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 Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/25/0706

Re: Property at Acreknowe Bungalow, Acreknowe Farm, Hawick, TD9 9UQ ("the Property")

Parties:

Mr Jaimie Jack, 94 Fairhurst Drive, Hawick, TD9 8HS ("the Applicant")

Mr William Peter Nicholas Lee Ewart, Acreknowe Farm House, Acreknowe Farm, Hawick, TD9 9UQ ("the Respondent")

Tribunal Members:

Ruth O'Hare (Legal Member), Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent is in breach of the duties in relation to the Applicant's tenancy deposit under regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations").

The Tribunal therefore made an order for payment against the Respondent in the sum of Two hundred and fifty pounds (£250) Sterling.

Background

1 This is an application under regulation 9 of the 2011 Regulations and rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules"). The Applicant sought a determination that the Respondent had failed to comply with the duties in respect of the Applicant's tenancy deposit under regulation 3 of the 2011 Regulations.

2 The application was referred to a case management discussion ("CMD") to take place by teleconference on 13 August 2025. The Tribunal gave notice of the

CMD to parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers.

3 The Tribunal invited both parties to make written representations in advance of the CMD. No written representations were received from either party.

The CMD

4 The CMD took place on 13 August 2025 by teleconference. The Applicant was in attendance. The Respondent also joined the call and was accompanied by his wife, Mrs Ewart, as a supporter.

5 The Tribunal explained the purpose of the CMD and the legal test to be applied under the 2011 Regulations. The Tribunal proceeded to hear submissions from the parties on the application. The following is a summary of the key elements of the submissions and is not a verbatim account.

6 The Applicant explained that the tenancy had commenced on 1 November 2024. He had paid the deposit to the Respondent on 8 October 2024. He understood the deposit would be paid into SafeDeposits Scotland ("SDS"). The deposit was not paid into the scheme until 3 February 2025, well beyond the statutory deadline. The Applicant had moved out of the property at the end of February 2025. The parties had gone through the deposit adjudication process with SDS, and the Applicant had since received the deposit back.

7 The Respondent accepted that the deposit was lodged late. He had used a solicitor in the past to manage the tenancy, and the solicitor had dealt with the deposit. The Respondent had since taken over the management of the deposit. The Respondent did not study his obligations carefully and failed to pay the deposit over to the scheme in time. As soon as he became aware of this upon advice from his solicitor, he arranged for the deposit to be secured. His solicitor had dealt with the tenancy documentation but the rent and deposit had been paid to the Respondent. The Respondent clarified that his estate agent had provided the tenancy agreement but had not gone through the terms of the document with the Respondent.

8 The Applicant disputed the Respondent's account of events. The Applicant did not find the Respondent's explanation for the failure to lodge the deposit to be credible. The Applicant had conversations with previous tenants of the property who advised him that their deposit was not placed in a scheme. This was not a new occurrence.

9 Both parties raised issues that had arisen during the tenancy, including claims of disrepair, however the Tribunal clarified that in terms of the application before it, it could only consider the circumstances surrounding the deposit.

10 Having heard from the parties the Tribunal determined to fix a full evidential hearing in the matter as there remained a dispute between the parties. The Tribunal noted that the Respondent did not dispute that he had breached

regulation 3 of the 2011 Regulations by lodging the deposit late. The Tribunal therefore required to establish what the aggravating and mitigating factors were in the case to properly assess what level of sanction would be appropriate.

The hearing

11 The hearing took place at George House, Edinburgh on 13 January 2026. The Applicant attended and was accompanied by his partner Kristina Noreikaite. The Respondent attended and was accompanied by his wife, Mrs Ewart, who confirmed that she would be acting as his representative. Ms Fiona Stephen, a Legal Member of the Tribunal, also attended the hearing as an observer.

12 The Tribunal heard evidence from both the Applicant and the Respondent, assisted by his wife. The following is a summary of the key elements of the evidence relevant to the Tribunal's determination of the application.

<u>The Applicant</u>

13 The Applicant explained that he had moved into the property on 1 November 2024. He had paid the deposit and the first months rent. He believed that his deposit would be lodged with SDS straight away. That did not happen. The Applicant had moved out of the property on 7 February 2025. On 3 February 2025 he received an email from SDS stating that his deposit had been paid into the scheme. The Applicant did not know why the deposit was only secured when he was moving out of the property. He did not think the Respondent was entitled to recover the deposit due to the condition of the property. The Respondent had tried to claim payment of the deposit but it had been repaid to the Applicant in full after he provided a lengthy statement to SDS. The Applicant noted the Respondent's position stated at the CMD, which was that he believed the Applicant's deposit was being held by his solicitor. However, the Applicant had provided a bank statement which clearly showed the deposit had been paid directly to the Respondent. The Applicant highlighted that the deposit had been secured very late, far past the statutory deadline. The Applicant felt he had to fight to get the deposit back, which caused significant stress when compounded by the other issues he was dealing with, including moving out of the property after the Respondent gave him a notice to leave. The Applicant explained that his family had suffered with various health issues caused by the condition of the property. He conceded however that this was not a direct result of the circumstances surrounding the deposit.

14 The Applicant confirmed that he had spoken with the previous tenant of the property after he moved in. They had come to the property to collect a package. He could not recall their name. The previous tenant had told him that when they moved out, the Respondent had retained part of their deposit. The deposit had not been secured in a scheme. The Applicant believed the conversation had taken place in November 2024. The Applicant started to question whether his own deposit was in a scheme. He confirmed that he was only made aware that the deposit had not been secured when he received the email from SDS on 3 February 2025.

15 The Applicant addressed the level of sanction to be awarded in this case. He explained that he had incurred costs because the condition of the property but understood that the sanction is not compensatory. He pointed out the length of time it had taken for the deposit to be secured by the Respondent as a relevant aggravating factor.

The Respondent

16 The Respondent confirmed that the deposit had been paid on 8 October 2024. The Respondent had understood that the deposit would be dealt with by his solicitor. He did not fully read the tenancy agreement. When it came to light that the deposit was not in a scheme, the Respondent had rectified the error as soon as possible. The solicitor had arranged for the property to be advertised and put forward potential tenants. They would have met with the Applicant to have the tenancy agreement signed. The Respondent conceded that the deposit had been paid into his bank account. He did not know that this was in fact the Applicant's deposit. He thought the solicitor would have deducted this from any funds and paid it into a scheme. The Respondent became aware that the deposit was not secured when he got in touch with his solicitor with a view to ending the tenancy.

17 The Respondent addressed the situation with the previous tenant. He explained that this was more of a neighbourly agreement. It was different from the Applicant's tenancy. The previous tenant was happy with what had been agreed regarding the deposit. They had lived in the property for around 9 months. Regarding the tenancies that had preceded both the Applicant and the previous tenant, the deposits had been dealt with by the Respondent's solicitor. The Respondent had then changed to a different solicitor, with the expectation that they too would handle the tenancy deposit, but that did not happen.

18 With regard to the level of sanction, the Respondent did not think the Applicant should receive any award. He had received his deposit back. The situation with the Applicant had caused the Respondent and his wife significant stress. The Respondent is almost 80 years old. He fully admitted the breach. This is his only rental property.

Closing submissions

19 The Applicant believes the Respondent's evidence is contradictory. The Respondent states that he did not know the deposit should be paid into a scheme, yet he signed a tenancy agreement to that effect. It was false to state that the Respondent thought it was their solicitor's responsibility. The Applicant had to wait until 3 February for confirmation that his deposit was secure. The Respondent had then tried to claim the deposit, despite the condition of the property.

20 The Respondent denies that he made a claim to SDS for the deposit. The Applicant had received his deposit back in full. The Respondent did not dispute this with SDS. He wanted to bring an end to the matter. The Respondent has

suffered financial loss in terms of loss of rent. He reiterated that the Applicant should not receive any payment.

21 The Tribunal concluded the hearing and determined to issue its decision in writing.

Findings in fact

22 The Applicant and Respondent entered into a private residential tenancy agreement in respect of the property, which commenced on 1 November 2024.

23 In terms of clause 11 of the tenancy agreement the Applicant agreed to pay a tenancy deposit in the sum of £500.

24 The Applicant paid the deposit to the Respondent on or around 8 October 2024.

25 The Respondent did not read the terms of the tenancy agreement. The Respondent did not realise that the deposit had been paid into his account.

26 The Respondent lodged the tenancy deposit with Safe Deposits Scotland, an approved tenancy deposit scheme, on 3 February 2025, which was after the 30 working day statutory deadline under regulation 3 of the 2011 Regulations. The Respondent did so after a conversation with his solicitor.

27 The Applicant left the property on 7 February 2025.

28 Following the termination of the tenancy, the deposit was adjudicated upon by SafeDeposits Scotland. The Applicant received his deposit back in full.

29 The Respondent has no other rental properties.

Reasons for decision

30 The Tribunal considered all the documentary evidence before it, and the oral evidence from the parties at the hearing, in reaching its decision. The Tribunal was satisfied that it had sufficient evidence before it to make relevant findings in fact to reach a decision on the application.

31 There are clearly much wider disputes between the parties arising from this tenancy that both parties have referenced during these proceedings. For the avoidance of doubt, the Tribunal's determination of this application is focused solely on the circumstances surrounding the tenancy deposit.

32 Regulation 3 of the 2011 Regulations states that "*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".

33 The Tribunal was satisfied that the tenancy between the parties is a relevant tenancy for the purpose of Regulation 3. The Tribunal also accepted based on the evidence before it that the Applicant had paid a tenancy deposit of £500 to the Respondent, and the Respondent had failed to pay the deposit into a tenancy deposit scheme within the statutory timescale. These facts were not in dispute. The Tribunal therefore found the Respondent to be in breach of Regulation 3.

34 Regulation 10 of the 2011 Regulations states "*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; and (b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to- (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42".*

35 Having been satisfied that the Respondent had failed to comply with the duties in Regulation 3, the Tribunal went on to consider what sanction to impose having regard to the particular facts and circumstances of the case. The application of the sanction must seek to act as a penalty to landlords and ensure compliance with their statutory duties in relation to tenancy deposits. There is no discretion available to the Tribunal under Regulation 10. If the Tribunal finds the landlord in breach of Regulation 3, it must make an order for payment.

36 The Tribunal had regard to the decision of Sheriff Cruickshank in Ahmed v Russell (*UTS/AP/22/0021*) which provides helpful guidance on the assessment of an appropriate sanction. In doing so the Tribunal must identify the relevant factors, both aggravating and mitigating, and apply weight to same in reaching its decision. The Tribunal is then entitled to assess a fair and proportionate sanction to be anywhere between £1 and three times the sum of the deposit, which in this case is £1500. As per Sheriff Cruickshank at paragraph 39 of his decision in Ahmed: "*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*."

37 The Tribunal took into account the fact that the deposit had been retained by the Respondent until shortly before the tenancy ended, a period of around three months. The Respondent advised that he did not properly read the terms of the tenancy agreement and did not realise that the deposit had been paid into his own bank account. The Tribunal could accept this, having regard to the Respondent's age and presentation at the hearing. However, the Respondent still has a duty to ensure he is fully compliant with his legal responsibilities as a landlord. He had clearly failed to do so in this case and ignorance cannot be an

excuse. The Tribunal also noted the fact that the deposit paid by the previous tenant to the Respondent had not been secured in a scheme. Whilst the Respondent had stressed that the circumstances were different in that case, the duties under the 2011 Regulations apply to all relevant tenancies, regardless of the nature of the relationship between the parties. This highlighted a lack of proper attention by the Respondent to his responsibilities as a landlord.

38 The Tribunal did however give significant weight to the fact that the deposit had ultimately been paid over to SDS by the Respondent, and without any prompting by the Applicant. The Applicant had conceded that he only became aware of the fact that his deposit was not in a scheme when he received the email from SDS on 3 February 2025. Whilst he may have had suspicions in November 2024, he did not act upon these by approaching the Respondent to query the position regarding his deposit. One of the primary aims of the 2011 Regulations is to ensure tenants have access to the independent scheme dispute resolution process should any disputes arise. The Applicant was not deprived of this protection. Whilst the Respondent may have initially claimed against the deposit, the Applicant would have been entitled to challenge this through the proper channels. However, the Applicant ultimately received his deposit back in full. He did not suffer any financial loss insofar as his deposit. These are generally factors that will always weigh in favour of a lower award.

39 The Tribunal also gave weight to the fact that the Respondent had fully admitted his failure to comply with Regulation 3. The Tribunal accepted that he did not become aware of this until a conversation with his solicitor. That was a credible explanation for the action he had then taken to lodge the deposit with the scheme, without any prompting by the Applicant. It did not show there to be any intention on his part to deliberately evade the requirements of the 2011 Regulations.

40 The Tribunal was therefore satisfied that the gravity of the breach is low in this case, and in relation to culpability, greater weight can be given to the mitigating factors. The Tribunal concluded that an award of £250 would be proportionate, fair and just.

41 The Tribunal therefore made an order for payment in the sum of £250.

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.

Ruth O'Hare

Legal Member/Chair

27 January 2026

Date