



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the 2017 Rules)

Chamber Ref: FTS/HPC/PR/25/5353

Re: Property at 2/6 Colonsay Place, Edinburgh, Eh5 1FQ (the Property)

Ms Zhang Tingshu, 99 Meadowbank Road, Kirknewton, Edinburgh, Eh27 8BH (the Applicant)

Mr Craig Whittaker, 2/6 Colonsay Place, Edinburgh, EH5 1FQ (the Respondent)

Tribunal Member:

Ms. Susanne L. M. Tanner K.C., Legal Member and Chair

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal): (i) determined that the Respondent did not comply with the duty in Regulation 3 of the 2011 Regulations to pay the Applicant's deposit into an approved scheme within the stipulated time; (ii) it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit in terms of Regulation 10 of the 2011 Regulations; and (iii) made an order requiring the Respondent to pay to the Applicant the sum of TWO THOUSAND ONE HUNDRED POUNDS (£2100.00) Sterling

Statement of Reasons

Procedural background

1. On 11 December 2025, the Applicant made an application to the tribunal against the Respondent in terms of Rule 103 of the 2017 Rules and Regulation 9 of the 2011 Regulations, namely an application for an order for payment where the landlord has failed to carry out duties in relation to a tenancy deposit (the Application).

2. The Applicant produced the following with the Application:
 - 2.1. Case Statement;
 - 2.2. Copy tenancy agreement;
 - 2.3. Proof of payment of deposit (£700.00)
 - 2.4. Messages with the landlord (WhatsApp transcript)
 - 2.5. Formal demand letter issued to landlord;
 - 2.6. Written confirmation from all three approved deposit schemes that the deposit was not protected; and
 - 2.7. Evidence of the date of the end of the tenancy;
3. The tribunal's administration checked the Scottish Landlord Register and found that the Respondent is not registered as a landlord for the Property.
4. The Application was considered by a legal member acting under the delegated powers of the President. The Application was accepted for determination by the tribunal.
5. A Case Management Discussion (CMD) teleconference was fixed for 16 June 2026 at 1400h by teleconference. By letter of 12 May 2026, parties were notified of the date, time and details of the CMD, which both parties were required to attend. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application. Parties were advised that if they did not attend the CMD, this would not stop a decision or order from being made by the tribunal if the tribunal considered that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations he wished by 2 June 2026. The Application paperwork and notification of the hearing was served on the Respondent by Sheriff Officers on 13 May 2026.
6. The Respondent did not lodge any written representations prior to the CMD.

Case Management Discussion (teleconference): 16 June 2026, 1400h

7. The Applicant, Ms Tingshu, attended.
8. The Respondent did not attend or make any contact with the tribunal. The tribunal was satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing had been duly complied with and proceeded with the application upon the representations of the Applicant who was present and all the material before it.

Submissions by the Applicant

9. Ms Tingshu adopted her case statement and supporting documents.
10. Ms Tingshu stated that she only met the Respondent twice, once when she viewed the Property and once on the day of key handover at the start of the tenancy on 29 August 2025. Her tenancy deposit of £700.00 was paid on 19 August 2025 by transfer to the Respondent's account.
11. Ms Tingshu stated that the Property has two bedrooms. She lived there with one other female tenant from 29 August 2025 until 28 October 2025. The tenancy ended as a result of the landlord giving her one month's notice that he needed to move into the Property with his son when he brought him back from Brazil with him.
12. Ms Tingshu stated that the Applicant was not a resident landlord in the Property, despite what was stated on p. 1 of the tenancy agreement.
13. Ms Tingshu stated that around one month after she moved out of the Property she contacted the Respondent on WhatsApp to ask about return of her deposit. She then checked the three statutory deposit protection schemes. All three schemes replied to state that they had no record of her deposit.
14. Ms Tingshu referred to the WhatsApp chat which she submitted shows that the Respondent lied about the deposit being lodged in a scheme and that it was to be returned to her. The Respondent stated on 28 October 2025 that the deposit was in Safe Deposit Scotland and that he would be in touch when her deposit was ready to send. In later messages in November 2025, he said that he had started the return process. On 8 December 2025, Ms Tingshu asked again about her deposit. The Respondent did not reply. On 9 December 2025 she sent an official letter via WhatsApp requesting return of her deposit and the Respondent did not reply. (During the CMD, Ms Tingshu supplied a replacement screenshot of the 9 December 2025 message which showed the date in numbers and English rather than Chinese symbols).
15. Ms Tingshu stated that there was no further contact after her message of 9 December 2025.
16. Ms Tingshu did not receive return of her deposit.
17. Ms Tingshu invited the tribunal to make the maximum award of three times the tenancy deposit. She submitted that the Respondent's lies which she had shown in the documentary evidence about lodging the deposit and his lack of response and cooperation should be taken into account.

18. Having heard the Applicant's submissions, the tribunal adjourned to deliberate.

Findings in Fact

19. On or about the Applicant entered into a private residential tenancy of the Property with the Respondent with a start date of 29 August 2025.

20. The Applicant had a bedroom with shared facilities in a two bedroomed property. The other resident in the flat was an English female who had her own bedroom and shared the facilities.

21. The Respondent did not reside in the flat at any time during the Applicant's tenancy.

22. The Applicant paid a tenancy deposit of £700.00 to the Respondent on 19 August 2025.

23. The Applicants' tenancy deposit was not lodged by the Respondent in a statutory deposit protection scheme.

24. The Respondent repeatedly lied to the Applicant by stating that he had lodged the deposit in a statutory deposit protection scheme.

25. The Applicant's tenancy ended on 28 October 2025.

26. The Applicant made multiple requests for return of her deposit.

27. The Respondent repeatedly lied to the Applicant when he stated that he had started the deposit return process with the tenancy deposit protection scheme.

28. The Respondent did not respond to the Applicant's formal request on 9 December 2025 for return of her deposit.

29. The Respondent did not return the Applicant's deposit and has retained £700.00 which belongs to the Applicant.

Discussion

30. The Respondent has not engaged with the tribunal proceedings.

31. The tribunal is satisfied that there had been a failure on the part of the Respondent to comply with Regulation 3 of the 2011 Regulations.
32. Regulation 3 provides that the tribunal must make an order for payment. The maximum amount of any payment order for failure to lodge a tenancy deposit in the statutory timescale is three times the amount of the deposit. In this case the deposit is £700.00 and the maximum is £2100.00.
33. The deposit was not lodged in a deposit protection scheme at any before, during, or after the tenancy ended.
34. The tribunal took into account its findings in fact on the evidence and the Applicant's submissions.
35. The tribunal had regard to Upper Tribunal authorities *Rollett v Mackie [2019] UT 45* and *Ahmed v Russell [2023] UT 7*.
36. In *Rollett*, above, Sheriff Ross said [at para 9] 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. Comparison with other cases is therefore of minimal assistance in the present case. The general principles of the law apply and these include that for a discretionary decision to be overturned it must be one which no reasonable tribunal could make.'

37. And further [at para 13]:

'In assessing the level of a penalty charge, the question is one of culpability and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree and these two points cannot help on that question. The admission of failure tends to lessen fault; a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the fact and tends to lessen culpability.'

38. In *Ahmed*, above, Sheriff Cruickshank outlined the purpose and policy objectives of the Regulations [at para. 19] and referred to Sheriff Ross's '*helpful summary*' *Rollett*, above [at para. 29], stating:

‘Furthermore, in Rollett, Sheriff Ross considered that in assessing the level of sanction the question was one of culpability. When it came to the level of sanction the question was one of degree and provided examples of the factors which could lessen or increase the level of culpability’ [at para. 30].

39. In the present case, the tribunal took the approach of establishing the facts and then considering any aggravating and mitigating factors to determine culpability of the Respondent and decide on the appropriate level of sanction.

40. The tribunal considers that the following are aggravating factors:

- 40.1. that the deposit was unprotected for the entire tenancy;
- 40.2. an intentional decision was made not to lodge the deposit;
- 40.3. the Respondent’s repeated lies about the fact that the deposit was lodged and later that repayment was being processed;
- 40.4. the Respondent’s failure to repay the deposit to the Applicant; and
- 40.5. the Respondent’s failure to respond to informal and formal correspondence from the Applicant about the return of her tenancy deposit.

41. The Application has not been defended by the Respondent and there are no mitigating factors.

42. For the reasons outlined, the tribunal considered that the breach was at the highest end of the scale of seriousness and decided to make an order for payment by the Respondent to the Applicant of the sum of £2100.00, which is three times the tenancy deposit. That sum was considered by the tribunal to be reasonable in all the circumstances.

43. The tribunal told the Applicant its decision and reasons orally at the hearing and explained that a written decision with statement of reasons would be produced and sent to both parties.

Permission to Appeal

44. 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.

16 June 2026

**Ms. Susanne L. M. Tanner K.C.
Legal Member/Chair**