



**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/24/5756**

**Re: Property at Flat 22, 10 Dorset Square, Glasgow, G3 7LL (“the Property”)**

**Parties:**

**Mr Joyston Franklin Miranda, 21 Mardle Street, Norwich, NR5 9HU (“the Applicant”)**

**Mr Abhijeet Nandkumar Kadwe, Mrs Monica Abhijeet Kadwe, 37 Fifth Avenue, Glasgow, G12 0AR (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision (in absence of the Applicant)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents were in breach of the duties in relation to the Applicant’s tenancy deposit under regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”).

The Tribunal therefore made an order for payment against the Respondents in the sum of One hundred pounds (£100) Sterling.

**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 Applicant sought a payment order against the Respondents for their alleged breach of the duties under regulation 3 of the 2011 Regulations in relation to the Applicant’s tenancy deposit.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 17 June 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice was served

upon the Respondents by sheriff officers. Both parties were invited to make written representations.

- 3 On 14 April 2025 the Tribunal received written representations from the Respondents. A copy of the representations was intimated to the Applicant.

### **The CMD**

- 4 The CMD took place by teleconference on 17 June 2025. The Applicant's representative, Mr Arun Pinto, joined the call along with the Applicant. The Respondents were both present.
- 5 Having heard from the parties, the tribunal determined to fix an evidential hearing on the application to establish both the aggravating and mitigating factors to assess an appropriate penalty. The Respondents did not dispute they had breached regulation 3 of the 2011 Regulations regarding the Applicant's deposit. A Direction was issued to parties following the CMD requiring them to submit any documents, details of witnesses and authorities in advance of the hearing.
- 6 The first hearing scheduled for 4 December 2025 was postponed on the request of both parties.
- 7 The second hearing scheduled for 19 March 2026 was postponed on the request of the Respondents, there being no objection from the Applicant.
- 8 The third hearing was scheduled to take place on 15 June 2026. On 13 May 2026 the Tribunal received an email from Mr Pinto stating that the Applicant would be unable to attend the hearing as he would be out of the country. Mr Pinto provided a copy of the Applicant's flight booking. The Tribunal responded to Mr Pinto querying whether the Applicant was seeking a postponement of the hearing. The Tribunal received no response.
- 9 On 12 June 2026 the Tribunal received written representations from the Respondents which included emails from SafeDeposits Scotland and text messages between the parties.

### **The hearing**

- 10 The hearing took place on 15 June 2026 by videoconference at 10am. The Respondents were both in attendance. Neither the Applicant, nor the Applicant's representative, joined the call.
- 11 As a preliminary issue the Tribunal noted the absence of the Applicant and his representative. Neither had made a formal request for postponement of the hearing. The tribunal therefore considered whether it could proceed with the hearing in the absence of the Applicant.
- 12 The Tribunal considered the fact that the hearing had been scheduled in June 2025 and had been postponed on two occasions. The Applicant had submitted

no response to the Tribunal's Direction, other than intimating one witness. He had provided no further evidence to support the position he had advanced at the CMD. He had not sought a postponement of the hearing, nor had he arranged for his representative to attend. The Tribunal had to balance the competing interests of both parties in this case. The Respondents were prepared and ready to proceed with the hearing. They had both taken time off work to allow them to do so. The Tribunal considered that there would be significant prejudice to the Respondents should the hearing be postponed again.

- 13 The Tribunal therefore determined to proceed in the Applicant's absence under Rule 29 of the Rules.
- 14 The tribunal heard oral evidence from the Respondents. The following is a summary of the key elements of the evidence.
- 15 The Respondents explained the reasons for the late lodging of the deposit, which were a combination of ill health on the first Respondent's part, family circumstances and travel abroad. The Respondents have three rental properties in Glasgow. They have never been in this situation before. It was a genuine error. The first Respondent explained that there had been some confusion at the start of the tenancy regarding a joint tenant. He did not want to lodge the deposit with the scheme until he had clarification on the joint tenant's position. He had lodged the deposit with the scheme as soon as he was able. The Applicant had suffered no loss. The deposit had been adjudicated upon by the deposit scheme. The Respondents believe the Applicant was prompted to make the application upon receiving an email from the deposit scheme alerting him to the late lodging of the deposit. The Respondents explained that they have now put new safeguards in place, such as reminders, to ensure this does not happen again.

### **Findings in fact**

- 16 The Applicant and the Respondents entered into a private residential tenancy agreement in respect of the property, which commenced on 3 January 2024.
- 17 In terms of clause 5 of the tenancy agreement the Applicant agreed to pay a tenancy deposit of £2000.
- 18 The Applicant made payment of the tenancy deposit to the Respondents on 6 December 2023.
- 19 The Respondents lodged the tenancy deposit with SafeDeposits Scotland ("SDS"), an approved tenancy deposit scheme, on 19 March 2024. The Respondents did so without any prompting from the Applicant.
- 20 The delay in lodging the deposit arose from the personal circumstances of the Respondents at the time the tenancy commenced. In particular, the first Respondent had travelled abroad to see family and had suffered health issues which led to him seeking medical treatment. The second Respondent was

working full time whilst also taking care of the Respondents' children and had not previously dealt with the tenancy funds.

- 21 The Respondents have two other rental properties in Scotland. There is no evidence that the Respondents have previously been found in breach of the 2011 Regulations.
- 22 The tenancy between the parties terminated on 11 November 2024.
- 23 The Applicant became aware of the late lodging of the deposit upon receiving an email from SDS on 8 December 2024.
- 24 Following the termination of the tenancy, the deposit was adjudicated upon by SDS. The Applicant received a partial refund of the deposit following deductions for cleaning and repairs.

### **Reasons for decision**

- 25 The tribunal considered all the documentary evidence before it, and the oral evidence from the parties at the hearing, in reaching its decision. The tribunal was satisfied that it had sufficient evidence before it to make relevant findings in fact to reach a decision on the application.
- 26 Regulation 3 of the 2011 Regulations states 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*".
- 27 The tribunal was satisfied that the tenancy between the parties is a relevant tenancy for the purpose of Regulation 3. The Tribunal also accepted based on the evidence before it that the Applicant had paid a tenancy deposit of £2000 to the Respondents, and the Respondents had failed to pay the deposit into a tenancy deposit scheme within the statutory timescale. These facts were not in dispute. The Tribunal therefore found the Respondents to be in breach of Regulation 3.
- 28 Regulation 10 of the 2011 Regulations states "*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*".
- 29 Having been satisfied that the Respondents had failed to comply with the duties in Regulation 3, the Tribunal went on to consider what sanction to impose having regard to the particular facts and circumstances of the case. The application of the sanction must seek to act as a penalty to landlords and ensure compliance

with their statutory duties in relation to tenancy deposits. There is no discretion available to the Tribunal under Regulation 10. If the Tribunal finds the landlord in breach of Regulation 3, it must make an order for payment.

- 30 The Tribunal had regard to the decision of Sheriff Cruickshank in *Ahmed v Russell (UTS/AP/22/0021)* which 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 £6000. 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.”*
- 31 The Tribunal took into account the fact that the deposit had not been secured in a scheme until approximately three months after the commencement of the tenancy. The purpose of the 2011 Regulations is to ensure tenancy deposits are held securely throughout the tenancy and the fact that the deposit had been unprotected during that period was a cause for concern.
- 32 The Tribunal did however give significant weight to the fact that the deposit had ultimately been paid over to SDS by the Respondent, and without any prompting by the Applicant. It had been unprotected for a relatively short period, just over three months. The Applicant had conceded at the CMD that he only became aware of the fact that his deposit was not in a scheme when he received the email from SDS towards the end of the tenancy. The tribunal therefore found it difficult to believe that his mental and physical health would have been affected because of the late lodging of the deposit. The Applicant had provided no evidence of this.
- 33 The Tribunal also accepted the Respondents’ explanation for the late lodging of the deposit. Their evidence on this point was credible and consistent. There was no evidence that the breach in this case was part of a systemic failure to comply with their duties under the 2011 Regulations.
- 34 Furthermore, 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 Applicant was not deprived of this protection. He received his partial payment of the deposit following the scheme’s adjudication process. He did not suffer any financial loss. These are generally factors that will always weigh in favour of a lower award.
- 35 The Tribunal also gave weight to the fact that the Respondents have fully admitted the failure to comply with Regulation 3. The Tribunal accepted that they are generally compliant with their duties in relation to tenancy deposits across their rental portfolio. That was a credible explanation for the action they had taken

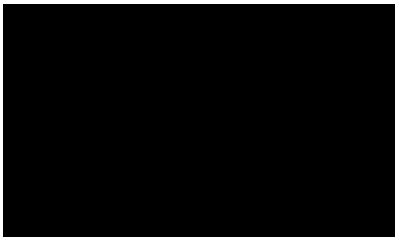
to lodge the deposit with the scheme, without any prompting by the Applicant. It did not show there to be any intention on their part to deliberately evade the requirements of the 2011 Regulations.

36 The Tribunal was therefore satisfied that the gravity of the breach is low in this case, and in relation to culpability, significant weight can be given to the mitigating factors. The Tribunal concluded that an award of £100 would be proportionate, fair and just.

37 The Tribunal therefore made an order for payment in the sum of £100.

### **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**

**15 June 2026**

---

**Legal Member/Chair**

---

**Date**