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 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/25/4405

Re: Property at 21/2 Viewcraig Gardens, Edinburgh, EH8 9UL ("the Property")

Parties:

Ms Maddalena Pezone, 46 Rashierigg Place, Bathgate, West Lothian, EH47 8AT ("the Applicant")

Mrs Marina Tsilkovskaya, 2/15 Western Harbour Terrace, Edinburgh, EH6 6JQ ("the Respondent")

Tribunal Members:

Rory Cowan (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that (i) the Respondent failed to comply with Regulation 3(1)(a) and (b) of the Tenancy Deposit Schemes (Scotland) Regulations 2011; and (ii) that the sum of £1,200, was an appropriate sanction.

- Background

By Application under Rule 103 dated 9 October 2025 (the Application) the Applicant sought a penalty against the Respondent for an alleged failure to pay a tenancy deposit into an approved scheme as well as a failure to issue prescribed information to her. In support of the Application, the Applicant produced various documents including a copy correspondence between her and the Respondent, copy bank information to confirm payment of the deposit, "TimeLine Summary" and a copy of her lease.

- The Case Management Discussion

A Case Management Discussion (CMD) was initially scheduled for 31 March 2026, but was postponed on the Respondent's motion due to a medical appointment. Prior to that CMD, a response was lodged by the Respondent. A further CMD was scheduled 6 July 2026 to be heard by way of conference call. The Application was intimated to the Respondent by way of sheriff officers. At the CMD, both the Applicant and the Respondent appeared and represented themselves.

The Tribunal outlined the basis of the Application and the issues including the potential penalties for failure to comply with a landlord's duties under regulation 3 of Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations).

After discussion both the Applicant and Respondent agreed that:

1) The Applicant had paid to the Respondent the sum of £1,200 by way of security deposit for the Applicant's tenancy of the Property.
2) The Applicant vacated on 4 October 2025.
3) That the said tenancy ended on 5 October 2025 when the keys were returned to the Respondent.
4) That the deposit had not ever been paid into an approved tenancy deposit scheme and no prescribed information issued.
5) That the deposit was repaid to the Applicant by the Respondent in full on 10 October 2025.

The Respondent therefore accepted that she had breached her obligations as a landlord in relation to the said security deposit under Regulation 3(1)(a) and (b) of the 2011 Regulations. As the Respondent had admitted a breach of regulation 3 of the 2011 Regulations, the parties were invited to make representations about the question of any penalty that should be applied and the level of same

The Applicant indicated that she was seeking the maximum penalty against the Respondent as a result of the "pain" that she had been through in terms of seeking return of the deposit.

The Respondent in turn accepted she had not protected the deposit and explained that it was down to an "oversight" and that at that time her "priority" had been her health. The Respondent apologised for this failure and pointed out that she had done so in her response to the Application as well. However, the Respondent also went on to state that, at that time, she had been unaware of her duties under the 2011 Regulations. She explained that she had been a landlord for "the last 3 years" and that the Applicant was only the second tenant she had had. That she was now aware of the rules regarding deposits and that the deposit for her current tenant was protected. She stated that, regardless of the omission to lodge the deposit, she felt she had been a good landlord and had had a good relationship previously with the Applicant. The Respondent did state that it was her view that the Property had not been returned at the end of the tenancy in a good condition. This had led to the dispute between her and the Applicant as the Applicant had not accepted this was the case. She explained that she had hoped she would negotiate with the Applicant with regards to the condition of the Property and had not really intended to deduct any monies from the deposit. The Respondent further stated that it was during these discussions that she became aware of the requirement to lodge security deposits. This was after the point being raised by the Applicant to her and her carrying out her own "research". She claimed that the decision to repay the deposit in full to the

Applicant was as a result of that rather than the Applicant's threats to refer the matter to the Tribunal.

The Applicant did not accept the Property had been left in a poor condition stating that it was left in a "decent condition" and any deterioration in same was down to fair wear and tear. The Applicant further stated that the Property had not been provided at the start of her tenancy in a clean condition. She stated that she had paid for some repairs for example in relation to drainage issues at the Property and paid for cleaners for the Property. She also claimed that the Respondent had only repaid the deposit when she made the threat to initial these proceedings and in fact the day after she had lodged the Application. She also claimed that she had left furniture at the Property for the Respondent to use (the Respondent accepted there was a "shoe rack" left at the property).

- Findings in Fact and Law

1) The Respondent was the heritable proprietor of 21/2 Viewcraig Gardens, Edinburgh EH8 9UL during the term of the Applicant's tenancy of same which commenced on 5 March 2023.
2) The Respondent was the Applicant's landlord for the purpose of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
3) That, under the terms of the tenancy agreement, the Applicant paid to the Respondent the sum of £1,200 by way of security deposit on or around 5 March 2023.
4) That the Applicant vacated the Property on 4 October 2025 and her tenancy for same ended on 5 October 2025.
5) That from on or around 6 October 2025 until 8 October 2025 the Applicant and the Respondent communicated regarding retuirn of the security deposit.
6) That the Respodnent initially raised issues regarding the condition of the Property with the Applicant.
7) That in that correspondence the Respondent acknowleded the deposit had not been lodged with an approved scheme and confirmed that it would be retrurned to the Applicant.
8) That by 9 October 2025 the deposit had not been repaid to the Applicant and the Applicant lodged the Application with the Tribunal.
9) That the Respondent returned the full security deposit of £1.200 to the Applicant on 10 October 2025.
10) That the security deposit of £1,200 was not paid into an approved tenancy deposit scheme and was held by the Respondent.
11) That the Respondent therefore failed to comply with regulation 3(1)(a) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
12) That the Respondent did not issue the information to the Applicant as required by regulation 3(1)(b) and as prescribed by regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
13) That the Respondent had some prior experience as a landlord.
14) That an appropriate penalty is a sum equivalent to £1,200

- Reasons for Decision

The Respondent has not complied with her obligations under regulation 3(1)(a) and (b) of the 2011 Regulations. The issue therefore for the Tribunal in the face of an admitted breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 is to consider the level of the appropriate sanction or penalty. The level of such a penalty is a matter of discretion for the Tribunal taking into account the particular circumstances of the case when considering the approach to the level of the appropriate sanction (*Jensen v Fappiano [2015] 1WLUK 625*). It is a penalty for breach of the Regulations and not compensation for damage suffered (*Wood & Wood v Johnston UTS/AP/19/0023).* Cases involving more serious breaches of the 2011 Regulations will likely 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” (*Rollet v Mackie 2019 UT 45*).

The Tribunal therefore looked at the particular circumstances of this case with a view to determining the question of the level of the appropriate penalty. The Respondent admitted she had some prior experience of being a landlord, but it was limited. She indicated that she had only one prior tenant at the Property. She indicated that in relation to that tenancy she had not lodged the deposit because she was unaware of the requirement to do so. Whilst ignorance of the requirement is no defence, it can act as a mitigatory factor of sorts albeit limited in the sense that the failure to comply with the obligations imposed under the 2011 Regulations were not deliberate or wilful. The deposit was unprotected for the whole of the Applicant’s tenancy at the Property (a period of in excess of 2 years). There was mention of the Respondent’s health around the time the tenancy commenced, but as the Respondent indicated she was unaware of her duties regarding the deposit, these issues did not assist and were not something the Tribunal took into account when assessing the level of penalty. It could be said that the Applicant has been denied the protection of the 2011 Regulations and, in particular the ability to seek adjudication of any claim the Respondent may have made on the deposit. However, the deposit has been repaid to her in full and was repaid within 5 days of the end of the tenancy which is a shorter period that it would have been had it been processed via an approved tenancy deposit scheme. Whilst there was some discussion around the condition of the Property when the Applicant vacated (not accepted by the Applicant) these all were issues at the end of the tenancy and do not assist the Respondent in relation to her failure to lodge the deposit at the start and no weight in terms of mitigation has been attached to them. The Respondent was apologetic for her failures and indicated that going forward she was aware of her responsibilities as a landlord and was complying with them.

For all these reasons the Tribunal reached the conclusion that whilst the non-compliance in this case may have been inadvertent it was at neither extreme of the spectrum of triviality. Taking this into account and all the circumstances of the Application, the written response and the Applicant’s and Respondent’s oral submissions, the Tribunal was of the view that this was an example of a case where the Respondent’s culpability was in the middle to lower end of the scale. The main factors that the Tribunal relied upon in coming to that view were the amount of time the deposit was unprotected, the fact that the deposit had been returned very shortly after the end of the tenancy, and the Respondent’s apologetic response for what was an inadvertent breach of the 2011 Regulations. The appropriate sanction therefore would be to make an award by way of a penalty at the level of £1,200.

- Decision

The Tribunal orders that the Respondent pay to the Applicant the sum of £1,200.

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.

Rory Cowan	**6 July 2026**
Legal Member/Chair	**Date**