and were advised that it had been.
5. The applicants stated that they had moved out of the property in May 2025. Emails giving notice to the respondent had been submitted with the application. At the termination of the tenancy there was an adjudication in relation to the deposit by Safe Deposits Scotland. The respondent had sought to retain 50% of the deposit. At that time the applicants discovered that a deposit of £3050 had been placed in the scheme from 16 July 2024, 66 days after the deposit had been paid to the respondent. £400 of the deposit was unprotected throughout the tenancy period. Safe Deposits Scotland determined that the full deposit of £3050 held by them would be returned to the applicants. £400 of the deposit which had not been placed in the scheme was not returned to the applicants by the respondent.
6. The applicants stated that as far as they were aware the respondent was a landlord of multiple properties. They stated that the respondent had been

unjustifiably critical of the way that the house had been left and was not good to deal with. The applicants stated that their occupation of the property had been a stressful time. There had been issues with the gas boiler and other repairs' issues many of which were not resolved by the respondent during the tenancy.

7. The applicants stated that they sought the maximum award under the regulations. They stated that the level of deposit had been unlawful as it was well in excess of 2 months' rent. They had also been asked to pay 6 months' rent in advance of the tenancy commencing.

### **Findings in fact**

8. Parties entered into a private residential tenancy agreement with a commencement date of 11 May 2024.
9. A deposit of £3450 was paid at the commencement of the tenancy.
10. Monthly rent payable in the tenancy was £1150.
11. The respondent lodged £3050 of the deposit with Safe Deposits Scotland on 16 July 2024 after prompting by the applicants.
12. £400 of the deposit was unprotected throughout the tenancy period.
13. The applicants gave written notice to the respondent on 7 April 2025 that they would move out of the property by 7 May 2025.
14. The deposit of £3050 held by Safe Deposits Scotland was returned to the applicants at the conclusion of the tenancy agreement despite opposition from the respondent.
15. The deposit of £400 not placed in a tenancy deposit scheme was not returned to the applicants after the termination of the tenancy agreement.

16. The present application was submitted on 16 July 2025. Additional documents requested by the Tribunal to complete the application were submitted on 7 August 2025.

### **Reasons for the decision**

17. Rule 18 states:

*Power to determine the proceedings without a hearing*

**18.—(1) Subject to paragraph (2), the First-tier Tribunal—**

*(a) may make a decision without a hearing if the First-tier Tribunal considers that—*

*(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and*

*(ii) to do so will not be contrary to the interests of the parties; and*

*(b) must make a decision without a hearing where the decision relates to—*

*(i) correcting; or*

*(ii) reviewing on a point of law,*

*a decision made by the First-tier Tribunal.*

*(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.*

18. The Tribunal was satisfied that having regard to the undisputed facts of the case it was able to make a determination and that it was in the expressed interests of both parties to make a determination without the need for a further hearing. The Tribunal took into account the application, documents that had been submitted and oral submissions at the cmd.

19. Regulation 3 of the 2011 Regulations provides inter alia :

*(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..*

20. Regulation 9 of the 2011 Regulations provides:

- (i) A Tenant who has paid a tenancy deposit may apply to the First Tier Tribunal for an order under Regulation 10 where the Landlord did not comply with any duty in Regulation 3 in respect of that tenancy deposit.*
- (ii) An Application under paragraph 1 must be made no later than three months after the tenancy has ended.*

21. Regulation 10 of the 2011 Regulations provides inter alia :

*If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal –*

- (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit*

22. The respondent did not attend the cmd or lodge written opposition to the application. The Tribunal accepted the unopposed evidence relating to the amount of deposit paid (£3450). The amount was less than that stated in the tenancy agreement however the Tribunal accepted the explanation provided which was corroborated by the various email correspondence that had been submitted. The Tribunal accepted the evidence supported by the document from Safe Deposit Scotland that £3050 was placed in the scheme on 16 July 2024. The Tribunal accepted that £400 remained unprotected.

23. The Tribunal determined that there had been a breach of the tenancy deposit regulations and that the present application had been made timeously. The Tribunal proceeded to consider an appropriate level of award in terms of regulation 10 in light of the information provided.

24. The legal test to be applied in determining the level of sanction is set out in *Jenson v Fappiano* 2015 G.W.D. 04-89 and subsequent case law. Those authorities are reviewed by Sheriff Cruickshank in *Ahmed v Russell* 2023 S.L.T. (Tr) 33 and confirm the Tribunal should seek to assess a sanction that is “*fair and proportionate*” in all the circumstances, taking into account both aggravating and mitigating circumstances.
25. The Tribunal also had regard to the decision of the Upper Tribunal (UTS/AP/19/0020) which states:
- “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.”*
26. In reaching a determination the Tribunal took into account that there had been a breach of the 2011 regulations which had left the entire deposit unprotected for 66 days. The Tribunal took into account that £400 had been unprotected for the 12 month duration of the tenancy. The Tribunal took into account that the applicants had been entitled to expect that the deposit would be placed in an appropriate scheme and that he had been disappointed at the breach of the regulations.
27. The Tribunal gave weight to the fact that the respondent had sought to dispute the return of the deposit after the applicants had left the property. The respondent’s position had not been accepted by the deposit scheme who returned the full amount held by them to the applicants. The Tribunal also gave significant weight to the fact that £400 of the deposit had not been placed in the deposit and had not been returned to the applicants.
28. The Tribunal gave weight to the fact that the respondent was a professional property company. The Tribunal gave significant weight to the fact that the

respondent had not opposed the application and had provided no explanation for their breach of the regulations. The Tribunal also gave weight to the applicants' evidence relating to the conduct of the tenancy generally including the unlawful level of the deposit taken which was more than the maximum amount allowed of 2 months' rent.

29. Having regard to all the factors the Tribunal determined that there had been a serious breach of the rules. However a significant mitigating factor was that a large proportion of the deposit (£3050) was protected from July 2024 and the tenancy itself was for the relatively short period of 12 months. The financial impact on the applicant had been limited to the loss of £400.

30. Taking the above aggravating and mitigating factors into account the Tribunal determined to award an amount equal to two times the deposit i.e. (£6,900).

### **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.**

# M-C. Kelly

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Legal Member/Chair

6<sup>th</sup> February 2026 \_\_\_\_\_  
Date