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 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/25/4087

Re: Property at Flat 1/1, 67 Curle Street, Glasgow, G14 0SA ("the Property")

Parties:

Miss Maryann Stewart, Mr Andrew Hogg, Flat 1/1, 67 Curle Street, Glasgow, G14 0SA ("the Applicants")

Mr Lewis Harvey, whose present whereabouts are unknown ("the Respondent")

Tribunal Members:

James Bauld (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should be ordered to make payment to the Applicants of the sum of TWO THOUSAND FIVE HUNDRED AND FIFTY POUNDS (£2,550)

Background

1. By application dated 21 September 2025 the applicants sought an order in terms of Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations") in respect of an alleged failure by the respondent to comply with those regulations.

2. The application was accepted by the Tribunal on 7 October 2025 and referred for determination by the tribunal.

3. A Case Management Discussion (CMD) took place on 13 March 2026. The applicants attended personally. The respondent Mr Harvey was not present. Intimation of the CMD upon Mr Harvey required to be effected by service by advertisement on the tribunal's website. The advertisement was placed on the website on 18 February 2026.

4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters. The tribunal asked various questions of the applicants with regard to the application.

5. The tribunal explained to the applicants the maximum award which could be made in terms of the 2011 Regulations and the requirement that an award must be made if the tribunal finds that there has been a breach of the regulations.

Discussions at the CMD

6. The applicants indicated that the tenancy had commenced in September 2024 and a deposit of £850 had been paid prior to the commencement of the tenancy and it has never been lodged in an approved tenancy deposit scheme.

7. The applicants indicated that they were recently visited by the landlord but that he did not discuss this application with them. It is the applicants' belief that the respondent is the landlord in a number of other properties.

8. The applicants indicated that the respondent has refused to carry out necessary repairs to the property and has indicated to them that he wishes to remove them from the property and that their deposit will not be returned to them.

9. The applicants occupy the property with their two young children.

10. The applicants indicated that it was their view that it was the respondent's duty to lodge the deposit with the appropriate scheme

11. The applicants indicated that throughout the tenancy their rent has been paid on time via bank transfer to the landlord.

12. The applicants invited the tribunal to make an award in respect of the failure to lodge the deposit at the maximum allowable level. The deposit has been unprotected for the entire period of the tenancy which is ongoing and now exceeds eighteen months and the landlord has given no indication that he intends to lodge the deposit. He has indicated to them that he has no intention of returning the deposit if the tenancy ends.

Findings in fact

13. A tenancy agreement was entered into between the parties which commenced 24 September 2024.

14. A deposit of £850 was paid by the applicants to the respondent.

15. The deposit has never been paid into an approved tenancy deposit scheme.

16. The tenancy is continuing a at the date of the CMD.

Decision

17. This application relates to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy.

18. In this case it was clear that the Landlord had failed to do so. Accordingly, he was and remains in breach of the duties contained in Regulation 3 of the 2011 Regulations. Those duties are twofold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a

Tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties.

19. Regulation 9 of the 2011 Regulations indicates that if a landlord does not comply with any duty in regulation 3 then the Tribunal must order that a Landlord makes payment to the Tenant of an amount "not exceeding three times the amount of the tenancy deposit".

20. In this case the Tribunal is required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment.

21. The Tribunal carefully considered the evidence which had been produced by the applicants. There was clear evidence that the respondent had failed to pay the tenancy deposit into the appropriate scheme for the whole period of the tenancy (a period now exceeding 18 months and continuing). The respondent had also failed to provide the prescribed information required by regulation 42 of the 2011 Regulations. The deposit has never been lodged in accordance with the requirements of the 2011 Regulations.

22. The Regulations were introduced to safeguard deposits paid by tenants. They were introduced against a background of landlords abusing their position as the holder of deposit moneys. The parliament decided that it should be compulsory to put the deposit outwith the reach of both the landlord and the tenant to ensure that there was a dispute resolution process accessible to both landlord and tenant at the end of a tenancy and which placed them on an equal footing. The Regulations make it clear that the orders to be made by Tribunals for failure to comply with the Regulations are a sanction or a penalty.

23. In this case, the Respondent is in flagrant breach of the 2011 Regulations.

24. The tribunal notes that in an Upper Tribunal decision, (***Ahmed v Russel*** UTS/AP/22/0021 2023UT07) Sheriff Cruickshank indicates (at Para 38) that "***previous cases have referenced various mitigating or aggravating factors which may be considered relevant. It would be impossible to ascribe an exhaustive list. Cases are fact specific and must be determined on such relevant factors as may be present***". The amount awarded should represent "***a fair and proportionate sanction when all relevant factors have been appropriately balanced***".

25. The sanction to be imposed is intended to mark the gravity of the breach which has occurred. It should reflect the level of overall culpability in each case measured against the nature and extent of the breach of the 2011

Regulations. The tribunal is required to determine a fair and proportionate sanction based on the facts as recorded.

26. Prior to the jurisdiction to determine these applications becoming part of the jurisdiction of the First-tier Tribunal, the applications were determined in the Sheriff Court. There were numerous Sheriff Court decisions which have been reported.

27. In many of these cases, the Sheriff Courts have indicated that the Regulations were introduced to address what was a perceived mischief and that they will be meaningless if not enforced.

28. In a decision by Sheriff Principal Stephen at Edinburgh Sheriff Court in December 2013, the Sheriff Principal indicated that the court was "entitled to impose any penalty including the maximum to promote compliance with Regulations". (***Stuart Russell and Laura Clark v. Samdup Tenzin 2014 Hous.L.R. 17***).

29. In this case, the Respondent is in clear and blatant breach of the 2011 Regulations. The respondent had not attended the CMD and had failed to provide any representations setting out any mitigation of his failure to lodge the deposit in accordance with the Regulations.

30. The tribunal considered that this was a significant breach of the regulations which required to attract a penalty towards the higher end of the available range.

31. The tribunal considered whether the award should be made at the maximum level available to the tribunal which based on the deposit being £850 would have been £2550. The tribunal took the view that this case involves an egregious and ongoing failure by the landlord. No proper explanation or mitigation had been offered to the tribunal by the landlord. It appeared he had simply and deliberately ignored the provisions of the Regulations In the absence of any mitigating factors, the award requires to be at a significant level.

32. Having considered the submissions from the applicants and taking into account the guidance from Upper Tribunal cases, the tribunal has decided that the appropriate award should be the maximum amount of £2,550 reflecting the very serious and continuing failure by the landlord in this case. This case involves a significant breach of the relevant regulations. The deposit has been unprotected for the entire length of a tenancy which has now lasted over 18 months. It continues to be unprotected.

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33. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

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.

J. Bauld

_____ ___13 March 2026_____

Legal Member/Chair Date