



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”)**

**Chamber Ref: FTS/HPC/PR/25/3578**

**Re: Property at FLAT 1/1, 23 ESMOND STREET, YORKHILL, GLASGOW, G3 8SN (“the Property”)**

**Parties:**

**MISS DOMINIKA MAJOWICZ, FLAT 1/1, 23 ESMOND STREET, YORKHILL, GLASGOW, G3 8SN (“the Applicant”)**

**MR MARK MACAULAY, 9 Kirkdene Crescent, Newton Mearns, Glasgow, G77 5RP (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £900.**

**The Tribunal further orders the Respondent to pay the tenancy deposit into an approved tenancy deposit scheme.**

**Background**

1. This is a Rule 103 application received in the period between 20<sup>th</sup> August and 1<sup>st</sup> September 2025. The Applicant is seeking payment in respect of the Respondent’s failure to lodge the tenancy deposit of £450 in an approved tenancy deposit scheme. The Applicant lodged a copy of an assured tenancy agreement between the parties which commenced on or around 30<sup>th</sup> October 2011 and ended on 12<sup>th</sup> June 2025, evidence of payment of a tenancy deposit of £450, approved tenancy deposit scheme emails, correspondence between the parties, and evidence of the end date of the tenancy.
2. By email dated 28<sup>th</sup> January 2026, the Respondent lodged written representations.

3. By email dated 19<sup>th</sup> February 2026, the Applicant lodged written representations.

### **Case Management Discussion**

4. A Case Management Discussion (“CMD”) took place by telephone conference on 3<sup>rd</sup> March 2026. Both parties were in attendance. The Applicant was accompanied by a supporter. A Polish interpreter was in attendance for the benefit of the Applicant.
5. The Legal Member explained the purpose of the CMD, and explained that the Tribunal must make an order if there has been a breach of the Regulations.
6. The Respondent explained that he accepted he had failed to lodge the tenancy deposit in an approved tenancy deposit scheme. This was a mistake that came about due to a misunderstanding of the Regulations. The tenancy commenced before the Regulations came into force. The Respondent was aware of the Regulations but was not aware that they applied to tenancies in place before the Regulations came into force. The Respondent said there was no deliberate attempt to avoid the Regulations. The deposit was preserved intact in a bank account throughout the tenancy. It was not spent, misapplied or at risk.
7. Responding to questions, the Respondent said he has one other property which has been let since 2007. Upon discovering his mistake in respect of the Regulations, the Respondent returned the tenancy deposit to the tenants. The Respondent said he did this, rather than lodge it in a deposit scheme, because the property is in the process of being sold and the tenants have always paid their rent over the lengthy tenancy.
8. The Respondent said the Tribunal should make an award using the minimal multiplier. The Respondent said he acknowledged the breach as soon as he became aware of it. The Respondent said he takes his landlord responsibilities seriously and addressed the deposit with the other tenants as soon as he became aware.
9. The Applicant submitted that there was a repeated breach of the Regulations. It was her position that the Respondent should have kept up to date with the rules. The Applicant said this had caused her a lot of stress, as had the conjoined application FTS/HPC/CV/25/3520. The Respondent had not returned the deposit in that case.
10. The Legal Member explained that it was unlikely that the stress caused by failure to return the deposit would be taken into account in this application, as they are two separate matters. The Applicant said she was caused stress when she discovered the deposit had not been lodged, as she wondered if any other obligations of the Respondent had not been complied with. She had

trusted the Respondent as her landlord, and it came as a shock to discover the deposit had not been lodged.

11. The Legal Member explained that the Regulations allow the Tribunal to make an order that the tenancy deposit be lodged in an approved tenancy deposit scheme, which will allow for adjudication of the matter by the tenancy deposit scheme. The parties agreed to this course of action.

### **Findings in Fact and Law**

- 12.
- (i) The parties entered into an assured tenancy agreement in respect of the Property that commenced on or around 30<sup>th</sup> October 2011 and ended on 12<sup>th</sup> June 2025.
  - (ii) A tenancy deposit of £450 was paid to the Respondent by the Applicant's partner at the commencement of the tenancy.
  - (iii) The deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy.
  - (iv) The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

### **Reasons for Decision**

13. The Regulations were put in place to ensure compliance with the tenancy deposit scheme, and to provide the benefit of dispute resolution for parties. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015)* by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
14. The Tribunal took guidance from the decision of the Upper Tribunal UTS/AP/19/0020 which states: '*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.*'
15. The Tribunal considered this to be a serious matter, although not one at the most serious end of the scale. The Applicant's deposit was not lodged with an approved tenancy deposit scheme as required by Regulation 3, and remained unprotected for the duration of the tenancy.
16. The Tribunal considered the mitigating circumstances put forward by the Respondent. The Tribunal accepted the Respondent's evidence that he was

unaware of the obligation to lodge the tenancy deposit with an approved tenancy deposit scheme following commencement of the Regulations. The Tribunal took into account that the Respondent acknowledged his mistake. The Tribunal considered that, although the same issue arose in respect of two tenanted properties, the other property was also let when the Regulations came into force, and the same reasons for the failure to lodge the tenancy deposit applied in that case. It was not a case where the Respondent had breached the Regulations, and knowingly and deliberately breached them again in respect of another property.

17. Notwithstanding the mitigating circumstances, the Tribunal considered that ignorance of the law is no defence, and the Respondent ought to have taken steps to ensure he was aware of his responsibilities and duties as a landlord. The breach occurred over a lengthy period, when the Respondent was aware of the Regulations and could have taken steps to ascertain whether they applied to his tenancies. The Applicant was entitled to have confidence that the Respondent would comply with his duties as a landlord.
18. Taking all the circumstances into account, the Tribunal decided it would be fair and just to award a sum of £900 to the Applicant, which equates to two times the deposit.

### **Decision**

19. The Tribunal grants an order against the Respondent for payment to the Applicant of the sum of £900 in terms of Regulation 10(a).
20. The Tribunal grants an order requiring the Respondent to lodge the deposit of £450 with an approved tenancy deposit scheme in terms of Regulation 10(b)(i).

### **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.**

# Ms H Forbes

Legal Member/Chair

3<sup>rd</sup> March 2026  
Date