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 Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/25/5349

Re: Property at Flat 2/3 101 West Graham Street, Glasgow, G4 9LL ("the Property")

Parties:

Ms Maia Harding, Flat 0/1, 50 Pollokshaws Road, Glasgow, G41 1PY ("the Applicant")

Mr Imran Ui Haq, 68 Lismore Place, Newton Mearns, Glasgow, G77 6UQ ("the Respondent")

Tribunal Members:

Fiona Stephen (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to grant an order for payment in the sum of Six Hundred Pounds (£600.00) Sterling

Background

1. By application dated 10 December 2025 the Applicant seeks an award under the Tenancy Deposit Schemes (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 on 12 December 2025 and referred for determination by the Tribunal.

3. The Respondent was served with the papers in this case by Sheriff Officers on 18 March 2026 conform to Execution of Service of the same date. A CMD was fixed for 22 April 2026 at 11.30am by teleconference call and written representations from the Respondent were to be lodged with the Tribunal by 4

April 2026. Written representations were received from the Respondent on 3 April 2026 and sent to the Applicant on 8 April 2026.

4. The Tribunal had before it:

   (i) The Application Form G;
   (ii) A Tenancy Agreement between the Applicant and another and the Respondent dated 12 May 2024;
   (iii) Confirmation from the Scottish Landlord Register that the Property is registered in the name of the Respondent and three other joint owners;
   (iv) A Change of Name Deed confirming the Applicant's name dated 20 August 2024;
   (v) Proof of payment of the deposit and rent by the Applicant;
   (vi) Confirmation that no deposit was lodged with any of the three deposit protection schemes;
   (vii) The representations lodged by the Respondent on 3 April 2026 with accompanying documents which included a further Tenancy Agreement between the Applicant and another and the Respondent dated 12 May 2025; and
   (viii) Case Papers

5. A Case Management Discussion (CMD) took place on 22 April 2026 by teleconference call. Both parties were in attendance.

6. The Tribunal explained the purpose of the CMD and the powers of the Tribunal to determine matters. The Tribunal asked various questions of the parties with regard to the application.

7. The Tribunal explained to the parties the maximum award which could be made in terms of the 2011 Regulations and the requirement that an award must be made if the Tribunal finds that there has been a breach of the 2011 Regulations.

Discussions at the CMD

8. The Applicant moved into the Property in May 2024 and paid a deposit of £300 and one month's rent (£300) up front. The tenancy commenced on 13 May 2024 and ended on 30 September 2025. The deposit was paid back by the Respondent 2/3 weeks later. The Tribunal noted this had been a joint tenancy with Dorottya Szanka. When she left the Property (on 2 September 2025) the Applicant took on the obligations under the tenancy agreement, paid the full rent (£600) and dealt with the Council tax.

9. At the start of September 2025, the Respondent visited the Property to agree a move out date with the Applicant. The Applicant had become concerned about whether the deposit would be repaid by the Respondent as there was no inventory for the flat and there was a concern that the Respondent might hold the Applicant liable for damage done by prior tenants. The Applicant asked the Respondent if the deposit was protected. The Respondent claimed there was no deposit and the additional payment taken (£300) was "extra rent

held in security, not a deposit". After leaving the property, the Applicant found out from all three of the deposit schemes that no deposit had been lodged in respect of the Property. This is confirmed in the case papers.

10. The Tribunal asked the Applicant about the second tenancy agreement which had been produced by the Respondent with his written representations. The Applicant had no recollection of receiving this. The Applicant noted that the clause relating to the extra "rent" (Clause 2) was different in the second tenancy agreement. The Applicant had not seen this before. Although it seems to be signed by the names being printed, this was the same for the first tenancy. The Applicant thought the second tenancy agreement had been doctored. So far as the Applicant was concerned, it was the first tenancy that applied.

11. The Tribunal asked the Respondent a number of questions. It was noted that the tenancy agreement (indeed both agreements) were in his name only although there appeared to be three other joint owners of the Property. The Respondent explained that the other owners were his brothers. The Respondent looked after the Property as he was the eldest and they were aware of the tenancy. They had consented to the tenancy arrangement. The Respondent had been a landlord for 20+ years and let out another 2 properties.

12. The Respondent explained that before the Applicant moved into the Property, he did not know who was moving in. The joint tenant, Dorrotya Szanka had stayed in the property for around 6 years. When a joint tenant moved out, another moved in. In May 2024, the Respondent went to the Property, met the Applicant and Dorrotya Szanka and handed over the tenancy agreement. He gave the Applicant a set of keys. The Applicant moved in. He had never had any problems before.

13. When the Tribunal asked the Respondent to explain the position about the deposit, he said that he took one month's rent (£600) and another £600 as an "extra month's rent". This was to cover any issues that might arise, for example if the rent was paid late. He had bills to pay. The Respondent used the extra "rent" as a buffer for payments he had to make. He stated he had "bills to pay".

14. Given the Respondent was an experienced Landlord, the Tribunal asked if he was aware of the 2011 Regulations. The Respondent confirmed he was. Every time he had been asked about the deposit his position was that he had never taken a deposit. If there were any issues with the flat then the deposit would be there. The Respondent stated that he never said he would not pay the extra rent back. The Respondent explained he stays quite far from the Property (about 10 miles in Newton Mearns) with his family and works long hours, 6 days per week.

15. The Respondent said he had a number of issues with the Applicant which he let slide. For example, late payment of rent, people staying in the flat, the state the flat was left in and the costs he incurred after the end of the tenancy. There was a delay in getting final meter readings. Once those were obtained, he returned the additional "rent" to the Applicant. The Respondent had never had anything like this happen before. On being pressed what he used the additional "rent" for he said he used this for his own expenses. The Respondent insisted that the additional payment was "rent" and not a deposit.

16. The Tribunal gave the Applicant an opportunity to respond. The Applicant accepted that sometimes the rent was paid late by a day. Reminders on the Applicant's mobile telephone were, inadvertently, set to the wrong day. Near the end of the tenancy, the Applicant discussed the amount of the last month's rent with the Respondent. The Applicant had a weekend away in London and said a friend could stay in the flat. The Respondent had messaged the Applicant to say he needed access and the Applicant told him a friend was staying in the flat. The Applicant then received a message from the Respondent to say the flat was a fire risk. The Applicant's friend left. The Applicant thought the purpose of the visit was to assess for window replacements. The windows had degraded over time. The Respondent was aware of the condition of the flat but is trying to level the costs of repair at the Applicant. The Applicant did not accept responsibility for that. The Applicant had taken photos of the condition of the flat when the tenancy started.

17. The Tribunal asked the Respondent if he had taken legal advice concerning this matter. He had not. The Tribunal suggested to the Respondent that he consider doing so. The Tribunal considered the Respondent was in difficulty here. Whilst his position was that the extra payment was "extra rent, not a deposit" the Tribunal did not agree.

18. The Tribunal noted that the rent payable in terms of the 2024 tenancy agreement was £600 per month payable one month in advance on the 13th of each month. Clause 2 provided:

> "Two months rent of £1200 to be paid before entry. One month's rent is returnable at the expiry only when all gas, electricity, council tax, telephone or any other bills outstanding are fully paid by tenant(s) and all terms of the let are adhered to during the period of let before deposit is returned".
>
> Clause 3 provided: "the extra one months rent will not be used as any payment for rent".

19. The rent payable in terms of the 2025 tenancy agreement was also £600 per month payable in advance on the 13th of each month. Clause 2 of that tenancy agreement provided:

> "One months rent of £600 to be paid before entry. One months rent is returnable at the expiry only when all gas, electricity, council tax,

telephone or any other bills outstanding are fully paid by tenant(s) and all terms of the let are adhered to during the period of let before rent is returned".

Clause 3 provided: "the extra one months rent will not be used as any payment for rent".

20. The Tribunal explained to the Respondent that a tenancy deposit was defined by reference to Section 120 of the Housing (Scotland) Act 2006. The Tribunal read the definition out i.e. 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 of an occupancy arrangement*."

21. Given the terms of the tenancy agreement (which included the Applicant being responsible for all gas, electricity and other bills in terms of Clause 12 of the tenancy agreement), the Tribunal told the Respondent that its view was that the extra "rent" provided for in Clause 2 was, in fact, a tenancy deposit and should have been lodged in a deposit scheme. The 2024 tenancy agreement referred to "deposit".

22. The Respondent disagreed and insisted that this payment was not a deposit but extra rent. He offered no justification for that position beyond repeating this. He reiterated that if rent was not paid then where did he stand? He has an overdraft and credit cards to pay. The Tribunal stated that there were provisions within tenancy legislation that provided a remedy for unpaid rent. The Tribunal could not give legal advice. The Tribunal suggested again that the Respondent may wish to seek legal advice so that he could make representations regarding this point. If he did not wish to do so then the Tribunal would make a decision today. The Respondent said he would rather get a decision today. The Tribunal asked the Respondent if he had anything further to add but he said no.

23. The Tribunal asked if the Applicant had anything further to add. The Applicant said there was video evidence of the state of the flat at commencement of the 2024 tenancy. The period after moving out was stressful as it was unclear if the deposit would be repaid. The Applicant had to pay a deposit of £600 for another tenancy. The Applicant lives pay check to pay check. The Applicant accepted that there had been a delay in getting final meter readings done. In the rush to leave (after cleaning the flat) that had been forgotten. The Respondent then had to do that. The Applicant did not receive the deposit back for 2.5 weeks after the end of the tenancy. The Tribunal commented that even if the deposit had been paid into one of the deposit schemes, this was a reasonable period for a deposit's return.

24. The Tribunal advised the parties that where it found there had been a breach of the 2011 Regulations in not paying in a deposit to one of the deposit schemes, the Tribunal was bound to make a payment order of up to three times the deposit amount. In this case, the Applicant sought the maximum amount i.e. £900.00.

25. The Tribunal gave the Respondent an opportunity to respond to what was sought. The Respondent thought £900 was excessive. The rent was paid back after the meter reading had been taken i.e. in about 17 days. The Respondent gave the Applicant a reference, as requested, and made no negative comments. The Respondent claimed he had to spend a lot of money fixing up the flat. What about that? The Tribunal said that any claim the Respondent had in respect of works done to the flat post tenancy, when the deposit had already been returned, could not be dealt with in these proceedings.

26. The Applicant had nothing further to add.

27. The Tribunal advised both parties that she did consider there had been a breach of the 2011 Regulations and wished time to consider the level of sanction to be applied. A written decision would be issued as soon as possible.

Findings in Fact

28. The parties entered into a private residential tenancy ("the tenancy") in respect of the Property dated 12 May 2024 that commenced on 13 May 2024 and ended on 30 September 2025.

29. The tenancy was initially a joint tenancy with Dorottya Szanka. Ms Szanka left the property on 2 September 2025.The Applicant took over the tenancy from that date, as provided for in the tenancy agreement (Clause 19) and with the Respondent's consent (given by text on 30 July 2025), until the Applicant's departure on 30 September 2025.

30. On 30 July 2025, the Applicant gave notice to the Respondent that she intended to end the tenancy as at 30 September 2025.

31. The Applicant had no recollection of signing another tenancy agreement in May 2025 as claimed by the Respondent.

32. The tenancy agreement which governed the parties relationship was the agreement entered into dated 12 May 2024 which continued until the end of the tenancy on 30 September 2025..

33. The monthly rent payable in the tenancy was £600 between the joint tenants.

34. The Applicant took over payment of the rent of £600 per month when Ms Szanka left on 2 September 2025.

35. Clause 12 of the tenancy agreement provided that "Two months rent of £1200 was payable before entry. One month's rent is returnable at the expiry only

when all gas, electricity, council tax, telephone or any other bills outstanding are fully paid by tenant(s) and all terms of the let are adhered to during the period of let before deposit is returned"

36. The one month's rent stated to be returnable at expiry of the tenancy agreement was not rent but a tenancy deposit.

37. The tenancy deposit was not lodged with an approved tenancy deposit scheme throughout the duration of the tenancy.

38. The Applicant was distressed to find out that the Respondent had not lodged the deposit in an approved scheme. This caused the Applicant financial distress.

39. The Respondent has been a Landlord for over 20 years and rents out two other properties.

40. The Respondent is aware of the 2011 Regulations and the requirement to lodge a tenancy deposit with one of the approved tenancy deposit schemes.

41. The Respondent returned the deposit (£300) to the Applicant 2.5 weeks after the tenancy ended.

Reasons for Decision

42. This application relates 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 and to advise a tenant of details of the scheme into which it has been paid.

43. Regulation 2 of the 2011 Regulations provides:

> ""the Act" means the Housing (Scotland) Act 2006"
>
> "tenancy deposit" has the meaning conferred by section 120(1) (tenancy deposits: preliminary) of the Act."

44. Section 120 (1) of the Housing (Scotland) Act 2006 provides inter alia:

> "***120 Tenancy deposits: preliminary***
> *(1) 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.*

45. Regulation 3 of the 2011 Regulations provides inter alia:

> *(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.*

46. Regulation 9 of the 2011 Regulations provides:

> *(i) 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.*
> *(ii) An application under paragraph (1) must be made [...] no later than 3 months after the tenancy has ended.*

47. Regulation 10 of the 2011 Regulations provides inter alia:

> *If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal][1] —*
> *(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;*

48. In this case, whilst the Respondent insisted that the "extra rent" taken from the Applicant in terms of Clause 2 of the tenancy agreement was not a tenancy deposit but rent, the Tribunal considers that this was, in fact and law a tenancy deposit. The payment falls clearly within the definition of "tenancy deposit" set out in s120 (1) of the Housing (Scotland) Act 2006. It was held as security for performance of the Applicant's obligations and discharge of the obligations arising from the tenancy. In any event, the tenancy agreement itself makes clear that this is the case by reference to the word "deposit". The fact that the Respondent, an experienced Landlord, considered he could use this money to meet his own obligations (overdraft, credit cards etc) if the Applicant paid rent late is, frankly, astonishing. This is the type of behaviour that the 2011 Regulations were designed to prevent.

49. The Respondent failed to place the deposit in an appropriate scheme and has breached Regulation 3 of the 2011 Regulations. The duties are two-fold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with the specified information required under Regulation 42. The Respondent failed in both duties.

50. The present application has been made timeously in terms of Regulation 9. The Tribunal is required to make an order for payment in terms of Regulation

10. The only matter to be determined by the Tribunal is the amount of the sanction.

51. The legal test to be applied in determining an appropriate level of sanction is set out in *Jenson v Fappiano 2015 GWD 04-89* and subsequent case law. Those authorities are reviewed by Sheriff Cruickshank in *Ahmed v Russell 2023 SLT (Tr 33).* He 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 factors as may be present.*" At para [39] he states that *"The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose is not to compensate the tenant"*. The amount awarded should represent a "*fair and proportionate sanction when all relevant factors have been appropriately balanced.*" para [44].

52. The Tribunal also had regard to the decision of the Upper Tribunal in *Rollett v Mackie [2019] UT 45* (also cited as UTS/AP/19/0020) in which Sheriff Ross states at para [13] *"In assessing the level of a penalty charge, the question is one of culpability and the level of culpability requires to reflect that culpability… The finding that a breach was not intentional is..rational on the facts and tends to lessen culpability"* At paragraph [14], he goes on "*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*".

53. In reaching a determination, the Tribunal took into account that the Respondent is in clear breach of the 2011 Regulations.

54. The Tribunal took into account that the deposit was £300 and had been left unprotected for the entire duration of the tenancy (@16.5 months). This was an aggravating factor. The Tribunal gave weight to the fact that the Respondent was well aware of the obligations contained in the 2011 Regulations, as he admitted at the CMD. Whilst he claimed, repeatedly, that he believed the additional payment was not a deposit, the Tribunal considers that this amounted to wilful ignorance of the law. The tenancy agreement itself referred to "deposit". The Respondent claimed that he thought he could use the "extra rent" for his own purposes in the event of the tenant not paying rent timeously. The Tribunal considered that to be quite astonishing given the Respondent is an experienced Landlord.

55. The Tribunal took account of the fact that the Applicant was concerned that the deposit would not be returned and was caused some financial distress given the Applicant had to secure alternative accommodation and pay a deposit for that.

56. The Tribunal considered the fact that the Applicant received repayment of the deposit in full 2.5 weeks after the tenancy ended was a mitigating factor.

Similarly, that the Respondent assisted the Applicant in providing a reference in connection with the Applicant's new tenancy.

Decision

57. Having regard to all the facts and circumstances, the Tribunal determined that there had been a breach of Regulation 3 which was significant in nature and which merited a penalty towards the higher end of the available range. The Tribunal determined that an award of 2 times the deposit of £300 i.e. £600 was fair and proportionate in the circumstances.

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.

F.Stephen

Legal Member **27 April 2026**
Date