



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/25/3839

Re: Property at 4 Kinness Place, St Andrews, Fife, KY16 9EZ (“the Property”)

Parties:

Mr Thomas Baxter, Mr Samuel Durston, Ms Karolina Singerova, Mr Andrew Stirling, 14 Hamilton Avenue, St Andrews, Fife, KY16 8EH; 14 Hamilton Avenue, St Andrews, Fife, KY16 8EH; Eliasova 44, Prague 6, 16000, Czech Republic, Czech Republic; 8 Anna Munro Avenue, Dunfermline, KY12 8GL (“the Applicant”)

Mrs Gillian Perras, Mr Larry Perras, Easter Edenhill, Kennedy Gardens, St Andrews, Fife; Easter Edenhill, St Andrews, Fife, KY16 9DJ (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had breached 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 One Hundred pounds (£100) Sterling.

Background

- 1. The Applicant made an application in Form G (“the Application”) dated and lodged on 8 September 2025, under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 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 ("**the 2011 Regulations**").

2. The documents produced to the Tribunal by the Applicant were:
 - Copy Private Tenancy Agreement ('**PRT**') entered into between the parties with a start date of 16 August 2024.
 - Email from Safe Deposit Scotland ('**SDS**') to the Applicant dated 30 July 2025, confirming the deposit for the Property was protected from 30 September 2024.
 - Checkout report for the Property dated 11 July 2025.
3. The Application was accepted by the Tribunal on 17 September 2025.
4. The Application and relevant paperwork were served on the Respondent by Sheriff Officers on 13 January 2026.
5. The Respondent intimated that their Letting Agent would be representing them in relation to the Application.
6. On 16 February 2026, the Respondent's representative lodged written representations with the Tribunal.

The Case Management Discussion

7. A Case Management Discussion ("**CMD**") took place on 24 February 2026 by teleconference. The Applicants Mr Samuel Durston and Mr Thomas Baxter were present. The Respondent's representative Mr Michael Fitzgerald, Director of Stand Property Ltd, letting agents for the Property, also attended. Mr Baxter was dialling in from Switzerland, but did not give evidence.
8. The parties accepted that they were in a position to address the tribunal regarding the tenancy deposit claim, and that there was no requirement for any further procedure by way of a Hearing to be scheduled.
9. Parties were in agreement that;
 - The tenancy commenced on 16 August 2024.
 - The deposit was paid by the Applicant to the Respondent's letting agent at the commencement date.
 - The tenancy ended on 10 July 2025.
 - The deposit in terms of the PRT amounted to £2900.
 - The deposit was not paid in to the relevant scheme with SDS until 30 September 2024.

Position of the Respondent

10. Mr Fitzgerald stated in his written representations that the Respondent had engaged the services of his company as letting agents. They were employed to manage the Property, and to make sure that the deposit was lodged with an approved deposit company. The relevant lease commenced on Friday 16th August 2024. The deposit instruction to SDS was processed via the company software, SMS Professional, on 26th September 2024. Via SMS Professional, a BACS schedule is uploaded into the bank, which provides instructions to the bank to make transfers from the company client account. A screenshot from SME Professional was lodged, and showed this instruction being processed via SME, on 26th September 2024. The instruction to the bank was only processed by the bank on 30th September 2024. Having checked, it transpired that BACS instructions to the company's bank can take 2/3 working days to be implemented. The instruction issued on Thursday 26th September 2024 was not implemented by the bank until the following week, on Monday 30th September 2024. The company do not have the facility to make same day transfers with the software system used by them.

11. He accepted that under the 2011 Regulations, the deposit for the Property should have been paid to SDS within 30 working days of the lease start date, which was 16th August 2024. He submitted that working days exclude weekends and also bank holidays. Bank holidays are those in any part of the UK, not just Scotland. Monday 26th August 2024 was a bank holiday in England and Wales. If the 30 working days included 16th August 2024 being the lease start date, the last compliant date for payment of the deposit to SDS is 27th September 2024. If the 30 working days excluded the lease start date, the first date for the 30 working days is 19th September 2024 the last compliant date for payment of the deposit to SDS is 30th September 2024. If the latter is the case, the deposit was paid to SDS on time. If the former is the case the deposit was paid to SDS one working day late. If so, he said that he apologised to the Tribunal and the tenants for this failure. This was an oversight which was caused by the letting agents not being aware, at that time, of the delay in BACS schedule payment instructions being implemented. His company have also apologised to the Respondent. The late payment was neither wilful nor deliberate. He said that his company now have processes in place to ensure that deposit payments are made much quicker, and closer to the lease start date, to avoid the risk of breaching the 30 working day time limit.

12. Mr Fitzgerald said that he was embarrassed to have found himself in this position, and that his company had not displayed the best practice. He said that

he had never before found himself in this situation, and had not previously breached the 2011 Regulations.

Position of the Applicant

13. Mr Durston said that the Applicant had become aware of the fact that the deposit had been unprotected, when they had sought the return of their deposit from SDS. At first it had appeared that the deposit was not with SDS at all, then it became clear it had not been paid into the scheme on time. He said that in the end, the harm suffered by the Applicant had been negligible. He said that as regards sanction, the Applicant was content with whatever repercussion that the tribunal felt was appropriate.

Findings in Fact

14. The parties entered into a PRT in respect of the Property that commenced on 16 August 2024 and which ended on 10 July 2025.

15. A tenancy deposit of £2900 was paid to the Respondent's Letting Agent by the Applicant at the commencement of the tenancy.

16. The deposit was not lodged with an approved tenancy deposit scheme within 30 working days of the commencement of the tenancy.

17. The deposit was lodged with an approved tenancy deposit scheme on 30 September 2024, which was one working day late.

18. The letting agent was contracted by the Respondent to attend to timeous lodging of any deposit received in terms of the 2011 Regulations.

19. The Respondent has breached Regulation 3 of the 2011 Regulations, by failing to pay the deposit into an approved tenancy deposit scheme timeously.

Reasons for Decision

20. The Rules allow at rule 17(4), for a decision to be made at a CMD as at a hearing before a full panel of the tribunal. In light of the submissions by the parties, the tribunal was satisfied both that the necessary level of evidence had been provided through the Application, further papers, and orally at the CMD, and that it was appropriate to make a decision under regulation 10 of the 2011 Regulations at the CMD.

21. The tribunal considered the provisions of regulations 2,3, 9 and 10 of the 2011 Regulations: -

“2.- In these Regulations-

.....

“working day” means a day that is not a Saturday or Sunday, nor any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;

3.—(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. (2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy. (3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement— (a) in respect of which the landlord is a relevant person; and (b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act. (4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.”

“9.—(1) 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. (2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.”

“10. 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.”

.

22. The tribunal was satisfied that the tenancy between the parties was a relevant tenancy for the purpose of regulation 3(3) of the 2011 Regulations having had sight of the PRT between the parties.
23. The tribunal was further satisfied that the Respondent was in breach of regulation 3(1) of the 2011 Regulations regarding the Applicant's tenancy deposit. The start date of the tenancy was 16 August 2024. The deposit was protected from 30 September 2024. The 2011 Regulations provide that the deposit must be paid into an approved scheme within 30 working days of the commencement of the tenancy. There was a Bank Holiday on 26 August 2024 in England, Wales and Northern Ireland. This meant that the deposit should have been lodged on 27 September 2024. It was lodged the next working day, 30 September 2024, one working day late. This was confirmed by the e-mail lodged with the Application from SDS.
24. The tribunal therefore considered regulation 10 of the 2011 Regulations. Regulation 10 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. There is no discretion afforded to the tribunal under the 2011 Regulations. If the tribunal finds the landlord in breach of regulation 3, it must make an order for payment. There was little dispute between the parties on the material points. The tribunal was satisfied that the evidence provided by both parties was credible and reliable on the material issues of this Application.
25. The amount to be awarded is a matter for the discretion of the tribunal having regard to 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."

26. The tribunal also had regard to the decision of Sheriff Cruickshank in *Ahmed v Russell (UTS/AP/22/0021)* which provides helpful guidance on the 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. As per Sheriff Cruickshank at paragraph 40 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 overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations".

27. The tribunal gave significant weight to the fact that the deposit in this case had been lodged with the scheme only one day after the statutory deadline expired. The Applicant had been prompted to make the application after SDS highlighted the late lodging of their deposit. Until that point at the end of the tenancy, they had been unaware that there had been any breach of the 2011 Regulations. The tribunal could understand their reasons for making the Application, but ultimately they had suffered no real harm because of the breach, and accepted the damage was negligible. Their deposit was secured just over a month after the tenancy commenced and they had benefited from the protection of the independent dispute resolution service afforded to them by the deposit scheme, which is one of the primary aims of the 2011 Regulations.

28. The tribunal could identify little in the way of aggravating factors in this case. The Respondent had engaged a professional letting agent to manage the tenancy on their behalf, with an expectation that the agent would ensure adherence to their statutory responsibilities as landlords. The Respondent was reliant on her agent and has no culpability for the slight delay. There is no suggestion of any intentional breach of the 2011 Regulations, and the tribunal was assured that there was no chance of any repeat of the issue. There was no suggestion of any attempt by the Respondent to deliberately circumvent the requirements of the 2011 Regulations. There was no evidence that the breach in relation to the Applicant's deposit was part of a systemic failure of compliance. Whilst there had been a breach in this case, it was negligible and had no real consequences, and the tribunal found it difficult to find much fault on the Respondent's part. These are regarded as significant

mitigating factors. The tribunal have also taken account of the amount of the deposit in this case as part of its overall consideration.

29. In the circumstances, the tribunal is satisfied that this falls in the lowest range of breaches and is awarding £100 under regulation 10 of the 2011 Regulations. This is an appropriate award in consideration of the law and all the facts.

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.

Yvonne McKenna

24 February 2026

Legal Member/Chair

Dated