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 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/25/1981

Re: Property at Flat B2 16 West Princes Street, Glasgow, G4 9BP ("the Property")

Parties:

Mr Samuel Ocansey, 1/1 30 Salen Street, Glasgow, G52 1EB ("the Applicant")

Mrs Lindsay Canty, Home Farm Ardmore, Cardross, Dumbarton, G82 5HE ("the Respondent")

Tribunal Members:

James Bauld (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should be ordered to make payment to the Applicants of the sum of TWENTY-FIVE POUNDS (£25)

Background

1. By application dated 8 May 2025 the applicant sought an order in terms of Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations") in respect of an alleged failure by the respondent to comply with those regulations.

2. The application was accepted by the Tribunal and referred for determination by the tribunal.

3. A Case Management Discussion (CMD) took place on 10 October 2025 where it was decided that the matter required to be remitted to a hearing. Two

issues remained in dispute. The first issue was whether the landlord had failed to comply with the 2011 Regulations. The second issue was the amount of the award which should be made if it was accepted the landlord had breached those regulations.

The hearing

4. The hearing took place by telephone case conference on 2 April 2026.Both parties were present.

5. The tribunal explained the purpose of the hearing and the powers available to the tribunal to determine matters. The tribunal asked various questions of the parties with regard to the application.

6. The tribunal explained to the parties the range of awards (including the minimum and the maximum award) which could be made in terms of the 2011 Regulations

.

Agreed matters of fact

7. Certain matters were agreed between the parties.

8. The applicant and his brother Sean Ocansey and the respondent had entered into a tenancy agreement relating to the property.

9. The same parties had been the parties to a previous tenancy agreement relating to an adjoining property at Flat B1,16 West Princes Street, Glasgow, G4 9BP from 1 August 2018 to 1 July 2020.

10. The tenancy of the property at B2, 16 West Princes Street, Glasgow, G4 9BP had commenced on 1 July 2020 and had ended on 16 April 2025

11. The rent was £790 per month.

12. The tenancy agreement indicated that a deposit of £1000 had been paid in respect of the tenancy.

13. No actual payment of that deposit had been made by the applicant and his joint tenant at or prior to commencement of the tenancy. Parties had agreed that the deposit in respect of the previous tenancy at Flat B1 was to be treated as the deposit for the tenancy of the property.

14. At the commencement of tenancy, the deposit funds were held by Safe Deposits Scotland ("SDS"), an approved tenancy deposit scheme. The funds were held in account number DAN516439 whcih related to the tenancy at flat B1.

15. The respondent attempted to have SDS transfer the funds held in account DAN516439 internally to reflect the change of address.

16. The respondent was advised by SDS on 7 August 2020 that such an internal transfer could not be done. She was advised that the funds would require to be repaid to her and then lodged afresh in respect of the new tenancy

17. On 10 August 2020 SDS repaid the funds held in account DAN516439 (£1000) to the respondent.

18. On 13 August 2020, the respondent lodged the funds with SDS and the deposit was then protected from that date in account number DAN569840

19. The deposit was repaid in part to the applicant at the conclusion of the tenancy

Summary of discussions

20. During the hearing, the parties were asked various questions by the tribunal members.

21. There was no dispute between the parties regarding the factual background to the tenancy

22. Parties were also both aware of the provision of the 2011Regulations which requires that a tenancy deposit must be lodged with an approved deposit scheme within 30 working days of the beginning of the tenancy

23. The tenancy in the current case had begun on 1 July 2020. The period of 30 working days from the beginning of the tenancy including the start date therefore ended on 11 August 2020.

24. It was accepted that the deposit had been paid to the deposit scheme on 13 August 2020

25. It was also accepted that the deposit funds had previously been held by the deposit scheme in respect of the previous tenancy between the parties and had been refunded to the respondent on 10 August 2020

26. The deposit funds were then re-lodged with the deposit scheme on 13 August 2020

27. The tribunal indicated to the parties that there were numerous Upper Tribunal decisions relating to tenancy deposit disputes and also drew the parties' attention to specific decisions made by the Upper Tribunal and by the Sheriff court in respect of certain applications. Particular reference was made by the tribunal to the decision by Sheriff Welsh in the case of ***Russel-Smith and others v Uchegbu*** ([2016] SC EDIN 64). In that case Sheriff Welsh had calculated the sanction to be imposed for failure to comply with the 2011 Regulations by comparing the length of time a deposit was unprotected with the length of time that the tenancy had lasted. He also added an additional amount to reflect the fact that the landlord had been repeatedly officially informed of her obligations and still failed to comply.

28. It was the applicant's position that there had been a breach of the 2011 Regulations and in his view the tribunal should make an award of £1000. He appeared to be under the impression that the minimum award to be made by the tribunal was the amount of the deposit itself. He was reminded by the tribunal that was not correct. There was no minimum award set in the regulations.

29. The applicant was unable to provide any convincing evidence that he and his joint tenant had been in any significant way inconvenienced by the manner in which the deposit had been paid into the approved scheme. He accepted that he had not been asked at the commencement of the new tenancy to provide a fresh deposit for the new tenancy while the parties resolved any issues relating to the previous tenancy

30. It was his position that the landlord should have taken steps in that period to advise him and his joint tenant of the processes which were being undertaken in respect of the transfer of the deposit within the deposit scheme.

31. The respondent indicated that when the parties had agreed to the move from one flat to the other, she had allowed the applicant and his brother some time to complete their move. For a period of time, they effectively had occupancy of both flats. She had eventually managed to inspect the original flat and had agreed that there should be no deductions from the deposit.

32. The respondent then contacted the deposit scheme to try to make arrangements to simply move the deposit internally within the scheme reflecting the change of address. She was advised by the scheme that this could not be done and that the funds would require to be refunded either to the tenants or to herself. She took the view that she would prefer the funds to be repaid to her and she could arrange to then re-lodge them

33. She accepted funds were paid into her bank account on 10 August 2020 and it was a matter of agreement between the parties that the funds had been relodged with the approved scheme on 13 August 2020

34. The applicant indicated that all of these actions and activities had occurred during the initial Covid pandemic lockdowns. During that period there were significant restrictions on travel and face-to-face meetings. She had also suffered bereavements during that time

35. The respondent accepted that on the strict interpretation of the 2011 Regulations that she had failed to comply with them and that the funds should have been lodged no later than 11 August 2020. It was her position that there was no prejudice at all to the applicant and the joint tenant in respect of the period of two days where the funds were effectively not protected.

.

36. At the conclusion of the hearing, both parties indicated that they were content for the tribunal to consider all the evidence that had been presented to the tribunal both orally and in writing and to make the decision in accordance with the relevant regulations. The tribunal is grateful to the parties for their attendance at the hearing and their assistance in answering questions.

Discussion and decision

37. This application related to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy. In this case it was accepted by the Landlord

that she had failed to do so. Accordingly, she was in breach of the duties contained in Regulation 3 of the 2011 Regulations. Those duties are twofold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit.

38. Regulation 9 of the 2011 Regulations indicates that if a Landlord does not comply with any duty in regulation 3, then the Tribunal must order that a Landlord makes payment to the Tenant of an amount "not exceeding three times the amount of the tenancy deposit".

39. Accordingly in this case the Tribunal is required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment.

40. In this case the Tribunal carefully considered the evidence which had been produced by both parties. There was clear evidence, agreed and acknowledged by the respondent, that the respondent had paid the tenancy deposit into the appropriate scheme on 13 August 2020. It should have been lodged no later than 11 August 2024. The delay was a period of two working days. The deposit was thereafter lodged in accordance with the requirements of the 2011 Regulations.

41. The Regulations were introduced to safeguard deposits paid by Tenants. They were introduced against a background of Landlords abusing their position as the holder of deposit moneys. The parliament decided that it should be compulsory to put the deposit outwith the reach of both the Landlord and the Tenant to ensure that there was a dispute resolution process accessible to both Landlord and Tenant at the end of a tenancy and which placed them on an equal footing. The Regulations make it clear that the orders to be made by Tribunals for failure to comply with the Regulations are a sanction or a penalty

42. In this case, the Respondent was in breach of the 2011 Regulations.

43. The tribunal notes that in an Upper Tribunal decision, (***Ahmed v Russel*** UTS/AP/22/0021 2023UT07) Sheriff Cruickshank indicates (at Para 38) that "***previous cases have referenced various mitigating or aggravating factors which may be considered relevant. It would be impossible to ascribe an exhaustive list. Cases are fact specific and must be determined on such relevant factors as may be present***" . The amount awarded should represent "***a fair and proportionate sanction when all relevant factors have been appropriately balanced***".

44. The sanction to be imposed is intended to mark the gravity of the breach which has occurred. It should reflect the level of overall culpability in each case 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.

45. The tribunal was not persuaded that the award should be made at the level suggested by the applicant. By any measure this was a breach at the most minor end of the scale. The respondent had control of the deposit funds for three days. From 1 July 2020 until 10 August 2020, the funds were held by an approved tenancy deposit scheme. The applicant and his joint tenant had suffered no prejudice by the delay.

46. In this case, the deposit was actually unprotected (i.e the funds were not in the possession of an approved scheme) for a period of two days. Even at its highest, the deposit was unprotected for a period of 44 days if the period from the commencement of the tenancy until 13 August 2020 (and counting both dates as part of that period) is taken into account. The tenancy lasted for a period of almost five years. Using the formula suggested by Sheriff Welsh in ***Russel-Smith and other v Uchegbu***, the calculation based on the deposit being unprotected for two days and a tenancy lasting for 1751 days, would lead to an award of £1.14. Using the period of 44 days the calculation would be £25.12. In this case there is no justification for adding any additional amount to reflect any warnings given to the respondent about repeated failures. No such warnings nor any such failures exist in this case.

47. The tribunal does accept that this appears to have been an isolated incident and notes that the respondent has acknowledged the breach. The tribunal accepts her submission that these events occurred during the pandemic lockdown and shortly after she had suffered bereavements. The tribunal takes the view that this breach does not come remotely close to being the most egregious breach of the 2011 Regulations. Indeed, it might be the most insignificant breach ever to be brought before the tribunal. The tribunal also notes that in ***William and Barbara Wood against Gillian Johnston([2019] UT 39 UTS/AP/19/0023)***, the Upper Tribunal upheld a decision of the First Tier Tribunal to make an award of £50 in respect of a breach of the 2011 Regulations

48. The tribunal accepts that the failure to lodge the deposit was caused by a simple human error. There was no malice. The delay could easily be argued to have arisen from a unique set of circumstances involving a switch of

tenancies (to the benefit of the tenants) involving the same parties within the same building

.

49. The tribunal is willing to accept the submission that the respondent simply made a mistake in this matter rather than being in wilful defiance of the purpose of the 2011 Regulations. The tribunal also notes that no actual prejudice occurred and in the final analysis, the purpose of the regulations was not defeated, and the deposit was returned in part to the tenants, at the conclusion of the tenancy after an adjudication by the deposit scheme. dispute.

50. In the circumstances, the tribunal determines that the appropriate amount of the award to be made should be £25 which reflects the very minor nature of the breach, the unique circumstances of the case and the mitigatory factors put forward by the respondent.

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.

Jim Bauld

_____ _____10 April 2026___

Legal Member/Chair **Date**