



**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/25/3642

Re: 93 Inglefield Street, Glasgow G41 7PP ("the Property")

Parties:

Sam Allcock, 103 Chesterfield Road, Arkwright, Chesterfield, Derbyshire S44 5DR ("Applicant")

Aimee McKay, 19 Tollcross View, Glasgow G32 8UA ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Decision :

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should pay to the Applicant the sum of £1,500 plus interest thereon at the rate of 5% per annum.

Background

1. The Applicant sought an order for payment of £1650 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations").
2. The Applicant lodged a summary of his claim in which he stated that the Property was a 3 bedroom flat; that he rented one room in the Property; that the other two bedrooms were occupied by third parties; that the agreed monthly rent was £500; that a deposit of £550 was paid on 26 May 2025; that the Respondent did not reside in the Property; that the period of the tenancy was 26 May 2025 to 24 July 2025; that the deposit had not been returned following the end of the tenancy; that the deposit had not been protected in an approved scheme and that no written tenancy agreement was provided. The Applicant lodged a transcript of whatsapp messages between the Parties. The Application was served on the Respondent by sheriff officer on 16 December 2025.

3. The Applicant also sought return of the deposit paid of £550. That application was given reference CV/25/3832. The applications were conjoined.

Case Management Discussion (“CMD”)

4. A CMD took place on 3 February 2026 by conference call. The Applicant was in attendance. There was no appearance by or on behalf of the Respondent.
5. Mr Allcock told the Tribunal that the tenancy commenced on 26 May 2025 and ended on 24 July 2025. He drew the Tribunal’s attention to messages dated 16 May 2025 and 23 July 2025 which confirmed these dates. He said that no notices were served to end the tenancy, it was ended by agreement. Mr Allcock said that an initial payment was made of £1100 to cover the deposit of £550 and the first month’s rent. He referred to messages dated 16 May 2025 which referred to the payment being made. He said it was later agreed that the monthly rent would be £500. He referred to a message dated 28 June 2025 which confirmed that. He said that he was never given a written tenancy agreement.
6. Mr Allcock told the Tribunal that the Property consisted of 3 bedrooms plus a shared bathroom and kitchen. He said that the Respondent did not occupy the Property. He said the remaining two bedrooms were occupied by third parties.
7. Mr Allcock told the Tribunal that he moved to Glasgow to work on a contract. He said he continued to work on that contract which did not have an end date. He said it is open ended. He said that he left the Property as his wife came to work in Glasgow on the same open ended contract at the end of July 2025 and they wanted to live in a property occupied only by them. He said they are renting a property at Glasgow Harbour.
8. The Tribunal noted the form of tenancies which are excluded from the 2011 Regulations. Mr Allcock told the Tribunal that the Property is not used for religious or medical purposes. He said the Respondent does not live in the Property. He said that he did not live in the Property for the purpose of a holiday.
9. The Tribunal noted that a short term let is excluded from the 2011 Regulations. The Tribunal noted the meaning of “short term let”. Mr Allcock said that he used the Property as his principal home. He said that he owned a property in Derbyshire but only visited it perhaps once each month. He said he would eventually rent out the property in Derbyshire. Mr Allcock said that he paid council tax for the property which he occupies in Glasgow.

10. Mr Allcock told the Tribunal that the Respondent had told him she was not required to lodge his deposit in an approved scheme as he only rented one room in the Property.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a tenancy agreement which commenced on 26 May 2025.
2. The tenancy came to an end on 24 July 2025.
3. The Applicant paid to the Respondent a deposit of £550 on or about 16 May 2025.
4. When occupying the Property the Applicant did not use the Property for one of the uses described in section 83(6) of the Antisocial Behaviour etc (Scotland) Act 2004.
5. When the Applicant occupied the Property it was his principal home.
6. The deposit was not paid to the administrator of an approved scheme in compliance with the 2011 Regulations.

Findings in Fact and Law

7. The Applicant's tenancy of the Property was a "relevant tenancy" for the purposes of Regulation 3(3) of the 2011 Regulations.
8. The tenancy was not a short term let as defined in article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) Order 2022.
9. The Respondent breached Regulation 3 of the 2011 Regulations.

Reasons for Decision

11. Since 1 December 2017 the only competent way to constitute a private residential tenancy is in terms of the Private Housing (Tenancies)(Scotland) Act 2016 ("2016 Act"). Section 3 of the 2016 Act provides that such contracts do not require to be in writing. Section 2(2) of the 2016 Act provides that a tenancy is to be regarded as one under which a property is let to an individual notwithstanding that it is let jointly to an individual and another person. Section 2(4) of the 2016 Act provides that a tenancy is to be regarded as one under which a property is let as a separate dwelling if the terms of the tenancy entitle the tenant to use property in common with another person ("shared

accommodation") and the let property would be regarded as a separate dwelling were it to include some or all of the shared accommodation. Section 2 of the 2016 Act was considered in the Upper Tribunal decision in *Affleck v Bronsdon* in 2019 where the Upper Tribunal determined that the letting of a bedroom with the use of shared facilities would be a private residential tenancy.

12. The 2011 Regulations apply to a "relevant tenancy" as defined in Regulation 3. Regulation 3(3) excludes certain tenancies from the 2011 Regulations being those where the use of the house is of a type described in section 83(6) of the Antisocial Behaviour etc (Scotland) act 2004. The uses described in section 83(6) include a holiday let, where the property is the main residence of the landlord and a short term let as defined in article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) Order 2022.

13. Mr Allcock's evidence was that he did not occupy the Property for a holiday, that the Respondent did not occupy the Property and that the Property was his main residence between May and July 2025. The tenancy did not therefore fall into one of the categories of tenancy excluded from the 2011 Regulations.

14. 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.....*

15. 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."

16. 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"

17. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Respondent had told the Applicant that she was not required to lodge the deposit with an approved scheme. This was not correct.
18. The amount to be awarded is a matter for the discretion of the Tribunal having regard the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie UTS/AP/19/0020*. At para 13 and 14 he considered the assessment of the level of penalty and said:

"[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 facts, and tends to lessen culpability.

[14] 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. None of these aggravating factors is present."
19. The Respondent did not attend the CMD to put forward any mitigating factors. There was however no evidence of multiple lettings, multiple breaches of the 2011 Regulations or of fraudulent intent on the part of the Respondent.
20. The Tribunal considered that there were aggravating factors in this case. Firstly the lack of admission of fault. Secondly, and importantly, as the deposit was not lodged in an approved scheme the Applicant was deprived of the opportunity to approach the scheme administrator regarding return of the deposit. In these circumstances the purpose of the 2011 Regulations was defeated. This also meant that the Applicant required to apply to the Tribunal to seek recovery of

the deposit. In light of these aggravating factors the Tribunal considered that it would be appropriate to make an award of compensation at the higher end of the scale.

21. The Tribunal determined that the sanction should be £1,500 in the particular facts and circumstances of this case. The Tribunal considered that it was reasonable to award interest at the rate of 5% per annum.

Decision

The Tribunal granted an Order for payment of £1,500 in terms of Regulation 10(a) of the 2011 Regulations plus interest thereon at the rate of 5% per annum..

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.

Joan Devine

**Joan Devine
Legal Member**

Date: 3 February 2026