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 the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/25/4319

Re: Property at 59 Inverdon Court, Aberdeen, AB24 1XT ("the Property")

Parties:

Mr Michael Aigbogun, Mr Emmanuel B Foye, First Floor Right, 6 St Mary Street, Aberdeen, AB12 6HL; 103 Maurice Avenue, Stirling, FK7 7UE ("the Applicant")

Gail Davidson, Elmburn Drumoak, Banchory, AB31 5AS ("the Respondent")

Tribunal Members:

Ruth O'Hare (Legal 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 Seven hundred and fifty pounds (£750) under regulation 10 of the 2011 Regulations.

Background

1 This is an application under regulation 9 of the 2011 Regulations and rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules"). The Applicants sought a determination that the Respondent had failed to comply with her duties under regulation 3 of the 2011 Regulations along with a payment order of up to three times the amount of the deposit.

2 In terms of regulation 9 of the 2011 Regulations, an application under rule 103 must be made within three months of the end date of the tenancy. The tenancy between the parties terminated on 31 August 2025. The application was made to the Tribunal on 7 October 2025. The application is therefore timeous.

3 The application was accepted as valid and referred to a tribunal for determination. A case management discussion ("CMD") was scheduled to take place by teleconference on 15 April 2026 at 11.30am.

4 The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice was served at the Respondent's address by sheriff officers on 27 February 2026. The sheriff officers report advised that neighbours had indicated the Respondent may be abroad. The Tribunal therefore emailed the Respondent to notify her of the service of the papers. The Respondent responded by email on 17 March 2026 requesting a postponement of the CMD. The Tribunal provided the Respondent with a copy of the case papers by email and advised that the CMD would take place by teleconference. The Tribunal requested further information in support of the request for postponement, querying why the Respondent would be unable to join the call from abroad. The Respondent did not respond to this request.

5 On 11 April 2026 the Tribunal received written representations from the Respondent in response to the application. The Respondent advised that she would be unable to attend the CMD due to personal circumstances and requested the Tribunal consider the written representations in her absence. She did not seek a further postponement. A copy of the written representations was intimated to the Applicants.

The CMD

6 The CMD took place on 16 April 2026 at 11.30am by teleconference. The Applicants joined the call. The Respondent did not. The tribunal noted the terms of her written representations and determined to proceed in her absence.

7 The tribunal had before it the application form together with a copy of the tenancy agreement, excerpt text messages between the parties, bank statements and email from SafeDeposits Scotland. The tribunal also had the Respondent's written representations.

8 The tribunal explained the purpose of the CMD and the legal test. The tribunal noted the terms of the Respondent's written representations in terms of which she accepted the breach of regulation 3 of the 2011 Regulations. The issue for the tribunal to determine therefore was the level of sanction to be applied in the circumstances of this case. The tribunal proceeded to hear submissions from the Applicants on this point. The following is a summary of the key elements of the submissions.

9 Mr Ayebogun advised that he believed the Respondent may have breached the duties in relation to tenancy deposits in respect of her other properties. He described an overall lack of attention to her landlord responsibilities throughout the tenancy, including a failure to carry out inspections and produce the necessary safety certification. He confirmed that he first became aware that the deposit was not protected when he inquired with the Respondent upon giving

notice to terminate the tenancy. The Respondent mentioned that she had forgotten about it and proceeded to then lodge the deposit with the scheme. She had provided false information to the scheme regarding the start date of the tenancy, stating it commenced on 1 July 2025 when in fact it commenced on 2 August 2022. Mr Ayebogun advised that the Applicants had received the deposit back in full, subject to a payment of £50 that they had agreed to, and had suffered no financial loss.

10 Mr Foye agreed with Mr Ayebogun's submissions. He outlined various issues with repairs at the property which had caused the Applicants significant stress and inconvenience. The tribunal clarified that it could only look at the circumstances surrounding the deposit in its determination of the application.

11 The Applicants confirmed that they would be content for the tribunal to proceed to a decision based on the information before it and they had no further evidence to present. The tribunal therefore concluded the CMD and confirmed that the decision would be issued in writing.

Findings in fact and law

12 The Respondent is the owner and landlord, and the Applicants were the tenants, of the property in terms of a private residential tenancy agreement, which commenced on 2 August 2022.

13 At the commencement of the tenancy the Applicants paid the Respondent a tenancy deposit in the sum of £500.

14 In terms of regulation 3 of the 2011 Regulations, the statutory deadline for lodging the Applicant's tenancy deposit with an approved deposit scheme was 13 September 2022.

15 The Respondent lodged the Applicants' tenancy deposit with Safedeposits Scotland on 26 July 2025. The Respondent advised the scheme that the tenancy commenced on 1 July 2025.

16 The tenancy between the parties terminated on 31 August 2025.

17 The Respondent accepts she failed to comply with the duties under regulation 3 by failing to lodge the deposit with the scheme within the statutory timescale. The Respondent discovered the error when the Applicants gave her notice to terminate the tenancy.

18 The Respondent has other rental properties. The Respondent does not employ a letting agent to manage her rental portfolio.

19 The Tribunal has previously found the Respondent in breach of the duties in relation to tenancy deposits by decisions dated 6 February 2020.

20 The Applicants received the deposit back in full following adjudication by the deposit scheme.

Reasons for decision

21 The tribunal considered it had sufficient information based on the documents produced and the submissions from the parties at the CMD to make relevant findings in fact and reach a decision on the application in the absence of a hearing under Rule 18 of the Rules. The tribunal considered that to do so would not be contrary to the interests of the parties. The Respondent appeared content to rely upon her written representations and the tribunal identified no issues to be resolved that would require a hearing to be fixed.

22 The tribunal considered 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."

23 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.

24 The tribunal further determined that the Respondent was in breach of regulation 3(1) of the 2011 Regulations regarding the Applicants' tenancy deposit because of her failure to lodge the Applicants' deposit with a scheme and provide the Applicants with the prescribed information prior to the statutory deadline. The Respondent did not dispute this.

25 The tribunal therefore 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.

26 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*).

27 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."*

28 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."

29 In terms of aggravating factors, the tribunal considered the fact that the deposit had been retained by the Respondent until shortly before the tenancy ended, a period of around three years. It was a significant period, during which the Applicants' deposit would have been unprotected. The tribunal also considered that the Respondent appears to have a rental portfolio, having referenced "*administration of my tenancies"* in her written representations. The tribunal notes from the published decisions that she has previously been found by the Tribunal to be in breach of the duties in relation to tenancy deposits in respect of one of her other rental properties. Whilst these decisions date back to 2020, the tribunal was concerned that they represent an overall lack of care and attention by the Respondent to her landlord responsibilities. The tribunal would have expected the Respondent to ensure she had appropriate procedures in place to handle deposits in accordance with the duties under the 2011 Regulations, having been previously subject to sanctions because of her failure to do so. Her explanation that this was simply a mistake due to the pressures of work was not a satisfactory excuse.

30 The tribunal was also unclear as to why the Respondent had stated the wrong tenancy start date when lodging the deposit with the scheme. In the absence of any explanation from the Respondent on this point, the tribunal could reasonably assume that this was an attempt to mask the fact that the lodging of the deposit was long overdue.

31 In terms of mitigating factors, the tribunal gave weight to the fact that the deposit had ultimately been paid over to the deposit scheme by the Respondent. The Applicants had conceded that they only became aware of the fact that their deposit was not in a scheme towards the end of the tenancy. The tribunal considered that one of the primary aims of the 2011 Regulations is to ensure tenants have access to the independent scheme dispute resolution process should any disputes arise. The Applicants were not deprived of this protection. Whilst the Respondent may have claimed against the deposit, the Applicants had been able to challenge this through the scheme's adjudication process and received their deposit back in full, subject to an agreed deduction of £50. They did not suffer any financial loss. That will always be a significant mitigating factor in cases such as these. The tribunal also took into account the fact that the Respondent has now taken full responsibility for the breach and does not seek to evade responsibility.

32 The tribunal was therefore satisfied that the gravity of the breach is in the mid-range of the scale in this case, and in relation to culpability, the aggravating and mitigating factors are evenly balanced. The tribunal accordingly concluded that an award of £750 would be proportionate, fair and just.

33 For the avoidance of doubt, the tribunal's determination of this application is focused solely on the circumstances surrounding the tenancy deposit. The parties' conduct of any other aspects of the tenancy is not considered a relevant factor in determining an appropriate sanction in this case.

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

16 April 2026

Legal Member/Chair **Date**