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

Chamber Ref: FTS/HPC/PR/25/5528

Re: Property at 7A Paxton Place, Kilmarnock, KA1 3HL ("the Property")

Parties:

Mr David Bell, 0/1 92 Dundrennan Road, Glasgow, G42 9SG ("the Applicant")

Catherine McLatchie, 2 Moorfield Place, Gatehead, Kilmarnock, KA2 0AX ("the Respondent")

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent failed to comply with her duty as a Landlord in terms of Regulations 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicant's Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme grants an Order against the Respondent for payment to the Applicant of the sum of ONE THOUSAND AND SEVENTY-TWO POUNDS AND FIFTY PENCE (£1072.50) STERLING.

Background

1. This is an application for an order for where it is alleged the Respondent has not paid a deposit into an approved scheme under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Application is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").

2. The Application was accompanied by a bank statement from the Bank of Scotland, a Property Inventory/Schedule of Condition dated 21 February 2024 relating to the Property, the Private Residential Tenancy Agreement between the parties commencing 1 March 2024, various emails between the Applicant and the Respondent's Letting Agents, Limegreen Estate Agents, a Certificate of Protection from Safe Deposits Scotland dated 25 February 2025, Prescribed Information under Regulation 42 of the 2011 Regulations, and an email dated 29 October 2025 from Safe Deposits Scotland.

3. On 7 January 2026, the Tribunal accepted the application under Rule 9 of the Regulations. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 22 June 2026.

4. On 16 June 2026 the Tribunal received an email from the Respondent and Ross McLatchie. They acknowledged that the Applicant's deposit had not been lodged within the timescale prescribed by the 2011 Regulations. This was due to an administrative oversight. They regretted that oversight. The breach of the 2011 Regulations was inadvertent. They took immediate steps to rectify the matter and immediately lodged the deposit with an approved tenancy deposit scheme, provided the Applicant with the prescribed information and contacted the Applicant by telephone to advise of the oversight and to confirm that the deposit had been protected. They further stated that after an initial dispute with regards to a deduction from the deposit for the bedroom carpet at the end of the tenancy, they decided not to pursue the claim, and the Applicant's deposit was returned in full. They further submitted that proposed deduction for the carpet did not demonstrate any attempt to obtain an improper financial benefit from the deposit, but a genuine dispute concerning the condition of the property at the end of the tenancy, which Limegreen chose not to pursue in the interests of bringing the matter to a fair and amicable conclusion. Mr McLathcie also sent a further email on 22 June 2026 McLatchie Lettings to advise they wanted Limegreen Estate Agents to act on their behalf at the CMD and repeating the position as set out in the earlier email of 16 June 2026.

Case Management Discussion

5. The CMD proceeded by way of a teleconference call on 22 June 2026. The Applicant was present. The Respondent was represented by Ms Hughes from Limegreen Estate Agents.

6. The Tribunal had before it the application with the bank statement from the Bank of Scotland, the Property Inventory/Schedule of Condition dated 21 February 2024 relating to the Property, the Private Residential Tenancy Agreement

between the parties commencing 1 March 2024, the various emails between the Applicant and the Respondent's Letting Agents, Limegreen Estate Agents, the Certificate of Protection from Safe Deposits Scotland dated 25 February 2025, the Prescribed Information under Regulation 42 of the 2011 Regulations, the email dated 29 October 2025 from Safe Deposits Scotland and the Respondent's submissions dated 16 and 22 June 2026. The Tribunal considered these documents.

7. The Tribunal clarified with Ms Hughes that she had authority to act for Mrs McLatchie who was the Landlord under the tenancy agreement. She confirmed she had that authority and that Mr McLathcie was the Respondent's husband from McLatchie Lettings. The Tribunal confirmed with Ms Hughes that the Respondent accepted she was in breach of the 2011 Regulations by not lodging the deposit until 11 months after the tenancy started and that the Prescribed Information had not been sent to the Applicant who confirmed he had received that on 19 June 2025.

8. On the basis that the Tribunal understood the Respondent's position with regards to the breach as presented in the emails of 16 and 22 June 2025 the Tribunal asked the Applicant to state what his position was. He confirmed that he had felt anxious when he found out the deposit had not been lodged. Even after the deposit was lodged on 12 February 2025, he did not receive the prescribed information until 19 June 2025 after he had asked for it. He accepted that he had not been disadvantaged in any way as the deposit had been lodged by the time the tenancy terminated on 22 October 2025. He accepted the deposit of £715 had been paid to him in full.

<u>Reasons for Decision</u>

9. For the purpose of Regulation 9(2) of the 2011 Regulations, an application where a landlord has not paid a deposit into a scheme administrator must be made within three months of the tenancy ending. The Tribunal found that the application was made in time, the application being received on 23 December 2025 following on the tenancy terminating on 22 October 2025.

Regulation 3 (1) and (2) of the 2011 Regulations provides –

"(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.

Regulation 10 of the 2011 Regulations provides-

"*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".

10. The tenancy in this case was a "relevant tenancy" for the purposes of the 2011 Regulations. The duties under the 2011 Regulations are twofold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide the tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties. In this case there is no dispute that the deposit of £715 remained unprotected until 12 February 2025 when it was paid into Safe Deposits Scotland, the tenancy having commenced on 1 March 2024. There was no dispute that the prescribed information had not been served on the Applicant until 19 June 2025. There was no dispute that the tenancy terminated on 22 October 2025. There is no dispute that despite there being an initial proposal that an amount be deducted from the deposit in relation to a carpet, that the deposit was repaid to the Respondent in full.

11. In this case the Tribunal is required to make an order for payment. There is no discretion available to the Tribunal under Regulation 10 of the 2011 Regulations if the Tribunal finds the landlord in breach of Regulation 3, it must make an order for payment. The Tribunal has to determine the amount to be paid. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. Being satisfied that the Respondent had failed to comply with her duties in Regulations 3 and

42, the Tribunal went on to consider what sanction to impose having regard to the particular facts and circumstances of the case.

12. The Tribunal in assessing the sanction level must impose a fair, proportionate and just sanction in the circumstances, taking into account both aggravating and mitigating circumstances, having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Tribunal considered the decision from the Upper Tribunal for Scotland in *Ahmed v Russell (UTS/AP/22/0021)* where Sheriff Cruickshank provides 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 each in reaching its decision. The Tribunal is then entitled to assess a fair and proportionate sanction. 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."*

13. The Tribunal considered the Respondent had admitted her failure to comply with the 2011 Regulations. The Respondent had explained this was inadvertent, was not deliberate, was due to an administrative oversight and had not been intended to place the Respondent at a financial advantage over the Applicant. The Tribunal accepted that explanation.

14. The Tribunal also accepted that the Applicant was anxious about what had happened to his deposit money when he found out it was not protected.

15. The sanction imposed by the Tribunal should reflect the level of overall culpability measured against the nature and extent of the breach of the 2011 Regulations. The Tribunal is required to determine a fair and proportionate sanction based on the facts as recorded. In the circumstances, having accepted the submissions in mitigation made on behalf of the Respondent and there being no dispute that the deposit was returned in full to the Applicant, the Tribunal considered the breach does not justify the maximum sanction. The tenancy had lasted a period of one and a half years, over half of which the deposit was unprotected which was a cause of concern to the Applicant when he discovered the breach. The deposit had been protected at termination and had been returned to the Applicant in full. Having considered

the submissions from the parties and taking into account the guidance from the Upper Tribunal the Tribunal decided that the appropriate award should not be on the upper end of the scale.

16. In all the circumstances the Tribunal considered that a fair and proportionate amount to be paid to the Applicant by way of sanction was the equivalent of one and a half times the amount of the deposit.

Decision

17. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicant of £1072.50.

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.

Shirley Evans

23 June 2026

Legal Member **Date**