



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/25/4834

Re: Property at Ground Floor Left, 59 Erskine Street, Aberdeen, AB24 3NR (“the Property”)

Parties:

Dr Sana Lodhi, Flat 1/1, 391 Shields Road, Glasgow, G41 1NW (“the Applicant”)

GK PROPERTIES (ABERDEEN) LIMITED, 22 Weaver Terrace, Aberdeen, AB24 4SD (“the Respondent”)

Tribunal Members:

Sarah O'Neill (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 its duties under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Tribunal therefore makes an order requiring the Respondent to pay to the Applicant the sum of £1650.

Background

1. An application was received from the Applicant on 8 November 2025 seeking a payment order under Rule 103 of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) against the Respondent. The Applicant sought an order for payment in respect of the alleged failure to lodge her tenancy deposit with an approved tenancy deposit scheme within 30 working days of the beginning of their tenancy, as required by Regulation 3 of the 2011 Regulations. She also sought an order for repayment of her tenancy deposit.
2. Attached to the application form were:

- (i) Copy private residential tenancy agreement between the parties, which commenced on 6 August 2025.
 - (ii) WhatsApp message dated 9 October 2025 from the Applicant's husband to Mr Jayraj Kumar, giving notice on her behalf with regard to the tenancy.
 - (iii) WhatsApp message dated 27 October 2025 from the Applicant to Mr Jayraj Kumar, notifying him that she had moved out of the property and left the keys there, together with photographs of the property.
 - (iv) Bank remittance advice showing two payments of £200 and £900 by the Applicant to Mr Gautam Kumar, on 5 and 6 October 2025 respectively, both citing the reference "rent and deposit".
 - (v) Copy confirmations from all three approved tenancy deposit schemes confirming that they did not hold the Applicant's tenancy deposit.
3. Further to a request from the tribunal administration, further information was received from the Applicant on 15 November 2025. This included an amended application form seeking an order under rule 103 only.
4. The application was accepted on 21 November 2025.
5. A civil proceedings application seeking a payment order against the Respondent under rule 111 of the 2017 rules was also received from the Applicant on 15 November 2025, regarding the repayment of her tenancy deposit. The two applications were conjoined and heard together by the tribunal.
6. Notice of the case management discussion (CMD) scheduled for 5 May 2026, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the tribunal on 18 March 2026. The Respondent was invited to submit written representations by 8 April 2026.
7. A submission citing the case reference was received by email from Mr Jayraj Kumar, stating that he was "Attorney for and on behalf of G.K. Properties Aberdeen Ltd", on 7 April 2026. Mr Kumar was notified by the tribunal administration on 24 April 2026 that, as he was not a named party on the case, the submission had not been processed. He was further notified that if he wished to be added to the case as a party's representative, he should provide a mandate signed by them to confirm this. Nothing further was received from him.
8. No written representations were received from the Respondent prior to the CMD.

The case management discussion

9. A CMD was held by remote teleconference call on 5 May 2026 to consider both the present application and the accompanying civil proceedings application (reference no: FTS/HPC/CV/25/4937). The Applicant was present on the teleconference call and represented herself.
10. The Respondent was not present or represented on the teleconference call. The tribunal delayed the start of the hearing by 10 minutes, in case the Respondent had been detained. The Respondent did not join the teleconference call, however, and no telephone calls, messages or emails had been received from it.
11. The tribunal was satisfied that the requirements of rule 24 of the 2017 rules regarding the giving of reasonable notice of the date and time of a hearing had been duly complied with. It therefore proceeded with the CMD in the absence of the Respondent.

Preliminary issue

12. The tribunal noted that an email had been received from Mr Jayraj Kumar on 7 April 2026. The tribunal had only become aware of this email immediately before the CMD. It had not been sent to the tribunal or to the Applicant because Mr Kumar was not a named party on the case. He had been notified that if he wished to be added to the case as a party's representative, he should provide a mandate signed by them to confirm this. Nothing further had been received from Mr Kumar.
13. The Tribunal noted that the sole director of the Respondent company is Mr Gautam Kumar. It did not therefore consider the contents of the email received from Mr Jayraj Kumar, who was not a party to the case and had not been authorised as a representative of the Respondent.

The Applicant's submissions

14. The Applicant told the Tribunal that her tenancy had commenced on 6 August 2025. All of her dealings regarding the tenancy had been with Mr Jayraj Kumar, whom she believed was Mr Gautam Kumar's father, and who had told her that he had power of attorney for the Respondent. She had paid Mr Gautam Kumar a total of £1100 in two instalments at the start of her tenancy, as instructed by Mr Jayraj Kumar. She understood this payment to include the sum of £550 for the first month's rent and a further £550 for a tenancy deposit.
15. The tenancy agreement which she had signed said that no tenancy deposit was to be paid. Clause 10 of the agreement provided that one month's "advance rent" was to be paid at the start of the tenancy, which would be

returned at the end of the tenancy, so long as the property was handed back in the same condition. It also stated that any damages incurred within the property would be deducted from the advance rent. Mr Jayraj Kumar had insisted that she sign her name against clause 10 specifically, as well as signing at the end of the agreement. She had queried this before signing the agreement, but was not aware of the rules on tenancy deposits at the time. She had very little time to find somewhere to live, as she was about to start a new job in Aberdeen and had little alternative but to accept the terms stated.

16. Clause 10 also said that the tenancy was intended to be long term, and was for a minimum of six months. She had only found out later that this was not compliant with the law. She had notified Mr Jayraj Kumar on 16 September 2025 that the boiler needed repair, and he told her that if she was not happy, she could leave the property. He also said to her verbally that he would give back her deposit if she did so. She said that he used the term "deposit" interchangeably with 'advance rent' in conversation with her.
17. She paid the second month's rent on 1 October 2025 and decided to leave the property, as she did not wish to continue with the tenancy in the circumstances. She said that Mr Jayraj Kumar had been rude towards her, so she asked her husband to give him notice on her behalf. Her husband had done so by WhatsApp message on 9 October 2025, stating that she wished to give notice to terminate the tenancy at 1 November 2025. Mr Kumar had replied shortly afterwards, stating that the notice was accepted.
18. She had moved out of the property on 27 October 2025. She had left it in a clean and tidy condition, as evidenced by the photographs which she had submitted to the tribunal.
19. She had asked Mr Kumar for her deposit to be returned. He wrote to her on 3 November 2025, attaching an invoice for alleged unpaid rent of £165 for the period 1- 9 November 2025. His email stated that her "advance rent" payment of £550 had "been adjusted, as per the signed agreement, against cleaning costs, marketing expenses and rent loss due to the early termination of the tenancy".
20. She had then sent an email directly to Mr Gautam Kumar on 4 November 2025, asking for the return of her deposit. She had received no response from him. He had not returned her deposit to her.
21. The Applicant said that the whole experience had an impact on her mental health. She felt that she had to leave the property after a short time due to her experiences with Mr Kumar. Her deposit had not been returned to her. She had cleaned the property thoroughly, and did not accept that there were cleaning costs to be paid. Mr Kumar had kept her deposit and she was unable

to challenge this through a tenancy deposit scheme.

22. She said that the main reason why she had made the application was that she wanted the Respondent to be held responsible for its actions. She was concerned that if she did not do so, the Respondent may continue to behave in the same way towards other tenants.

Findings in fact

23. The Tribunal made the following findings in fact:

- The parties entered into a private residential tenancy agreement in relation to the property, which commenced on 6 August 2025.
- The Respondent is the heritable proprietor and registered landlord of the property.
- The Respondent was the landlord named under the tenancy agreement. It was the landlord in terms of the 2011 Regulations.
- The tenancy agreement stated that the rent payable by the Applicant under the tenancy agreement was £550 per month, payable on the 6th of each month.
- The parties had later agreed that the Applicant would pay the rent for 6th-30th September only and thereafter would pay rent on the 1st of the month.
- The tenancy agreement stated at clause 10 that the tenant was to pay one month's "advance rent", which would be returned as long as the flat was handed back in the same condition.
- The tenancy agreement also stated that any damages incurred within the property would be deducted from the advance rent. It stated that the tenant agreed and confirmed that there was no deposit for the tenancy, and that the tenant agreed that they would not be able to claim this amount through the tribunal.
- The tenancy was a 'relevant tenancy' in terms of the 2011 regulations.
- The Applicant paid a tenancy deposit of £550 to Mr Gautam Kumar on 5 or 6 October 2025.
- Mr Gautam Kumar is the sole director of the Applicant company, GK Properties (Aberdeen) Ltd.
- The Respondent did not pay the Applicant's tenancy deposit into an approved tenancy deposit scheme within 30 working days of the beginning of the tenancy, or at any later date during the tenancy.
- The Applicant's husband gave notice on her behalf on 9 October 2025.
- The Applicant's tenancy ended on or around 8 November 2025.
- The Respondent did not repay the Applicant's tenancy deposit to her at the end of the tenancy.

The relevant law

24. Rule 3(1) of the 2011 Regulations provides that: *“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.*

25. In terms of section 120 of the Housing (Scotland) Act 2006 (“the 2006 Act”), a tenancy deposit is 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.

Reasons for decision

26. The tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties. It therefore proceeded to make a decision at the CMD without a hearing in terms of rules 17(4) and 18 (1) (a) of the 2017 rules.

27. The tribunal considered firstly whether the sum of £550 paid by the Applicant to Mr Gautam Kumar, the sole director of the Respondent company, was in fact a tenancy deposit. It was clear that the Respondent's position was that it was not a deposit, but that it was a payment of advance rent. Clause 10 of the tenancy agreement between the parties stated as follows:

10. ADVANCED RENT - NO DEPOSIT

Advanced Rent for £550 month of the tenancy has been paid up front, which amounts to £550. If the tenant decides to terminate the tenancy, this can be done by giving 4 weeks notice and this advance amount of £550 will be returned as long as the flat is handed back in the same condition.

Tenancy will begin on the 6/8/2025 and is intended to be long term, minimum 6 months.

The amount will be kept in a non-interest bearing account and is not a deposit or will be deposited within a deposit scheme. Any damages incurred within the property will be deducted from the advance rent. The tenant agrees and confirms that there is no deposit for the tenancy, but a credit/advance amount

of 1 months rent and also confirms and agrees that they will not be able to claim this amount through the housing tribunal.

28. The Applicant had been asked to sign this clause separately, and had done so.
29. It was clear to the tribunal that the £550 which she had paid to Mr Gautam Kumar was a tenancy deposit, as defined in section 120 of the 2006 Act. Clause 10 clearly stated that the 'advance rent' of £550 would be returned to the tenant so long as the property was handed back in the same condition. It also stated that any damages incurred within the property would be deducted from the "advance rent". This sum was clearly being held as security for the performance of the Respondent's obligations arising under or in connection with her tenancy, of the discharge of any of her liabilities which may arise.
30. It was also clear that the Respondent had in fact failed to return the "advance rent" at the end of the Applicant's tenancy. Mr Kumar said that this had been "adjusted against" cleaning costs, marketing expenses and rent loss due to the early termination of the tenancy. The rent claimed for the period 1-9 November 2025 had not been deducted from the "advance rent", but Mr Kumar had sent the Respondent a separate invoice for this. This clearly demonstrated that the "advance rent" had in fact been treated as a tenancy deposit.
31. It was also clear to the tribunal on the basis of the evidence before it that the Applicant's tenancy deposit had not been paid into an approved tenancy deposit scheme. The Respondent had therefore failed to comply with the duty under Regulation 3(1) of the 2011 Regulations to pay the tenancy deposit into an approved tenancy deposit scheme within 30 working days of the start of the tenancy.
32. The tribunal was therefore obliged to make an order requiring the Respondent to make payment to the Applicant, in terms of rule 10 of the 2011 Regulations.
33. The tribunal was then required to consider the sum which the Respondent should be ordered to pay to the Applicant, which could be any amount up to three times the amount of the tenancy deposit. The amount of any award is the subject of judicial discretion after careful consideration of the circumstances of the case, as per the decision of the Inner House of the Court of Session in the case of *Tenzin v Russell 2015 Hous. LR. 11*.
34. In determining the appropriate level of payment order to be made in the circumstances, the tribunal considered the need to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach (*Sheriff Welsh in Jenson v Fappiano 2015 GWD 4-89*).

35. The tribunal noted the view expressed by Sheriff Ross in *Rollet v Mackie* ([2019] UT 45) that the level of penalty should reflect the level of culpability involved. The tribunal considered the various factors to be taken into account, as set out by Sheriff Ross in that decision.
36. While the Applicant had only lived in the property for a very short time, her tenancy deposit was unprotected throughout her tenancy. The requirement to pay a tenancy deposit into an approved scheme is intended to protect the deposit, and offers protection for both parties in the event of any dispute at the end of the tenancy. The Respondent had not repaid the Applicant's deposit to her. Mr Kumar said that the "advance rent" had been set off against cleaning costs, marketing expenses and rent loss due to the early termination of the tenancy. The Respondent disputed that any of these sums were owed. Because her deposit was not appropriately protected, the Applicant was denied the opportunity to dispute these matters through an approved tenancy deposit scheme.
37. The tribunal considers that some of the aggravating factors which might result in an award at the most serious end of the scale were present in this case. It was clear that the Respondent was aware of the requirement to pay a tenancy deposit into an approved scheme, and had deliberately tried to circumvent this by referring to the deposit as "advance rent". Clause 10 of the tenancy agreement had been worded in such a way as to suggest that the tenant had signed away her rights to take the matter to the tribunal.
38. The requirement to place a tenancy deposit into an approved scheme is an absolute obligation on the landlord who has received it. A landlord cannot contract out of this duty. Any attempt to do so by amending the terms of the tenancy agreement is unlawful and could mislead a tenant as to both the landlord's duties and their own legal rights. If the Applicant's tenancy agreement is the standard agreement used by the Respondent, other future tenants may also be misled by it.
39. The tribunal considers that this represents both fraudulent intention by the Respondent and a deliberate or reckless failure by the Respondent to observe its responsibilities as a landlord.
40. The tribunal also notes that the Respondent appears to be unaware of the fact that a tenant under a private residential tenancy may serve notice at any time and that any stipulation of a minimum duration cannot be enforced. The tribunal notes, however, that this application concerns whether the Applicant's tenancy deposit was lodged with an approved scheme. It is not for the tribunal to make a ruling on whether the Respondent has complied with any other aspects of housing law.

41. Taking all of the above considerations into account, the tribunal considered that an award at the upper level of the possible penalty scale would be appropriate. The tribunal therefore determined that an order for £1650, representing three times the amount of the tenancy deposit paid, would be fair, proportionate and just, having regard to the seriousness of the breach

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.

Sarah O'Neill

6 May 2026

Legal Member/Chair

Date