



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulations 10 of the Tenancy Deposit
Scheme (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/24/5803

**Re: Property at FLAT 2 46 ARDSHIEL AVENUE, EDINBURGH, EH4 7HS ("the
Property")**

Parties:

**KIRUBHASINI DEVARAJAN, FLAT 2 46 ARDSHIEL AVENUE, EDINBURGH, EH4
7HS ("the Applicant")**

**KHALEDA AMAN, 7/3, BALFRON LOAN, EDINBURGH, EH4 7LA ("the
Respondent")**

Tribunal Members: Ruth O'Hare, Legal Member and Elizabeth Dickson, Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent is in breach of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations").

The Tribunal therefore determined to make an order for payment in the sum of Five hundred pounds (£500) Sterling.

Background

- 1 This is an application under regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations") and rule 103 of the Firsttier 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 under regulation 3 of the 2011 Regulations in relation to the Applicant's tenancy deposit.
- 2 The application was referred to a case management discussion ("CMD") to take place by teleconference on 1 July 2025. The Tribunal gave notice of the CMD

to the parties in accordance with Rule 17(2) of the Rules. Both parties were invited to make written representations.

- 3 The Tribunal received written representations from the Applicant on 17 April 2025, and from the Respondent on 10 April 2025 and 16 June 2025.
- 4 The CMD took place on 1 July 2025 by teleconference. Both parties joined the call. Having heard submissions from the parties the Tribunal determined to fix a hearing to assess the level of sanction to be awarded. It noted that the Respondent accepted she had failed to lodge the deposit within the statutory 30 working day period under Regulation 3 of the 2011 Regulations.
- 5 A Direction was issued to the parties detailing the arrangements for submitting additional documentary evidence and details of witnesses no later than 14 days prior to the hearing. Both parties submitted additional documentary evidence in response to the Direction.
- 6 The hearing took place on 13 November 2025 by teleconference. The Tribunal heard oral evidence from the Applicant and the Respondent. There were no other witnesses.
- 7 Towards the end of the hearing it came to light that the Applicant had submitted documents to the Tribunal that had not been received by the Tribunal members. The Tribunal therefore arranged for the documents to be sent to the Respondent and adjourned the hearing for the Respondent to provide any further written representations prior to the Tribunal proceeding to a decision. A Direction was issued requiring the Respondent to provide any response by 2 December 2025.
- 8 As at the date of this decision, no written representations have been received from the Respondent.

Findings in fact

- 9 The Applicant is the owner and landlord, and the Respondent is the tenant, of the property in terms of a private residential tenancy agreement.
- 10 The tenancy between the parties commenced on 1 November 2024.
- 11 Clause 7 of the tenancy agreement required the Applicant to pay a tenancy deposit to the Respondent in the sum of £1600.
- 12 The Applicant paid the tenancy deposit in the sum of £1600 to the Respondent prior to the commencement of the tenancy.
- 13 The Respondent paid the Applicant's tenancy deposit over to SafeDeposits Scotland, an approved tenancy deposit scheme, on 17 December 2024.
- 14 The Respondent has four rental properties.

Reasons for decision

- 15 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.
- 16 It is clear that there are several disputes outstanding between the parties regarding this tenancy. For the avoidance of doubt, the Tribunal's determination of this application is focused solely on the circumstances surrounding the tenancy deposit.
- 17 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*".
- 18 The Tribunal was satisfied that the tenancy between the parties was 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 £1600 to the Respondent, and the Respondent had failed to pay the deposit into a tenancy deposit scheme. These facts were not in dispute. The Tribunal therefore found the Respondent to be in breach of Regulation 3.
- 19 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*".
- 20 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.
- 21 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 £4800. As per Sheriff Cruickshank at paragraph 40 of his decision in Ahmed: "*The sanction which is imposed is to make 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.”

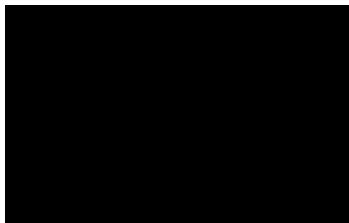
- 22 The Tribunal found it difficult to accept some aspects of the Respondent's evidence, in particular the reasons why the deposit was lodged late. The Tribunal was therefore unable to make any findings on this point. The Respondent gave evidence as to her circumstances at the time. She runs a salon, and it was a busy period in the lead up to Christmas. However, in an email to the Applicant on 16 December 2024 she had stated “*no deposit is needed*”. This contradicted the terms of the tenancy agreement between the parties, and the action she had then taken to pay the deposit over to a scheme on 17 December 2024. It was misleading at best and would have clearly confused the Applicant. The Respondent also denied receiving correspondence from the Applicant regarding the tenancy deposit, but the Tribunal preferred the Applicant's evidence regarding the nature of the correspondence, which was supported by the letters sent to the Respondent and confirmation of delivery by Royal Mail.
- 23 The Tribunal did take into account the fact that the Respondent has multiple rental properties. The Respondent would therefore appear to be an experienced landlord. The Tribunal would expect her to have robust procedures in place to ensure that deposits are handled appropriately and in line with her obligations under the 2011 Regulations. Her failure to do so in this case was therefore a relevant aggravating factor. There was however no indication this was a systemic failure on the Respondent's part, as there was no evidence to suggest that she had been in the same situation with any of her other tenancies.
- 24 The Tribunal did not give weight to the Respondent's alleged handling of the Applicant's deposit, which was paid in cash. The Applicant stated that the Respondent had given the money to a departing tenant. The Tribunal considered that it is up to the Respondent as to how she manages her funds and the fact that she may have used the cash from the Applicant for other means was not, in the view of the Tribunal, a relevant factor. The Applicant's deposit had in the end been secured in a deposit scheme.
- 25 The Tribunal did consider that a significant mitigating factor in this case is the fact that the Applicant does not appear to have suffered any real harm because of the Respondent's breach of regulation 3. The deposit is now secured in a deposit scheme and will be adjudicated independently if required, which is one of the primary purposes of the 2011 Regulations. The Applicant has not been deprived of that protection and there is no evidence that they have suffered any financial loss.
- 26 The Tribunal also gave significant weight to the fact that the deposit was paid into the scheme only two working days after the statutory deadline. Whilst the Tribunal can accept that the situation would have caused some stress to the Applicant, most likely compounded by the other matters arising from the

tenancy, the Tribunal can only look at the circumstances surrounding the deposit and has concluded that there has been little prejudice to the Applicant in this case.

- 27 The Tribunal was therefore satisfied that the gravity of the breach is at the lower end of the scale, and in relation to culpability, greater weight can be given to the mitigating factors. The Tribunal concluded that an award of £500 would be proportionate, fair and just in this case.
- 28 The Tribunal therefore made an order for payment in the sum of £500.

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.



19 January 2026

Legal Member/Chair

Date