



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 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/25/4286

Re: Property at 1 Ivy Crescent, Inverness, IV2 6DZ (“the Property”)

Parties:

MR KIAN MUNRO, MISS MEGAN GORMLEY, 58 SANDPIPER GARDENS, DUNFERMLINE, FIFE, KY11 8LE (“the Applicant”)

MR RANALD MACDONALD, 34 WOODSIDE FARM DRIVE, WESTHILL, INVERNESS, IV2 5TD (“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 failed to comply with the duties regarding the Applicants’ tenancy deposit under regulation 3 of the 2011 Regulations.

The Tribunal therefore made a payment order against the Respondent in the sum of £50 under regulation 10 of the 2011 Regulations.

Background

- 1 This is an application 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”). The Applicants sought a determination that the Respondent had failed to comply with his duties under regulation 3 of the 2011 Regulations along with a payment order of up to three times the amount of the deposit.
- 2 In terms of regulation 9 of the 2011 Regulations, an application under rule 103 must be made within three months of the end date of the tenancy. The tenancy

between the parties terminated on 29 August 2025. The application was made to the Tribunal on 22 September 2025. The application is therefore timeous.

- 3 The application was accepted as valid and referred to a tribunal for determination. A case management discussion was scheduled to take place by teleconference on 15 April 2026 at 10am. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers on 26 February 2026.
- 4 On 9 March 2026 the Tribunal received written representations from Tailormade Moves Ltd on behalf of the Respondent in response to the application. A copy of the representations were intimated to the Applicants.

The CMD

- 5 The CMD took place on 16 April 2026 by teleconference. The Applicants joined the call. Mr Innes Simpson of Tailormade Moves Ltd represented the Respondent.
- 6 The tribunal had before it the application form together with a copy of the tenancy agreement and email from Tailormade Moves Ltd to the Applicants confirming the end date of the tenancy. The tribunal also had the Respondent's written representations and a written mandate from the Applicant authorising Tailormade Moves Ltd to represent him.
- 7 The tribunal explained the purpose of the CMD and heard submissions from the parties. The following is a summary of the key elements of the submissions.
- 8 The tribunal confirmed with Mr Simpson that the Respondent did not dispute a breach of regulation 3 of the 2011 Regulations, albeit he noted that the deposit was lodged only two working days after the statutory deadline. The tribunal therefore asked parties to address it on the aggravating and mitigating factors in this case, pertaining to the circumstances surrounding the breach.
- 9 Miss Gormley spoke on behalf of the Applicants. She explained that the breach hadn't impacted them much, albeit they had felt some anxiety when they received an email from the deposit scheme at the end of the tenancy advising them that the deposit had been lodged after the deadline. The Applicants accept that the deposit was protected since 5 September 2022. Miss Gormely confirmed that the Applicants had gone through the scheme's adjudication process and had received partial repayment of the deposit.
- 10 Mr Simpson explained that the Respondent's letting agent took full responsibility for the breach. It had occurred during a staff transition. The tenancy had been passed on to another member of staff and through administrative oversight the deposit had been paid two working days late. The Respondent only has one property that it managed by Mr Simpson's agency. He had never been in this situation before. It was a one off. Mr Simpson

confirmed that the deposit had been held in the client account prior to being paid over to the scheme. It was not held insecurely.

- 11 The tribunal asked parties if they had any further evidence to present to the tribunal, or if they were content for the tribunal to proceed to a decision based on the information before it. Both parties confirmed their agreement with the latter.
- 12 The tribunal therefore concluded the CMD and determined to issue its decision in writing.

Findings in fact

- 13 The Respondent is the owner and landlord, and the Applicants were the tenants, of the property in terms of a private residential tenancy agreement, which commenced on 22 July 2022.
- 14 The Respondent employs Tailormade Moves Limited to manage the property on his behalf.
- 15 At the commencement of the tenancy the Applicants paid Tailormade Moves Limited a tenancy deposit in the sum of £645.
- 16 In terms of regulation 3 of the 2011 Regulations, the deadline for lodging the Applicant's tenancy deposit with an approved deposit scheme was 1 September 2022.
- 17 Tailormade Moves Limited lodged the Applicants' tenancy deposit with Safedeposits Scotland on 5 September 2022.
- 18 The deposit was held within the client account of Tailormade Moves Limited prior to being paid into the deposit scheme.
- 19 The delay in lodging the deposit with the scheme was due to a staff transition which led to the administrative error.
- 20 This is the first time the Respondent has been found in breach of the 2011 Regulations.
- 21 The tenancy between the parties terminated on 29 August 2025.
- 22 The Applicants' received partial repayment of their deposit following adjudication by the deposit scheme.

Reasons for decision

- 23 The tribunal considered it had sufficient information based on the documents produced and the submissions from the parties at the CMD to make relevant findings in fact and reach a decision on the application in the absence of a

hearing under Rule 18 of the Rules. The tribunal considered that to do so would not be contrary to the interests of the parties. All were content for the Tribunal to proceed on this basis.

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

“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.”

- 25 The tribunal determined 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 private residential tenancy agreement between the parties.
- 26 The tribunal further determined that the Respondent was in breach of regulation 3(1) of the 2011 Regulations regarding the Applicants' tenancy deposit because of his failure to lodge the deposit within a scheme and provide the Applicants with the prescribed information prior to the statutory deadline. The Respondent did not dispute this.
- 27 The tribunal therefore considered regulation 10 which requires the tribunal to 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.
- 28 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).
- 29 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.*”
- 30 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 £1935. 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.*”
- 31 The tribunal considered the relevant factors in this case in assessing an appropriate sanction. In terms of mitigation, the tribunal gave most weight to the

fact that the deposit had been lodged with the scheme only two working days after the statutory deadline expired. The Applicants were unaware that there had been any breach of the 2011 Regulations until they received correspondence from the deposit scheme at the end of the tenancy. Ultimately, they had suffered no real harm because of the breach as conceded by Miss Gormley during the CMD. Their deposit had been protected for most of the tenancy and the Applicants 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.

- 32 The tribunal could identify little in the way of aggravating factors in this case. Whilst the Respondent does have a duty to lodge deposits in advance of the statutory deadline, in this case the delay in securing the deposit was negligible. The tribunal accepted that the deposit had been held in a secure ringfenced account prior to being paid over to the scheme. 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 is part of a systemic failure of compliance. The Respondent had engaged a professional letting agent to manage the tenancy on his behalf, with the expectation that the agent would ensure adherence to his statutory responsibilities as landlord. Although there had been a breach in this case, it was inconsequential and the tribunal found it difficult to find much fault on the Respondent's part.
- 33 Accordingly, the tribunal concluded that the level of culpability was significantly low, when measured against the nature and extent of the breach. The Tribunal therefore determined that a fair and proportionate sanction in this case would be £50.
- 34 The Tribunal therefore made an order for payment in the sum of £50.

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.

16 April 2026

Ruth O'Hare

Legal Member/Chair

Date