

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 Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/24/4061

Re: Property at Flat 21, 1 Elsie Inglis Way, Edinburgh, EH7 5FQ (“the Property”)

Parties:

Ms Aisha Akinola Janki, 10/3 Redbraes Place, Edinburgh, EH7 4LL (“the Applicant”)

Mr Xiaoyan Feng, Flat 13, 1 East Pilton Farm Crescent, Edinburgh, EH5 2GF (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment be made against the respondent in the sum of One Thousand Four Hundred Pounds (£1,400)

Introduction

These are linked applications under Rule 103 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and Rule 111 and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The applicant is the former tenant and seeks payment due to the failure of the landlord to protect her deposit. She also seeks to recover her deposit.

Procedure

CMDs first took place on 10 April 2025. The applicant failed to attend. CMDs then took place on 28 August 2025 at 2.00 pm. Both parties appeared personally. A detailed CMD Note was issued identifying the identified issues. Matters were continued further to fresh CMDs today, 27 January 2026. Further submissions from both parties had

been received. The applicant joined and was represented by a friend Mr A Alase, a qualified Scottish solicitor holding a practising certificate (though not acting in the course of a business). The respondent joined and represented his own interests.

Findings and Reasons

The property is Flat 21, 1 Elsie Inglis Way, Edinburgh EH7 5FQ. The applicant is Ms Aisha Akinola Janki who is the former tenant. The respondent is Mr Xiaoyan Feng. The lease that has been produced names the landlord as Yuanke Gao. The respondent delegated responsibility for letting out the property in his absence. The respondent accepts that Mr Gao was his authorised agent. The respondent was aware of the lease arrangements, is the heritable proprietor of the property and the registered landlord. He has the obligations and responsibilities as landlord. All these facts are accepted by both parties.

The written tenancy agreement purported to a 'short assured tenancy'. Such tenancies have not been capable of being created in Scotland after 30 November 2017. Differing copies of the written lease have been provided. The applicant accepts that she altered the lease after it was entered into to reflect the payment of the deposit and the dates of occupation. She did not do so to deliberately mislead. On the contrary she did so to seek to clarify the parties' arrangements. The existence of a written lease is unnecessary and the de facto arrangements between the parties created a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016. The tenancy ended on 4 June 2024.

The applicant paid £1,900 by way of deposit. It was initially asserted by the respondent that the £1,900 paid at the commencement of the lease was not a deposit. It was asserted that this was a prepayment taken by the landlord in order that the applicant could secure the property. Key money or non-returnable deposits are illegal. In the respondent's most recent submissions dated 3 October 2025 he accepts that it was a deposit but suggests that his obligations arising were not created because the written lease was not returned. This does not excuse the respondent from his obligations under the 2011 Act, fortified by the fact that the written lease presented to the respondent was not a legal valid lease. The applicant's position is supported by the production of WhatsApp messages in which reference to a deposit is clearly made. The tribunal finds that the respondent knew or ought to have known that his obligations under the 2011 Act became live after the deposit was paid. The applicant has demonstrated by way of direct unequivocal evidence from the three Tenancy Deposit Schemes in Scotland that the deposit paid was not remitted to the schemes nor therefore protected. This is not disputed by the respondent.

The tribunal was satisfied that the respondent did not comply with the requirements of the 2011 Regulations and did not lodge the £1,900 deposit paid into an approved scheme. The duties of landlords are contained within Regulation 3. This requires the landlord who has received the tenancy deposit in connection with the relevant tenancy

to pay the deposit to a relevant scheme administrator from an approved scheme within 30 working days of the beginning of the tenancy. The respondent failed to do this. At the hearing today the respondent unequivocally accepted that the sum of £1,900 was a deposit in the true sense and that he had breached the tenancy deposit requirements.

Regulation 10 requires the Tribunal to make an Order against the respondent to pay to the applicant an amount not exceeding three times the amount of the tenancy deposit.

The Tribunal considered all relevant circumstances prior to making any Order under Regulation 10. The respondent is operating as a commercial letting agent and yet appears to have little experience or knowledge of residential lettings given that an attempt was made to enter into short assured tenancy after such tenancies were no longer valid as well as having failed to protect the deposit. The Tribunal is satisfied having regard to the entirety of the circumstances that the respondent has failed to act diligently and professionally and failed to account to the applicant in a proper manner. The applicant, who challenges the retention of her deposit, has been materially disadvantaged by the respondent's failure to pay the deposit into a scheme as required. She has further been disadvantaged by the respondent's lack of transparency in his actions due to the use of an agent who did not disclose him as the principal. The respondent relied upon informal advice and guidance offered to him by a friend at the time. He now accepts his culpability.

In all the circumstances, the Tribunal orders that the respondent pays the applicant one and a half times the amount of the tenancy deposit ie a total of £2,850. This is fair and proportionate in all the circumstances. The applicant sought the maximum penalty of three times the value of the deposit. This would be excessive. The deposit was particularly high and a penalty to the extent of one and a half times the value of that deposit is a suitable sanction. The public require to have confidence that residential landlords are operating fairly and that their deposits are secured in accordance with the law in force in Scotland. The more general failures of the respondent, including the delays caused by his actions, all as set out, justify the increase to a modest multiplier of one and a half times the value of the deposit.

The respondent also seeks to recover the deposit paid. She acknowledges that some sums ought to be deducted. Parties were agreed today that the sum of £500 in total be deducted from the £1,900 deposit paid. This deduction represents the cost of cleaning, breakages and a contribution towards utility bills. Importantly the applicant stated that utility bills were agreed to form part of the rent paid, agreed with the respondent's agent. The respondent was not present at the time of the agreement and cannot rely upon any written tenancy contract. She agreed to the deduction today in order to reach settlement with the respondent. An order is necessary to enforce the agreement reached given the disputed background and earlier failure of the

respondent to enter into discussions and settle the issue earlier. The payment order is thus one of £1,400, as agreed between the parties.

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.

R. Mill

27 January 2026

Legal Member/Chair

Date