



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

Chamber Ref: FTS/HPC/PR/25/3453

Re: Property at 62/1 Lochend Gardens, Edinburgh, EH7 6DF (“the Property”)

Parties:

Miss Rayana Millar, 36 Cunningham Square, Portobello, Edinburgh, EH15 1BJ (“the Applicant”)

GG-981-399 Limited, 3 Lochend Gardens, Edinburgh, EH7 6DF (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has breached regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) by virtue of their failure to lodge the Applicant’s tenancy deposit in an approved deposit scheme.

The Tribunal therefore made a payment order against the Respondent in the sum of Eight hundred pounds (£800) under regulation 10 of the 2011 Regulations.

Background

- 1 This is an application for a determination that the Respondent has failed to comply with the duties under regulation 3 of the 2011 Regulations in respect of the Applicant’s tenancy deposit. The application was made under regulation 9 of the 2011 Regulations and rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”).
- 2 An application under regulation 9 must be made within three months of the tenancy end date. The tenancy between the parties terminated on 14 June

2025. The application was made on 15 August 2025. The application is therefore timeous.

- 3 The application was accepted and referred to a case management discussion ("CMD") to take place by teleconference on 10 February 2026. The Tribunal gave notice of the CMD to the parties under rule 17(2) of the Rules.
- 4 The Tribunal asked the Respondent to submit any written representations in response to the application no later than 19 January 2026. On 7 January 2026 the Tribunal received an email from Mr Humberto H T De Mesquita, the Respondent's sole director, requesting a copy of the case papers. On 9 January 2026 the Tribunal received written representations from Mr De Mesquita in response to the application. In summary, Mr De Mesquita advised that the Respondent admitted the breach of regulation 3, which was due to an administrative oversight at an early stage of the company's operations. There had been no deliberate intent on the part of the Respondent to evade their legal duties. The Respondent had no history of non-compliance and had acted in good faith. This was not a case involving deliberate, repeated, or bad faith conduct. Mr De Mesquita invited the Tribunal to impose a sanction at the lower end of the scale. He confirmed that he was willing to repay the Applicant's deposit immediately.
- 5 On 14 January 2026 the Tribunal received written representations from the Applicant by email, which included email correspondence between the Applicant and the Respondent's agent.

The CMD

- 6 The CMD took place on 10 February 2026 by teleconference. The Applicant joined the call. Mr De Mesquita represented the Respondent.
- 7 The Tribunal noted that the Respondent admitted the breach. Accordingly, the issue for the Tribunal to determine was the level of sanction to be applied under regulation 10 of the 2011 Regulations, which could be up to three times the deposit of £670.
- 8 The Tribunal proceeded to hear submissions from the parties on the aggravating and mitigating factors in this case.
- 9 The Applicant spoke to the impact of the breach, which included harm to both her mental health and her financial position. She had to use a credit card to meet the costs of moving to a new property. The deposit was not returned to her, despite repeated requests. She left the property on 14 June 2025. She believes an appropriate sanction would be twice the deposit.
- 10 Mr Mesquita spoke to the mitigating factors in this case. The breach was due to an administrative error. The Respondent has two rental properties in Scotland. They have not been in this position before. They employ an agent as Mr Mesquita lives in England. Their agent is very experienced in dealing with

tenants. Both the Respondent and their agent were unaware of the duties under the 2011 Regulations. They have now ensured that any tenancy deposits are paid into a scheme. The Respondent accepts full responsibility for the breach. The Respondent returned part of the deposit in the sum of £379.71 to the Applicant on 28 June 2025. Mr Mesquita believes the sanction should be at the lower end of the scale. Twice the deposit would be disproportionate.

- 11 The Tribunal noted that there appeared to be a dispute as to whether the Applicant received partial repayment of the deposit. Mr Mesquita confirmed that he would submit a bank statement as evidence of this. The Tribunal advised that the Applicant would be given the opportunity to comment on the statement. Thereafter, both parties agreed that they had no further evidence to present and would be content for the Tribunal to proceed to a decision on the information before it.
- 12 On 11 February 2026 the Tribunal received an email from Mr Mesquita on behalf of the Respondent with a bank statement. Mr Mesquita reiterated that the Respondent took full responsibility for the oversight that had led to the breach. Mr Mesquita confirmed that a partial refund of the deposit had been made to the Applicant and she had been advised of the reasons for the deductions.
- 13 On 12 February 2026 the Tribunal received an email from the Applicant confirming that she had received the partial refund from the Respondent. She had initially missed this due to the timeline of her automatic pay from her employer.

Findings in fact

- 14 The Respondent is the owner and landlord, and the Applicant was the tenant, of the property in terms of a private residential tenancy agreement.
- 15 The Applicant paid a tenancy deposit of £670 to the Respondent at the commencement of the tenancy.
- 16 The Respondent did not pay the Applicant's tenancy deposit into an approved tenancy deposit scheme within thirty working days of the commencement of the tenancy.
- 17 The tenancy between the parties terminated on 14 June 2025, when the Applicant vacated the property.
- 18 The Respondent withheld in part the Applicant's tenancy deposit for various costs, including cleaning and repairs to furniture. The Respondent repaid the Applicant the sum of £379.71 on 28 June 2025.
- 19 The Respondent owns 2 rental properties in Scotland. The Respondent employs an agent to manage the properties on their behalf.

20 The Applicant suffered stress because her deposit was not protected.

Reasons for decision

- 21 The Tribunal determined it had sufficient information to reach a decision following the CMD based on the documentary evidence and submissions from the parties. Both parties were content to proceed on this basis. The Tribunal therefore concluded that there were no issues to be resolved that would require a hearing to be fixed.
- 22 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*”.
- 23 The Tribunal was satisfied, based on the tenancy agreement produced, that the tenancy between the parties is a relevant tenancy for the purpose of Regulation 3.
- 24 The Tribunal determined based on the evidence before it that the Applicant had paid a tenancy deposit of £670 to the Respondent, and the Respondent had failed to pay the deposit into a tenancy deposit scheme within the statutory timescale. These facts were not in dispute. The Tribunal therefore found the Respondent to have failed to comply with the duties under regulation 3(a) and (b) of the 2011 Regulations.
- 25 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*”.
- 26 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. There is no discretion available to the Tribunal under Regulation 10. If the Tribunal finds the landlord in breach of Regulation 3, it must make an order for payment.
- 27 In determining an appropriate level of sanction, the Tribunal considered the decisions from the Upper Tribunal for Scotland in *Rollett v Mackie* ([2019] UT 45) and *Ahmed v Russell* (UTS/AP/22/0021).

- 28 In *Rollett*, Sheriff Ross states at paragraph 9 of his decision that “*each case has to be examined on its own facts, upon which a discretionary decision requires to be made by the FtT. Assessment of what amounts to a “serious” breach will vary from case to case – it is the factual matrix, not the description, which is relevant*”. He goes on to state at paragraph 14 that “*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.*”
- 29 In *Ahmed*, Sheriff Cruickshank also 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 £2010. As per Sheriff Cruickshank at paragraph 39 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 level of overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations.*”
- 30 The Tribunal considered the Respondent’s full admission of the breach, as well as their commitment to ensuring deposits are protected going forward. The Tribunal had no reason to doubt Mr Mesquito’s submissions in this regard. There was no evidence to suggest that there had been any fraudulent or malicious intention on the part of the Respondent in this case, nor was there evidence of repeated breaches. It appeared the Respondent had simply been ignorant as to their duties under the 2011 Regulations.
- 31 However, as the Respondent is renting properties in Scotland, they should have ensured they were fully aware of, and compliant with, their legal responsibilities as a landlord in this jurisdiction. Whilst the Tribunal notes they had placed their faith in their managing agent, ultimately the responsibilities rest with them. It was of great concern that they appeared unaware of the requirements of the 2011 Regulations until it was brought to their attention in these proceedings.
- 32 The Tribunal also gave significant weight to the fact that the Applicant had been deprived of the primary protection of the 2011 Regulations, namely, to provide her with access to the independent dispute resolution offered by the deposit scheme, should any disputes arise. The Applicant had not had the benefit of this. Instead, the Respondent had unilaterally made deductions from the Applicant’s deposit, with no independent oversight. Accordingly, whilst the Respondent had partially refunded the Applicant’s deposit, she had not been given the opportunity to challenge the deductions made. The Tribunal accepted that this would have caused her a level of stress.

- 33 The Tribunal was however unable to make any findings regarding financial loss. The Applicant had stated at the CMD that she had not received her deposit back from the Respondent, however subsequently accepted that she had missed the partial refund to her account on 28 June 2025. The Tribunal could not therefore conclude that her use of other methods to fund her new tenancy was a direct result of the partial retention of her deposit by the Respondent, albeit it may have contributed in part.
- 34 In considering the aggravating and mitigating factors in this case, the Tribunal did not conclude that the circumstances of this case merit an award at the highest end of the scale. However, having considered the Respondent's responsibilities as a landlord, the purpose of the 2011 Regulations, and the lack of independent adjudication over the Applicant's deposit, the Tribunal determined that an order for payment in the sum of £800 would be fair and proportionate.
- 35 The Tribunal therefore make an order for payment in the sum of £800.

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.

Ruth O'Hare

17 March 2026

Legal Member/Chair

Date