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 ("the Deposit Regulations")

Chamber Ref: FTS/HPC/PR/26/0287

Re: Property at 10/3 (also known as 1F2) Ivanhoe Crescent, Edinburgh, EH16 6AU ("the Property")

Parties:

Miss Dana Diey, 10/3 (1F2), Ivanhoe Crescent, Edinburgh, EH16 6AU ("the Applicant")

Mr James Froude, Mrs Simone Froude, 94 Gilmerton Dykes Crescent, Edinburgh, EH17 8JN ("the Respondent")

Tribunal Members:

Fiona Stephen (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined (1) to grant an order for payment in the sum of One Thousand Six Hundred and Twenty Pounds (£1 620.00) Sterling and (2) to grant an order requiring the Respondent to pay the tenancy deposit to an approved tenancy deposit scheme.

Background

1. By application dated 16 January 2026 the Applicant seeks orders under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Deposit Regulations") in respect of alleged failures by the Respondent to comply with those regulations.

2. The Application was accepted by the Tribunal on 22 January 2026 and referred for determination by the Tribunal.

3. The Respondent was served with the papers in this case by Sheriff Officers on 25 May 2026 conform to Execution of Service of the same date. The parties were aware that a Case Management Discussion ("CMD") was fixed for 24 June 2026 at 2pm by teleconference call. The Respondent was required to lodge any written representations with the Tribunal by 12 June 2026. No written representations were lodged by the Respondent.

4. The Tribunal had before it:

(i) The Application Form G;
(ii) Various pages of the Tenancy Agreement between the Applicant and the Respondent;
(iii) Proof of payment of the deposit by the Applicant;
(iv) Confirmation that no deposit was lodged with any of the three approved deposit protection schemes; and
(v) Case Papers

Case Management Discussion

5. The CMD took place on 24 June 2026 at 2pm by teleconference call. The Applicant was represented by Mr Wilson of the Community Help and Advice Initiative (CHAI). Mrs Froude was in attendance and represented by a family friend, Mr Drummond, The Bungalow, Haddington EH41 4HQ.

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

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

8. The Applicant's representative relied on the information provided to the Tribunal and set out in the application. In his submission, there had been a clear regulatory breach of the Deposit Regulations. There was a tenancy in place and the Applicant had paid a deposit (in cash) which had not been lodged in any of the approved deposit schemes. The only question was the quantum of penalty. The Tribunal noted that the Respondent's failure to lodge the deposit had been discovered when the Applicant had approached CHAI to discuss her tenancy and tenancy rights. The Applicant's representative was unaware if the Applicant had had any dialogue with the Respondent.

9. The Tribunal noted that the Respondent's representative had been asked by the Respondent to assist them after they had been served with the Tribunal papers (on 25 May 2026). The reason for the lack of written representations was that Mrs Froude was the primary carer for Mr Froude. He confirmed that the Respondent accepted that there was a Short Assured Tenancy between the Applicant and Respondent and that a deposit had been paid but not put

into one of the approved deposit schemes. He stated that the deposit had been put into a bank account and remains there.

10. The Respondent's representative stated that whilst it was accepted there was a regulatory breach, it had not been deliberate. It had been Mr Froude who had dealt with the tenancy. He has dementia and Mrs Froude is his primary carer and has been for in excess of 14 years. Due to Mr Froude's health, Mrs Froude is now having to deal with the tenancy. They were not commercial landlords but individuals. They had two properties and had not been involved with the Tribunal before. The Respondent had "buried their head in the sand".

11. The Tribunal asked if the second property was let out. At first, the Tribunal was told that it had been sold but Mrs Froude clarified that it had not been sold and was still let out. The Respondent intends to sell that property eventually.

12. The Tribunal asked if the Respondent had been aware of their obligations under the Deposit Regulations. The Respondent's representative said they are aware of them now but were unsure of them before and had not sought any advice.

13. The Tribunal noted that the Respondent hoped that this matter could be dealt with today given the admission of a breach of the Deposit Regulations. The Respondent's representative stated that the mitigatory factors were (i) Mr Froude's ill-health and Mrs Froude's position as primary carer (ii) the deposit had been held at all times in a bank account and was available for the tenant (iii) there was no bad faith (iv) it was a first-time failure. The Respondent's representative described the circumstances as exceptional. He did not consider the maximum penalty, as had been asked for by the Applicant, to be fair or proportionate and suggested a penalty of one times the deposit (£600) would be appropriate. The Respondent was prepared to pay the deposit into an approved scheme.

14. The Tribunal asked the Applicant's representative to comment. His position was that the Respondent was letting out more than one property as an investment. There are regulatory requirements which need to be met. He noted that the Respondent had met the requirements of registering as a Landlord in the Landlord register and that information is available to landlords, including information relating to the Deposit Regulations, as part of that process. The deposit had not been protected for nearly 10 years. The Respondent could have sought advice but had chosen not to do so.

15. The Respondent's representative submitted that it had been Mr Froude who had been the registered Landlord. He dealt with the paperwork primarily but could no longer do so. The Tribunal pointed out that it was Mrs Froude who was the registered Landlord according to the Landlord Register. The Tribunal was told that it was Mr Froude originally but that was changed when his health deteriorated. The Respondent could not recollect when that was done.

16. The Respondent's representative then made reference to another Tribunal application – an application for removal. The Tribunal asked for clarification about this, given the reference to the Respondent not having had any dealings with the Tribunal before. The Tribunal was told that an application for removal had been lodged around two years ago in relation to this tenancy. The Respondent's representative stated that there had been some issue with whether it was a Short Assured or Private Residential Tenancy. He could not recollect what had happened to that application. Mrs Froude stated that she did not know if it had progressed or not.

17. The Tribunal stated that it had to be clear that it was the 2016 Short Assured Tenancy that was being dealt with. The Respondent's representative confirmed that it was.

18. Neither party made any further representations.

19. The Tribunal advised both parties that a written decision would be issued confirming what penalty was to be imposed.

20. Following the conclusion of the CMD, the Tribunal noted from the Housing and Property Chamber website that there is a published decision relating to the Property under reference FTS/HPC/EV/25/3196.That application had been lodged by the Respondent in July 2024 and sought an order of eviction. The application was rejected on 4 November 2025 under Rule 8 (1)(a) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the procedure rules") on the basis that it was frivolous and had no prospect of success. The Tribunal noted that Mr Drummond was shown as the Respondent's representative in that case.

Findings in Fact

21. The Applicant and the Respondent entered into a tenancy on 22 September 2016 in respect of the Property.

22. The tenancy agreement is a Short Assured Tenancy which commenced on 22 September 2016 and is ongoing.

23. The tenancy agreement provided that a tenancy deposit of £600.00 was payable by the Applicant.

24. The tenancy deposit of £600.00 was paid by the Applicant in cash at commencement of the tenancy.

25. The Respondent did not lodge the tenancy deposit with an approved tenancy deposit scheme at any time.

26. The tenancy deposit has been held in a bank account of the Respondent from commencement of the tenancy and remained so at the date of the CMD.

Reasons for Decision

27. The Tribunal was satisfied that it was able to make a determination and that it was not contrary to parties' interest to do so at the CMD without the need for a hearing all in terms of Rules 17 and 18 of the procedure rules.

28. 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 Deposit Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy.

29. 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."

30. Regulation 9 of the 2011 Regulations provides:

"(1) 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.
(2) An application under paragraph (1) must be made [...] no later than 3 months after the tenancy has ended."

31. 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] —

(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 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."

32. It is clear that in this case the Respondent failed to place the deposit in an appropriate scheme and has breached Regulation 3 of the Deposit 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 specified information regarding the tenancy deposit. The Respondent failed in both duties.

33. The present application has been made timeously in terms of Regulation 9 of the Deposit Regulations. The Tribunal is required to make an order for payment in terms of Regulation 10 of the Deposit Regulations. The only matter to be determined by the Tribunal is the amount of the payment.

34. 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].

35. 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*".

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

37. The Tribunal took into account that the deposit of £600.00 has been left unprotected since September 2016, 3 months short of 10 years. That is a very significant period. The tenancy is ongoing. The Respondent's position was that the failure to lodge the deposit was not intentional or deliberate. They had not been aware of the Deposit Regulations and had kept the deposit in their own bank account instead. The fact that the Respondent was not aware of its responsibilities in terms of the Deposit Regulations is very significant. The Respondent lets out another property and should have been aware of its responsibilities under the Deposit Regulations. The Respondent was sufficiently aware of the requirement to register in the Landlord's Register which requires landlords to provide a significant amount of information. The Deposit Regulations were brought into force to protect tenants' deposit monies and to provide a mechanism for dealing with the repayment of a deposit at the end of a tenancy, particularly where there may be a dispute between the parties. The Tribunal took account of the Respondent's personal circumstances and, in particular, Mr Froude's poor health. The Tribunal did not consider that, whether or not the Respondent had been involved with a tribunal process before, was a mitigating factor. As it turned out, that was not

the case. The Tribunal was left with the impression that the Respondent simply paid insufficient regard to their obligations. The Tribunal took account of the fact that the Respondent would now pay the deposit into one of the approved schemes. The Tribunal considered whether the order should be made at the maximum level available to it but, having regard to all the facts and circumstances, considered that a fair and proportionate order should be in the higher range of the available scale but not the maximum level.

38. The Tribunal determined that the sanction should be £1 620.00 (being 90% of the amount of the deposit) in the particular facts and circumstances of this case.

39. The Tribunal also considered it appropriate to make an order under Regulation 10 (b)(i) of the Deposit Regulations requiring the Respondent to pay the tenancy deposit to an approved scheme.

Decision

The Tribunal granted (i) an Order for payment of £1 620.00 in terms of Regulation 10 (a) of the Deposit Regulations and (ii) an Order requiring the Respondent to pay the tenancy deposit to an approved tenancy deposit scheme in terms of Regulation 10 (b) (i) of the Deposit Regulations.

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.

Fiona Stephen	**24 June 2026**
Legal Member/Chair	**Date**