



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/25/1721

Re: Property at 1/4 265 Broughton Road, Glasgow, G23 5JH (“the Property”)

Parties:

Mr Lukas Michael Robin, 3/4 79 Candleriggs, Glasgow, G1 1NP (“the Applicant”)

Mr Saud Sheikh, Flat 0/1, 17 Northpark Street, Glasgow, G20 7AA (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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 One thousand eight hundred and seventy five pounds (£1875) Sterling under regulation 10 of the 2011 Regulations.

Background

- 1 This is an application 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 determination that the Respondent is in breach of the duties under regulation 3 of the 2011 Regulations and requested the Tribunal impose a penalty of three times the amount of the deposit, being £1875.
- 2 The application was accepted and referred to a tribunal for determination. A case management discussion (“CMD”) was scheduled to take place on 30

October 2025. 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 24 September 2025 and required him to make written representations in response to the application by 9 October 2025. No written representations were received.

The CMD

- 3 The CMD took place on 30 October 2025 by teleconference. The Applicant and Respondent both joined the call.
- 4 The Applicant explained that he filed his application with the Tribunal in May 2025, along with a concurrent application for the return of his tenancy deposit. He had inquired with all three tenancy deposit schemes and none had his tenancy deposit. He had to contact the Respondent on three occasions to try and recover the deposit but received no positive response. The Applicant referred to what he considered to be serious breaches of the Respondent's professional responsibilities, including turning on disappearing messages and not responding to general inquiries from the Applicant. The Applicant was therefore seeking the maximum sanction of three times the deposit. This was a case of serious non-compliance with the 2011 Regulations. The tenancy ended on 17 March 2025 and the Applicant's deposit was returned to him on 2 May 2025. The Applicant had difficulty paying the deposit for his new tenancy and had to go into his overdraft. It had been frustrating. When the application was made to the Tribunal the deposit had not been returned to him, and he was worried he wasn't going to get it back at all.
- 5 The Respondent initially stated that he did not want to admit to any liability but was open to negotiating a settlement with the Applicant. He had been trying to contact the Applicant to facilitate this.
- 6 The Applicant advised that he would prefer the Tribunal to reach a decision on the application. He was not prepared to negotiate with the Respondent at this point.
- 7 The Tribunal asked the Respondent if he had sought any advice regarding the application. The Respondent advised that he had not as he had hoped to negotiate a payment to the Applicant. He accepted that the Applicant was unwilling to enter discussions in this regard. If the application was to proceed any further, the Respondent would seek advice or representation. He did have a position on the application but was not prepared to go into this without seeking advice.
- 8 The Tribunal explained again the purpose of the CMD, and the requirement for the Tribunal to identify what issues may require to be resolved. The Tribunal asked the Respondent if he could confirm his understanding of the factual position. The Respondent advised that he disputes he took a deposit from the Applicant that met the definition of a tenancy deposit for the purpose of the 2011 Regulations. He had initially taken a payment which included advanced rent. He pointed to the fact that the tenancy agreement did not make any

mention of a deposit and the Whatsapp communications produced by the Applicant were dubious.

- 9 The Applicant remains of the view that he paid a tenancy deposit to the Respondent. He believes the exclusion of reference to the deposit in the tenancy agreement was intentional. He referred to the bank statements produced and the screenshots of messages between the parties.
- 10 Having heard from the parties, the tribunal concluded that it could not reach a decision following the CMD as there was clearly a material issue in dispute, namely whether the payment of £625 made by the Applicant to the Respondent at the start of the tenancy was a tenancy deposit or advanced rent.
- 11 The Tribunal therefore determined to fix an evidential hearing. The preliminary issue to be resolved at the hearing was identified as whether the payment of £625 paid by the Applicant to the Respondent at the start of the tenancy was a tenancy deposit as defined by section 120 of the Housing (Scotland) Act 2006. Should the Tribunal conclude that the payment was a tenancy deposit, the Tribunal would then require to assess what level of sanction is appropriate, having regard to the aggravating and mitigating factors in this case.
- 12 A Direction was issued following the CMD requiring parties to submit documentary evidence, witness details and authorities at least fourteen days prior to the hearing. The Applicant submitted a response to the Direction by email on 10 November 2025. No response was received from the Respondent.

The hearing

- 13 The hearing took place by videoconference on 29 April 2026. The Applicant was in attendance. The Respondent was not. The tribunal delayed the start time of the hearing for a short period but the Respondent did not join the call. The tribunal noted his lack of response to the Direction and the fact that he had not provided any explanation for his failure to attend the hearing despite having been given proper notice under the Rules. The tribunal further noted that the Applicant was prepared and ready to proceed, and that the application had been submitted to the Tribunal in April 2025. Accordingly, having balanced the competing interest of the parties, the tribunal determined to proceed with the hearing in the absence of the Respondent.
- 14 The tribunal had the following documents before it:-
 - (i) The application form and supporting documents including a copy of the tenancy agreement, bank statements, emails from the three approved deposit schemes, photographs and excerpt text messages; and
 - (ii) The Applicant's direction response including his written submissions on the application, legal authorities, bank statements, a plumbing invoice, a rent statement, WhatsApp correspondence, OpenRent property listing, OpenRent correspondence, photographs, a copy of the tenancy

agreement, and emails from the three approved tenancy deposit schemes.

- 15 The tribunal heard oral evidence from the Applicant. The following is a summary of the key elements of the evidence.
- 16 The Applicant spoke to the circumstances surrounding the creation of the tenancy. The Applicant had paid the sum of £1875 to the Respondent, which equated to two months rent (£1250) and a tenancy deposit (£625). The Respondent had confirmed this to the Applicant when the parties met to sign the tenancy agreement. The Applicant explained that even if the payment of £625 was for advanced rent, it still met the definition of a tenancy deposit as it was being held as security for the performance of obligations under the tenancy agreement. He referred to two decisions of the First-tier Tribunal (*Foster-Grellis et al v Javid FTS/HPC/PR/22/2209* and *Brandt v Ewing FTS/HPC/PR/22/1214*) which had found on this point. The Applicant spoke to the Whatsapp messages produced and the fact that the phone number provided for the Respondent in the tenancy agreement matched the number used on Whatsapp. The Respondent had referred to himself both on the property listing on Openrent and on Whatsapp as "Sam H". The Respondent had ultimately returned the payment of £625 to the Applicant, therefore the Respondent did not deny that the payment was due.
- 17 The Applicant referred to the Whatsapp messages in which he had queried the deposit with the Respondent. He pointed out that the Respondent had turned on the disappearing messages function on Whatsapp after mention of the deposit. The Respondent had not denied that the Applicant paid the deposit. At no point had the Respondent stated to the Applicant that the payment of £1875 at the start of the tenancy was three months advanced rent. The Applicant spoke to the rent statement produced and a message from the Respondent which was evidence that only two months advanced rent had been paid. The Applicant explained that he had met with the Respondent at the end of the tenancy. The Respondent wanted to inspect the property when the keys were handed back. The Applicant thought the Respondent may wish to carry out further inquiries before returning the deposit therefore he did not query the return of the deposit at that meeting. However, in a phone call with the Respondent, the Respondent confirmed that the deposit would be returned to the Applicant.
- 18 In response to questions from the tribunal, the Applicant explained that he had been unaware of the deposit schemes when the tenancy commenced therefore he did not question why there was no reference to the deposit in the tenancy agreement. He assumed the Respondent was acting in good faith. The Applicant confirmed that the photograph of the Whatsapp contact "Sam H" was the Respondent with whom he had met both at the start and the end of the tenancy.
- 19 The Applicant went on to make submissions on the appropriate sanction in this case. He pointed out the purpose of the 2011 Regulations, which is to protect tenants. He noted that the deposit was not returned timeously, and only after he

had made an application to the Tribunal. He referred to the Respondent's denial of the existence of the deposit and refusal of any liability. No rationale had been provided as to why the Respondent had failed to comply with the duties in relation to the Applicant's deposit. There were no mitigating circumstances before the tribunal. The Applicant also referenced the Respondent's actions on Whatsapp, which appeared an attempt to conceal communications between the parties, and his use of a different name than his own. The Applicant confirmed that he had checked the online landlord registration and the Respondent only appears to have one rental property.

- 20 In response to questions from the tribunal, the Applicant explained that the Respondent had attempted to telephone him in advance of the CMD but the Applicant had not spoken with the Respondent as he did not want to prejudice his position on the application. The Applicant has had no further contact from the Respondent.

Findings in fact and law

- 21 The Applicant was the tenant, and the Respondent was the landlord, of the property, in terms of a private residential tenancy agreement, which commenced on 13 August 2024.
- 22 The tenancy agreement does not make provision for payment of a deposit.
- 23 The Respondent advertised the property and communicated with the Applicant using the name "Sam H".
- 24 On 13 August 2024 the Applicant paid the Respondent the sum of £1875 by bank transfer. The sum consisted of two months advanced rent in the sum of £1250 and a tenancy deposit in the sum of £625.
- 25 The Respondent did not pay the Applicant's deposit into an approved tenancy deposit scheme.
- 26 The tenancy between the parties terminated on 17 March 2025.
- 27 Following termination of the tenancy, the Applicant contacted the Respondent by Whatsapp message requesting the return of the deposit. The Respondent stated that he would "*get this resolved for Monday*". The Respondent activated the disappearing messages function which deletes messages after a period of time.
- 28 The Applicant applied to the Tribunal, along with this application, to recover the deposit from the Respondent on 23 April 2025.
- 29 The Respondent repaid the sum of £625 to the Applicant on 2 May 2025.
- 30 The Respondent appears to have one rental property in Scotland.

Reasons for decision

- 31 The tribunal considered all documentary evidence, submissions and the oral evidence taken at the hearing in reaching its decision on the application.
- 32 Section 120(1) of the Housing (Scotland) Act 2006 defines a tenancy deposit as 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”*.
- 33 The tribunal determined based on the evidence before it that the Applicant had paid the Respondent a tenancy deposit at the commencement of the tenancy in the sum of £625. The tribunal was satisfied that the communications produced were between the Applicant and the Respondent. The Respondent had provided no evidence to the contrary. Whilst the tenancy agreement made no mention of a deposit, the Applicant had evidenced in terms of the payments made to the Respondent and the messages between the parties that a deposit was in fact paid. The tribunal did not accept the Respondent’s position that the payment of £625 was a payment of advanced rent. The tribunal had regard to the rent statement produced by the Applicant, and the text messages which supported the Applicant’s position that the payment of £1875 he made to the Respondent on 13 August 2024 included a payment of two months advanced rent and a deposit of £625. The tribunal also considered the later messages between the parties, in which the Applicant had queried the return of his deposit. The Respondent had not denied the existence of the deposit in those messages, and he had ultimately returned a payment of £625 to the Applicant which gave further credibility to the argument that he was holding this payment as security for the performance of the Applicant’s obligations under the tenancy agreement. The tribunal therefore determined on the balance of probabilities that the payment of £625 was a tenancy deposit.
- 34 Having determined that the Applicant did pay a tenancy deposit to the Respondent, the tribunal went on to consider 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.”

- 31 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 and the Respondent is therefore subject to the duties outlined in regulation 3(1) and 3(2). It is not disputed that the Respondent did not lodge the tenancy deposit with an approved tenancy deposit scheme. The tribunal therefore determined that the Respondent was in breach of regulation 3(1) of the 2011 Regulations regarding the Applicant’s tenancy deposit because of his failure to lodge the Applicant’s deposit with a scheme and provide the Applicant with the prescribed information prior to the statutory deadline.
- 32 The tribunal 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.
- 33 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).
- 34 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.*"

- 35 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 £1500. 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.*"
- 36 In terms of aggravating factors, the tribunal considered the fact that the deposit had been retained by the Respondent for the entirety of the tenancy, that he had failed to pay it back to the Applicant until such time as the Applicant was put to the inconvenience of applying to the Tribunal, that he had failed to take any accountability for his breach of the 2011 Regulations, and that he appeared in terms of the text messages produced to have attempted to obfuscate by concealing messages regarding the deposit via the disappearing messages function on Whatsapp and by failing to make reference to the deposit in the tenancy agreement. The tribunal also considered that, as a landlord renting property in Scotland, the Respondent should be aware of the duties in relation to tenancy deposits and ensure tenants have access to the protections afforded under the 2011 Regulations.
- 37 The tribunal could identify little in terms of mitigation in this case, other than the fact that the deposit had ultimately been repaid to the Applicant. The Respondent had set out a skeletal response to the application at the CMD but had not sought to advance his defence any further. He had provided no evidence to counter that of the Applicant and had chosen not to participate in the hearing. There was therefore insufficient evidence to outweigh the aggravating factors outlined above.
- 38 Accordingly, the tribunal concluded that this was a serious breach which would merit an award at the highest end of the scale and determined to impose the maximum penalty of £1875.
- 39 The decision of the tribunal was unanimous.

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.

Ruth O'Hare

Legal Member/Chair

29 April 2026

Date