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 Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/25/0994

Re: Property at 123 Ocean Apartments, 52-54 Park Road, Aberdeen, AB24 5PH ("the Property")

Parties:

Miss Holly Tynan, 99 Hilton Avenue, Aberdeen, AB24 4RT ("the First Applicant") and

Mr Jack Roberts, Birch Bank, Carr Road, Carrbridge, PH23 3AD ("the Second Applicant") and

Mr Steven Milne, 2414 Sandhill, Crest Lane, Brookshire, TX, 77423, USA ("the Respondent") and

Regency Car Sales, 119 High Street, Buckie AB56 4DX ("the Respondent's Representative")

Tribunal Member: G McWilliams (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of the sum of £225.00, in terms of Regulation 10 (a) of the 2011 Regulations, should be made.

Background

1. This Application, dated 19th February 2025, was brought in terms of Rule 103 (Application for order of payment where Landlord has not paid the deposit into an approved scheme) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the 2017 Rules").

2. The First Applicant, Miss Tynan, and her then co-tenant, Mr R Low, entered into a tenancy agreement with the Respondent, Mr Milne, on 12th December 2023. Mr Low and Miss Tynan's aggregate deposit amount of £900.00, paid by each of them in equal shares of £450.00, was lodged with Safe Deposits Scotland Limited ("SDS") on 18th December 2023. Mr Low left the tenancy on 11th September 2024. The Second Applicant, Mr Jack Roberts, and Miss Tynan entered into a fresh tenancy agreement with Mr Milne, in respect of the Property, on 12th September 2024. Mr Roberts paid his share of £450.00 in respect of the total deposit monies, of £900.00, to Mr Milne's letting agents, Grouse Lettings, on 5th September 2024. Mr Low formally agreed the tenant changeover with SDS on 17th January 2025 and received his share of the deposit monies from SDS that day. The letting agents also paid Mr Roberts' share of the deposit of £450.00, from their clients' bank account, to SDS on that date. Miss Tynan, Mr Low and Mr Roberts' dealings regarding the deposit payments for their tenancies were with Grouse Lettings

Case Management Discussion on 16th March 2026

3. A Case Management Discussion ("CMD") proceeded by remote video call at 2.00pm on 16th March 2026. Miss Tynan attended on behalf of herself and Mr Roberts. Mr Milne attended with his Representative's Ms E Stephen and Grouse Lettings' Mr R Watt.

4. Miss Tynan and Ms Stephen agreed the background facts set out in paragraph 2 above.

5. Mr Watt stated that he accepted that there had been breach of the 2011 Regulations as Mr Roberts' share of the deposit monies, of £450.00 was not paid to SDS until 17th January 2025. He stated that the letting agents had misunderstood that they had to await Mr Low's acceptance of the tenant changeover, through SDS, before lodging Mr Roberts' share of the deposit monies with SDS. He said that, in hindsight, the letting agents should have lodged Mr Roberts' deposit monies in a new account with SDS, and had Miss Tynan's share of the deposit monies, of £450.00, transferred there. Mr Watt stated that Miss Tynan's share of the deposit monies had always been protected, and was released in full to her, along with Mr Roberts' share of the deposit, when they left the Property, and the tenancy ended, on 10th February 2025. He said that the full deposit monies, of £900.00, were always lodged with SDS. The confusion that arose related to the substitution of Mr Roberts' share for Mr Low's share of those deposit monies. Mr Watt said that because of the administrative mix up the letting agents had not sought to recover post-tenancy cleaning costs of £314.40 from Miss Tynan and Mr Roberts and, accordingly, the Applicants had had their full deposit monies returned to them by SDS. Mr Watt apologised to Miss Tynan, Mr Roberts, Mr Milne, Ms Stephen and the Tribunal for any inconvenience that has been caused due to his firm's misunderstanding regarding the lodging of Mr Roberts' share of the deposit monies.

6. Miss Tynan stated that she accepted that her share of the deposit monies had always been protected throughout her tenancy of the Property. She said that she

and Mr Roberts had returned the Property to its pre-tenancy condition and did not accept that cleaning costs had to be incurred when their tenancy ended. Miss Tynan accepted Mr Watt's explanation for events concerning the deposit payments and that the admitted breach of the 2011 Regulations was minor. Miss Tynan stated that as a breach, however minor, had occurred she, and Mr Roberts, wished the Tribunal to make a decision in respect of the Application on the basis of submissions made by her, Mr Watt and Ms Stephen. She said that she did not think there would be any merit in her having a discussion with Mr Milne, Ms Stephen and Mr Watt in respect of a possible extra-Tribunal settlement of this matter.

7. Ms Stephen stated that Mr Milne was content for the Tribunal to determine this Application on the basis of the submissions made by Mr Watt, herself and Miss Tynan at the CMD. Ms Stephen stated that she did not consider that parties would likely make any progress towards a resolution of this matter if they were to have direct dialogue.

Decision and Reasons

8. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations") provides that the Tribunal may do anything at a CMD which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all of the information and documentation it required and that it would determine the Application.

9. The Application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

10. Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:

    "(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."

11. The Tribunal considered the candid submissions that had been made by Miss Tynan, on behalf of both Applicants, Ms Stephen and Mr Watt. Mr Milne, through his letting agents, was required to pay Mr Roberts' share of the deposit monies, of £450.00, into an approved scheme within 30 working days of 12th September 2024. This was not done. Mr Milne's letting agents accepted that this was not done and provided an explanation, in paragraph 5 above, for why this happened. Miss Tynan accepted the explanation.

12. Regulation 10 of the 2011 Regulations provides as follows:

    "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."

13. The Tribunal was satisfied, and it was agreed by all, that Mr Milne, through Grouse Lettings, did not comply with the duty under Regulation 3 of the 2011 Regulations, in respect of the Second Applicant Mr Roberts. Therefore, the Tribunal had to decide on the amount to be paid to Mr Roberts by Mr Milne, being an amount not exceeding three times the amount of the former's tenancy deposit monies, in terms of Regulation 10 of those Regulations.

14. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh, in relation to Regulation 10 of the 2011 Regulations, was of the opinion that there had to be a judicial analysis of the nature of the non-compliance in the circumstances of the case and a value attached to reflect a sanction which was fair, proportionate and just given those circumstances. Sheriff Welsh was of the opinion that, when determining the sanction value, the starting point was not the maximum award to be discounted by mitigating factors. He considered that this would be inconsistent with the exercise of balanced, judicial discretion.

15. In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, the Court of Session reiterated that the amount of any payment in terms of Regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.

16. The Tribunal considered all of the available Application papers and the submissions made at the CMD in determining a fair, proportionate and just sanction. Mr Roberts' share of the deposit monies, in the sum of £450.00, was not protected for several months. Mr Milne's letting agents, Grouse Lettings, accepted that they had misunderstood the best course of action to take regarding protection of Mr Roberts' deposit monies. They believed that they had to await Miss Tynan's outgoing co-tenant Mr Low's acceptance of a tenancy changeover request from SDS before lodging Mr Roberts' deposit monies. They lodged Mr Roberts' deposit monies with SDS on the same day that Mr Low's monies were returned to him by SDS, 17th January 2025. Grouse Lettings accepted that they should have lodged Mr Roberts' deposit monies, and added Miss Tynan's existing deposit monies, in a new account with SDS rather than waiting until 17th January 2025. The Tribunal, having considered the available case file papers and submissions, finds that this was a genuine error on the part of Grouse Lettings, on behalf of Mr Milne. Grouse Lettings also agreed to the return of Mr Roberts' and Miss Tynan's deposit monies to them in full when their tenancy ended on 10th February 2025 and neither tenant suffered any loss by way of reduction or non-repayment of their deposit monies.

17. Having exercised their judicial discretion, the Tribunal have determined that the sum of £225.00 is an appropriate sanction to impose. The Tribunal find that this sum fairly, proportionately and justly applies a sanction in respect of the non-

compliance by Mr Milne, through his letting agents, with the Regulations, given the circumstances of this Application. The total deposit monies due in respect of the letting of the Property, of £900.00, were always in place with SDS. The “mix up” was that Mr Roberts’ share of those monies, having been paid by him to Grouse Lettings in September 2024, remained in the letting agents’ clients’ bank account until Mr Low accepted a tenant changeover request and had his share of the deposit monies returned to him by SDS in January 2025, rather than being in place in a fresh account with SDS from the outset. The letting agents have been candid in their acceptance of their mistake, which arose due to their misunderstanding as to how to substitute Mr Roberts’s share of the deposit monies for Mr Low’s share of those monies. It was a genuine error by Grouse Lettings. In terms of that error Grouse Lettings protected Mr Roberts’ deposit monies as soon as Mr Low’s funds were released to him. Miss Tynan and Mr Roberts also had their deposit funds returned to them in full at the end of their tenancy Mr Milne is liable as landlord for a sanction in respect of the non-protection of Mr Roberts’ share of the deposit monies as a result of that error but was not in any way responsible for the misunderstanding of Grouse Lettings. A sanction must be imposed to reflect that Regulation 3 of the 2011 Regulations was not complied with, whether deliberately or not. In all the circumstances of this Application the Tribunal find that the sanction to be imposed on Mr Milne should be at the lowest end of the scale of sanction amounts provided for in Regulation 10 of those Regulations. Accordingly, the Tribunal have determined that a fair just and proportionate sanction to impose is in the sum of £225.00, being one half of the amount of Mr Roberts’ share of the deposit monies. The Tribunal consider that this sum is appropriate and fairly and reasonably takes account of any upset and inconvenience caused to Mr Roberts, as a result of the period of non-protection of his share of the deposit monies, as well as the circumstances of the non-payment of those monies to SDS until January 2025.

18. Accordingly, the Tribunal have determined that an order for payment by Mr Milne to the Applicant Mr Roberts, of the sum of £225.00, in terms of Regulation 10(a) of the 2011 Regulations, should be made.

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.

Date of Decision: 16th March 2026

Tribunal Legal Member

Date of Issue of Decision: 30th March 2026