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 Section Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/25/4551

Re: Property at Flat 1/1, 17 Overdale Gardens, Glasgow, G42 9QG ("the Property")

Parties:

Miss Iona Tytlern, Flat 0/1, 207 Deanston Drive, Glasgow, G41 3JT; and Miss Catriona Mulholland, 6 Dolphington Avenue, Glasgow, G5 0HY ("the Applicant")

Mr Elliot Nouillan, Fulshaw Old Glasgow Road, Stewarton, Kilmarnock, KA3 5JR ("the Respondent")

Tribunal Members:

Elaine Paton (Legal Member)

Decision (in absence of the Respondent)

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 TWO THOUSAND EIGHT HUNDRED AND FIFTY POUNDS (£2,850) Sterling under Regulation 10.

Background

1. The Applicant applied to the Tribunal for a payment order under Rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules") and Regulation 9 of the 2011 Regulations. The Applicant sought a sanction against the Respondent as a result of their failure to lodge timeously the Applicant's tenancy deposit with an approved tenancy deposit scheme.

2. The application was referred to a case management discussion ("CMD") to take place by teleconference on 10 April 2026. Notification of the CMD was given to the parties in terms of Rule 17(2) of the Rules. Said notification was served upon the Respondent by Sheriff Officers on 24 February 2026.

3. Both parties were invited to make written representations in advance of the CMD. The Respondent submitted an outline response to the application on 09 March 2026. In their outline response the Respondent made mention of being out of the country for a period including the date of the CMD and suggesting they may require to obtain legal advice. On 21 March 2026 the Housing and Property Chamber ("HPC") administration wrote to the parties advising the CMD would proceed on 10 April 2026 as scheduled; parties could obtain independent legal advice should they wish or require to so do; and it was open to parties to be represented at the CMD and for a representative to put forward their position to the tribunal. Additionally, an extended period of time was available to allow parties an opportunity to submit further submissions (if any) and parties were reminded that a mandate or authorisation document should be submitted if a representative would attend a hearing or correspond with the HPC on their behalf (unless representation was by a solicitor).

Party request for Postponement

4.1 On 23 March 2026 the Respondent submitted correspondence stating they wished to make a formal request for postponement of the CMD expressing a position that did not meet the requirements of Rule 28 of the Rules.

4.2 Rule 28 of the Rules provides as follows:

" (2) Where a party applies for…postponement of a hearing, that party must- (a) if practicable, notify all other parties of the application for …postponement; (b) show good reason why …postponement is necessary; and (c) at the direction of the First-tier Tribunal produce evidence of any fact or matter relied on in support of the application for …postponement.
(3) The First-tier Tribunal may only …postpone a hearing at the request of a party on cause shown."

4.3 On 28 March 2026, the HPC administration wrote to the Respondent and to the Applicant outlining that submissions by parties required to be crossed over to the other party in order for consideration to be given by the tribunal to a request for postponement by a party, requiring evidence and an explanation regarding such request to postpone from the Respondent and allowing the Applicant the same timeframe to state their position in relation to such a request. Both parties responded timeously. The Applicant was opposed to a postponement of the CMD. The Respondent's reply did not adequately satisfy Rule 28. The HPC administration wrote to both parties on 01 April 2026 stating the CMD would proceed on 10 April 2026 at 14.00 hours (Scottish/UK BST) as scheduled, a toll-free number was provided to the Respondent to allow them to dial-in to the teleconference hearing from abroad, taking account of time difference, and parties were reminded that written representations and supporting documents could be received via email, parties would be required to redact any document

if/as necessary prior to lodging these, as all submissions would be crossed over to the other party. The Respondent emailed their acknowledgement of that correspondence later the same day, and indicated they were unlikely to attend the CMD hearing. No further written representations were received from the parties in advance of the CMD.

5. The CMD took place on 10 April 2026. The start time was delayed in order to allow additional time in the event that the Respondent may have been making efforts to attend. The CMD commenced by teleconference. Both Applicants were present. The Respondent was not present and was not represented.

6. The Tribunal had the following documents before it:- (1) Form G application form dated 15 October 2025; (2) copy Private residential tenancy agreement regarding the Property; (3) copy bank statement entries in relation to respective half shares of deposit and rental monies paid by both Applicants to the Respondent's letting agent Mitchells Sales and Lettings ("Mitchells") and a single payment by Mitchells at 05 September 2025 to the Applicant Ms Tytler in the full deposit sum; (4) email correspondence between the Applicant and Mitchells dated 24 June 2025 regarding the agreed end date of the tenancy; and also in relation to relative end-of-tenancy documentation; (5) Safe Deposits Scotland certificate noting the landlord as "Mitchells" and stating 'Amount protected £0.00'; (6) Email dated 03 October 2025 to the Applicant Ms Tytler from Safe Deposits Scotland; (7) Email dated 03 October 2025 to the Applicant Ms Tytler from the Letting Protection Service; (8) Email dated 15 October 2025 to the Applicant Ms Tytler from My Deposits Scotland; and (9) email dated 09 March 2026 from the Respondent in outline response to the application.

7. The Tribunal explained the purpose of the CMD, referred to the HPC administration correspondences in relation to the Respondent seeking postponement of the CMD. The Applicant confirmed they had received notification of the Respondent's correspondences dated 09 March 2026 and 01 April 2026 and maintained their opposition to a delay in proceedings.

8. In response to the tribunal, the Applicant Ms Tytler stated she would present the application on behalf of both applicants. The Tribunal explained that once the tribunal had heard the Applicant it would also take into consideration the Respondent's position in terms of the response dated 09 March 2026. For the avoidance of doubt the following constitutes a summary of the key elements of the discussion and is not a verbatim account of the proceedings.

9. The Applicant confirmed they wished the Tribunal to order a sanction against the Respondent, as their landlord, as a result of the failure to lodge their deposit with Safe Deposits Scotland within 30 working days of the commencement of their tenancy on 31 July 2023. Ms Tytler stated that both she and Ms Mulholland had each paid £475 deposit sums to Mitchells on 21 July 2023 and additionally their respective share of three months' advance rent approximately a week later, prior to commencement of their tenancy. The payments were evidenced in bank statements produced with the Application. In response to the tribunal, the Applicant stated they gave notice by email to Mitchells on 24 June 2025 that they would be leaving the Property on 23 July 2025 which was

acknowledged by Mitchells the same day; and the Applicant handed in their keys for the Property on 23 July 2025. In response to the tribunal, Ms Tytler stated that they had had to send reminders to Mitchells in order to obtain information or documents they had requested such as Safety Certificates. Ms Tytler explained the Applicant had been provided with a certificate by Mitchells dated 18 August 2023 in relation to their £950 deposit having been protected with approved scheme holder Safe Deposits Scotland however the Applicant now believed this certificate to be fake and that it had been produced to deceive them. The Applicant explained their deposit had not been protected and, in response to the tribunal, Ms Tytler stated she had received communication from Safe Deposits Scotland to confirm this. Ms Tytler continued to explain it transpired a registration appeared to have been made by Mitchells to Safe Deposits Scotland on 18 August 2023 which generated a certificate issued by Safe Deposits Scotland comprising a DAN reference but the amount protected in the scheme was £0.00. Ms Tytler referred to an email dated 03 October 2025 where a customer service advisor for Safe Deposits Scotland stated "The DAN number that you provided was registered with us in 08/2023, and we never received payment for this, so the deposit was closed 02/2024 due to not receiving payment." The Applicant had also contacted the other two approved tenancy deposit protection schemes and both had replied, stating the Applicant's deposit was not held by them. Ms Tytler stated the Applicant had left the Property in immaculate condition when they left so that they would receive return of their deposit in full. Ms Tytler explained the deposit had not been protected for their whole time in the Property and the Applicant felt they had been deceived by the Respondent's agent therefore they were seeking the sanction of £2,850, three times their deposit sum.

10. In response to the tribunal, Ms Tytler confirmed the Applicant's deposit had been returned to them. Ms Tytler explained the full £950 deposit had been paid into her bank account in one single payment, and not in two equal payments to each of the Applicants however Ms Tytler stated Mitchells only made the payment after she had stated to them it was illegal for their deposit not to have been protected. In response to the tribunal, Ms Tytler confirmed that half the sum repaid by Mitchells to her had then been repaid to Applicant Ms Mulholland and Ms Mulholland acknowledged that she had received this sum.

11. The tribunal referred the Applicant to the Respondent's position set out in their email dated 09 March 2026. In the response to the Applicant's application the Respondent confirmed they were the landlord for the Property. In response to the tribunal, Ms Tytler confirmed that the Applicant never had any direct dealing with their landlord stating all their dealings had been with the Respondent's letting agent Mitchells. The tribunal stated to the Applicant that the Respondent's position implied the Applicant had dealt with the Respondent's previous letting agent and in response, Ms Tytler commented that remarks had been made in passing during telephone communication with Mitchells that the Applicant's landlord was somehow related to Mitchells' owner however the Applicants were unaware whether or not, in fact, there is a family connection. The tribunal accepted the Applicant was unable to comment on matters between their landlord and their landlord's agent(s).

12. The Tribunal gave all participating in the hearing a final opportunity to make any additional points or comment before making closing remarks.

Relevant Law

13. The relevant law is contained within the Housing (Scotland) Act 2006 and the Tenancy Deposit Scheme (Scotland) Regulations 2011. Section 120 of the 2006 Act provides as follows:-

"120 Tenancy deposits: preliminary
(1) A tenancy deposit is a sum of money held as security for—
(a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or
(b) the discharge of any of the occupant's liabilities which so arise.
(2) A tenancy deposit scheme is a scheme for safeguarding tenancy deposits paid in connection with the occupation of any living accommodation.

14. The 2011 Regulations provide as follows:-

"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.
(1A) Paragraph (1) does not apply—(a) where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and (b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord, within 30 working days of the beginning of the tenancy

(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 …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."

Findings in Fact

15. The parties entered into a tenancy agreement in respect of the Property, which commenced on 31 July 2023.

16. The tenancy was a private residential tenancy under section 1 of the Private Housing (Tenancies) (Scotland) Act 2016. The tenancy is a relevant tenancy for the purpose of Regulation 3 of the 2011 Regulations.

17. On or around 21 July 2023 the Applicant paid a tenancy deposit of £950 (via two payments of £475) to the Respondent's letting agent Mitchells.

18. In terms of Clause 11 of the aforementioned tenancy agreement the Respondent undertook to lodge any deposit received with a tenancy deposit scheme within 30 days of the start date of the tenancy.

19. In terms of Regulation 3(a) and (b) of the 2011 Regulations the deposit should have been lodged with a scheme within 30 working days of 31 July 2023, and the relative information provided to the Applicant under Regulation 42.

20. The Applicant's deposit was not paid into any of the approved tenancy deposit schemes.

21. The Applicant's tenancy ended on 23 July 2025.

22. The Applicant's tenancy deposit was returned to them by the Respondent's letting agent Mitchells. The full deposit sum £950 was paid on or around 05 September 2025 into the bank account of one of the two applicants. A transfer of half the deposit sum was made by one applicant to the other applicant.

Reasons for Decision

23. Having considered the documents before it, the submissions from the Applicant, and the written representation by the Respondent dated 09 March 2026 in response to the application, the Tribunal considered it could make relevant findings in fact in order to make a decision on the application at the CMD, and in the absence of a hearing under Rule 18 of the Rules. The Tribunal determined that there were no substantive facts in dispute that would require a hearing to be fixed, and that proceeding to a decision following the CMD would be in accordance with the Tribunal's overriding objective under Rule 2 of the Rules to avoid delay so far as compatible with proper consideration of the issues.

21. 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. The Regulations specify clear duties, which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy and provide information to the tenant regarding the deposit. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.

22. In terms of Regulation 3 of the 2011 Regulations, the Respondent in this case required to pay the deposit over to a deposit scheme no later than 11 September 2025. The deposit had not been lodged with an approved tenancy deposit scheme. The Tribunal therefore found the Respondent to be in breach of Regulation 3.

23. Regulation 10 states that in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly, having been satisfied that the Respondent failed to comply, the Tribunal then had 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.

24. The Tribunal had regard to the decision of Sheriff Cruickshank in Ahmed v Russell (UTS/AP/22/0021) which 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 £2,850.

    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.”

25. The Tribunal considered the aggravating factors in this case. The failure to lodge the Applicant’s deposit with any of the approved tenant deposit schemes is a failure on the part of the Respondent. The Respondent is responsible for ensuring they comply with their statutory obligations. The Respondent cannot deflect from those obligations. The actions or omissions of an agent when acting for their principal may impact upon that principal. That situation has arisen in relation to this application. The business operations of their landlord’s letting agents is of no concern to the Applicant. The Applicant was without the benefit of their deposit being protected within a statutory scheme for the entirety of the period of their almost two years occupation of the Property under the tenancy agreement. No explanation was offered to the Applicant by the

Respondent's agent regarding the failure to pay their deposit into the statutory scheme nor in relation to contradictory paperwork was produced by them to the Applicant. The Applicant received return of their deposit in full, however that sum was paid by the Respondent's agent directly in a single payment into a bank account held by one applicant only, causing inconvenience to the Applicant in that one applicant was then required to transfer half the deposit sum to the other. The Applicant also required to correspond with all three statutory schemes to clarify their landlord's failure. There is a strict time constraint regarding application to the First-tier Tribunal under the Tenancy Deposit Schemes (Scotland) Regulations 2011 and there was a risk of the Applicant's application falling to be submitted outside of that time period.

26. The Tribunal went on to consider whether there were any mitigating factors in this case. The actions and/or omissions of the Respondent's letting agent can impact upon the Respondent as their principal. The arrangements between the Respondent and their letting agent Mitchells (or former letting agent as the Respondent alluded to) is a matter for the Respondent and landlord, as the principal, regarding Mitchells' dealings with the Applicant and tenant. The Respondent failed in their obligation to protect their tenants' deposit for full period of their tenure in the Property notwithstanding the Applicant had to be put to the inconvenience of their own inquiry and persistence regarding the protection and return of their deposit when the time limit for their application regarding sanction was close to expiry. The time constraint for such an application is a matter that will be familiar to a letting agent or property management company handling private residential tenancies.

27. Accordingly, having weighed the aggravating and mitigating factors in this case the Tribunal considered that the level of culpability was substantial, when measured against the nature and extent of the breach. Accordingly, the Tribunal determined that the maximum sanction would be appropriate in this case, being three times the deposit sum, therefore a sanction of £2,850.

Decision

28. The Tribunal therefore made an order for payment in the sum of £2,850.

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.

Elaine Paton, Legal Member **Date: 10 April 2026**