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 Regulation 10 of Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/25/4422

Re: Property at 46 Davidson House, Aberdeen, AB15 8ES ("the Property")

Parties:

Mr Muhammad Umar Furrukh, 103 Lansdowne Road, Seven Kings, London, IG3 8NG ("the Applicant")

Ms Elena Gallie, 21 Albany Road, Nottingham, NG7 7LX ("the Respondent")

Tribunal Member:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent failed to comply with her duty as a Landlord in terms of Regulations 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicant's Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme grants an Order against the Respondent for payment to the Applicant of the sum of ONE HUNDRED POUNDS (£100) STERLING.

Background

1. This is an application for an order for where it is alleged the Respondent has not paid a deposit into an approved scheme under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Application is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").

2. The Application was accompanied by a Private Residential Tenancy Agreement between the parties commencing 1 July 2025, emails dated 16 October 2025 from My Deposits Scotland, Safe Deposits Scotland and Letting Protection Scotland, various text messages between the parties, a Council Tax demand for £242.04 for the period 1 July -17 September 2025 and an OVO Energy bill dated 24 September 2025.

3. On 13 November 2025, the Tribunal accepted the application under Rule 9 of the Regulations.

4. On 28 February 2026 the Tribunal provided a copy of the application and invited the Respondent to make written representations to the application by 21 March 2026. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 20 April 2026. This paperwork was served on the Respondent by Steve Benham, Process Server and the Certificate of Intimation was received by the Tribunal administration.

5. On 21 March 2025 the Respondent lodged written submissions together with various photographs, a Council Tax demand, a receipt from Sterling Home, text messages between the parties, a receipt dated 7 March 2026 from Safe Deposits Scotland, and a Post Office receipt dated 14 August 2025 addressed to the Property, Unfortunately, these were not passed to the Applicant or to the Tribunal until the morning of 20 April 2026.

Case Management Discussion

6. The CMD proceeded by way of teleconference call on 20 April 2026.Both parties were in attendance. The application was heard together with an application under reference number FTS/HPC/CV/25/4860 for the return of the deposit and for payment of water charges.

7. The Tribunal had before it the Private Residential Tenancy Agreement between parties commencing 1 July 2025, the emails dated 16 October 2025 from My Deposits Scotland, Safe Deposits Scotland and Letting Protection Scotland, various text messages between the parties, the Council Tax demand for £242.04 for the period 1 July -17 September 2025 and the OVO Energy bill dated 24 September 2025, the Respondent's photographs, the Post Office receipt of 14 August 2025 and the receipt from Safe Deposits Scotland dated 7 March 2026. The Tribunal considered these documents.

8. The Tribunal checked whether the Applicant had been through the Respondent's submissions and the photographs and text messages. He confirmed he had. That being the case the Tribunal noting that the Respondent admitted she had failed to lodge the deposit within 30 working days of it being received, clarified with parties that they agreed the tenancy started on 1 July 2025, that a £400 deposit was paid, that it should have been lodged with one of the three scheme administrators by 11 August 2025, that the Applicant gave notice to terminate on 8 September 2025 and that the keys were received by the Respondent which she accepted by text on 1 October 2025. Both parties agreed these facts.

9. The Tribunal then asked the Respondent to explain why she had not lodged the deposit by 11 August 2025. The Respondent advised that although the tenancy started on 1 July 2025, she agreed to the Applicant moving in on 27 June 2025. The tenancy agreement was never returned signed by the Applicant. On 8 August 2025, the Applicant asked that a new tenancy agreement be issued in joint names with his wife. On 14 August 2025, with reference to the Post Office receipt lodged, the Respondent explained she posted a new tenancy agreement with the Applicant's wife named as the joint tenant and with a start date of 1 September 2025 to the Applicant. This was sent with a pre-paid envelope so that a signed copy could be returned. She advised the Applicant that once she had received the signed tenancy agreement, she would then lodge the deposit with Safe Deposits Scotland to be applied to the joint tenancy. However that tenancy agreement was never signed. The Respondent confirmed that the Applicant gave his notice to terminate on 8 September 2025 and that she acknowledged receipt of the keys on 1 October 2025. There were disagreements with the Applicant as to the amount of the deposit to be returned to the Applicant due to Council Tax and issues in the Property such as the mattress and broken electric shower which were never resolved before he lodged the application. There has been no further communication between the parties. She had a new tenant in the Property and had paid her deposit into Safe Deposits Scotland.

10. The Respondent went on to explain that she received the Tribunal papers on 5 March 2026. On 6 March 2026 she lodged the deposit with Safe Deposits Scotland. She advised that she was not aware whether the Applicant had asked for the return of the deposit.

11. The Applicant advised he had not asked for return of the deposit as he was not aware it had been lodged with Safe Deposits Scotland. When questioned by the Tribunal as to why he had not returned the tenancy agreement in his and his wife's name he advised he had never received it and that he had never chased that up with the Respondent. The Tribunal

enquired as to how he had been affected by the failure of the Respondent to lodge the deposit on time. He advised that as he had just been made redundant when the tenancy terminated, he was under financial stress and was not able to settle the Council Tax bill. He felt under extreme pressure by not getting the deposit returned.

12. The Tribunal advised both parties that it could take the matter to a full Hearing for evidence to be led with regards to the tenancy situation. There was confusion with regards to the tenancy caused by the request for a joint tenancy on 8 August 2025. The Tribunal explained that if it found the sole tenancy in the Applicant's name had been terminated before the joint tenancy, (which was due to start on 1 September), commenced the deposit would have been unprotected from 11- 31 August 2025, a period of 21 days. It further explained if it found the sole tenancy had continued, the deposit would have been unprotected from 11 August – 1 October 2025, when the sole tenancy ended, a period of 51 days. The Tribunal confirmed that the Applicant would be advantaged if it found the sole tenancy was terminated on 1 October 2025, there being a longer period that the deposit was unprotected. In either event, the Tribunal stated that the failure of the Respondent to lodge the deposit could not in all the circumstances be said to be a flagrant breach of the 2011 Regulations. Both parties confirmed they wanted the Tribunal to make a decision on the basis of the information it had before it.

Findings in Fact

13. The parties entered into a Private Residential Tenancy Agreement commencing on 1 July 2025. By agreement the Applicant moved into the Property on 27 June 2025.

14. In terms of Clause 10 of the tenancy agreement the Applicant paid the Respondent a tenancy deposit of £400.

15. In terms of Clause 23 of the tenancy agreement, the tenancy could be terminated by the Applicant giving the Respondent at least 28 days' notice in writing to terminate the tenancy, or an earlier date if the Respondent was content to waive the minimum 28 day notice period. Where the Respondent agreed to waive the notice period, her agreement had to be in writing

16. On 8 August 2025 the Applicant texted the Respondent to ask that his wife's name be added to the tenancy agreement.

17. The Respondent did not pay the deposit into one of the three approved tenancy deposit schemes by 11 August 2025 being 30 working days of 1 July 2025 as required in terms of Regulation 3 of the 2011 Regulations.

18. After receiving the Applicant's request to change the tenancy agreement in his name to a joint tenancy with his wife, the Respondent intended to apply the deposit the deposit to the joint tenancy when it was returned signed.

19. On 14 August 2025 the Respondent sent a joint tenancy agreement in the name of the Applicant and his wife to the Applicant with a start date of 1 September 2025. Neither tenancy agreement was signed and returned to the Respondent. The original tenancy agreement commencing on 1 July 2025 continued.

20. On 8 September 2025, the Applicant gave notice by text that he was terminating the tenancy due to being made redundant. He vacated the Property on 19 September 2025.

21. The Respondent received the return of the keys on 1 October 2025 and confirmed this in a text message to the Applicant. The tenancy terminated on 1 October 2025 in terms of Clause 23 of the tenancy agreement.

22. The Applicant contacted the Respondent about the return of the deposit. The Applicant having lost his job was under financial pressure and needed the deposit to be returned to him to settle the final bills such as Council Tax for the Property.

23. The Respondent failed to return the deposit of £400 to the Applicant. The Respondent claims the Property was not left in a reasonable state.

24. The Respondent lodged the deposit with Safe Deposits Scotland on 6 March 2026. Neither party has been in contact with Safe Deposit Scotland regarding the return of the deposit.

Reasons for Decision

25. For the purpose of Regulation 9(2) of the 2011 Regulations, an application where a landlord has not paid a deposit into a scheme administrator must be made within three months of the tenancy ending. The Tribunal found that the application was made in time, the application being made on 28 October 2025 following on the tenancy terminating on 1 October 2025.

Regulation 3 (1) and (2) of the 2011 Regulations provides –

"(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.

Regulation 10 of the 2011 Regulations provides-

"*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. The tenancy in this case was a "relevant tenancy" for the purposes of the 2011 Regulations. The duties under the 2011 Regulations are twofold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide the tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties. In this case there is no dispute that the deposit remained unprotected from 11 August 2025, being 30 working days from 1 July 2025, until 1 October 2025 when the tenancy ended as the Respondent acknowledged receipt of the keys by text. Despite the Applicant vacating the Property on 19 September 2025, Clause 23 of the tenancy agreement provides that the Applicant had to give at least 28 days' notice in writing to terminate the tenancy, or an earlier date if the Respondent was content to waive the minimum 28 day notice period in writing. The tenancy therefore terminated on 1 October 2025, notice having been given by the Applicant on 8 September 2025 and the Respondent waiving the 28 days' notice period by accepting the keys on 1 October 2025. At that point had the tenancy deposit been lodged the process for the return of the deposit

would have started through the scheme administrator. The Applicant asked for the return of his deposit. The Respondent did not do so and claims the tenancy was not left in a reasonable state. Since the application papers for this case and the application under reference number FTS/HPC/CV/25/4860 for the return of the deposit were served on the Respondent she has lodged the deposit with Safe Deposit Scotland.

27. In this case the Tribunal is required to make an order for payment. There is no discretion available to the Tribunal under Regulation 10 of the 2011 Regulations if the Tribunal finds the landlord in breach of Regulation 3, it must make an order for payment. The Tribunal has to determine the amount to be paid. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. Being satisfied that the Respondent had failed to comply with her 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.

28. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, taking into account both aggravating and mitigating circumstances, having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Tribunal considered the decision from the Upper Tribunal for Scotland in *Ahmed v Russell (UTS/AP/22/0021)* where Sheriff Cruickshank provides 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 each in reaching its decision. The Tribunal is then entitled to assess a fair and proportionate sanction. 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."*

29. The Tribunal considered the Respondent had admitted her failure to comply with the 2011 Regulations. The Respondent had explained this was down to the Applicant having requested a new joint tenancy in his and his wife's names on 8 August 2025. This request was made 3 days before she was

required to pay the deposit into a scheme on 11 August 2025. The Tribunal accepted that the Respondent intended to apply the deposit from the sole tenancy in the Applicant's name to the joint tenancy in his and his wife's name after she received it, which she never did. It was clear to the Tribunal the Applicant's request for a joint tenancy had confused matters for the Respondent. The Applicant had then given notice to terminate exactly a month after requesting a joint tenancy. It appeared to the Tribunal that the Respondent had genuinely intended to lodge the deposit but that the situation had become confused for her with the request for a joint tenancy and then the notice to terminate.

30. The Tribunal accepted that the Applicant was anxious about the return of his deposit. It accepted that having recently been made redundant he was under some financial pressure and could have used the deposit to settle his final bills at the Property.

31. The sanction imposed by the Tribunal should reflect the level of overall culpability measured against the nature and extent of the breach of the 2011 Regulations. The Tribunal is required to determine a fair and proportionate sanction based on the facts as recorded. In the circumstances, having accepted the submissions in mitigation made on behalf of the Respondent the Tribunal considered the breach does not justify the maximum sanction. Having considered the submissions from the parties and taking into account the guidance from the Upper Tribunal the Tribunal decided that the appropriate award should be on the lower end of the scale. The tenancy had lasted a period of three months. Within five weeks of it starting the request for a joint tenancy had confused matters with the notice to terminate being made four weeks later. The Respondent's failure was not deliberate, but rather she was confused by the events she was faced with. She has since lodged the deposit with Safe Deposits Scotland.

32. In all the circumstances the Tribunal considered that a fair and proportionate amount to be paid to the Applicant by way of sanction was the equivalent of a quarter of the amount of the deposit.

Decision

33. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicant of £100.

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.

Shirley Evans

25 April 2026

Legal Member **Date**