



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/26/0164

Re: Property at 22 Ardgay Drive, Bonnybridge, FK4 2FH (“the Property”)

Parties:

Miss Susan Milne, 1 Manor Neuk Cottages, Alloa Road, Stirling, FK9 5PR (“the Applicant”)

Adam Charles Watson, 239 Whitelees Road, Cumbernauld, G67 3DL (“the Respondent”)

Tribunal Members:

Fiona Stephen (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of Four Hundred and Seventy Five Pounds (£475.00) Sterling

Background

1. By application dated 11 January 2026 (erroneously dated 2025) the Applicant seeks an award under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Deposit Regulations”) in respect of an alleged failure by the Respondent to comply with those regulations.
2. The Application was accepted by the Tribunal on 19 January 2026 and referred for determination by the Tribunal.
3. The Respondent was served with the papers in this case by Sheriff Officers on 14 May 2026 conform to Execution of Service of the same date. The parties were aware that a Case Management Discussion (“CMD”) was fixed for 17 June 2026 at 11.30am by teleconference call. The Respondent was

required to lodge any written representations with the Tribunal by 3 June 2026.

4. At about 11.15am on the morning of the CMD, the Tribunal was sent two emails from the Applicant's representative, K Property, 18-20 Baronhill, Cumbernauld Village, North Lanarkshire G67 2SB which had been received by the Tribunal's administration on 12 June 2026 (13:27) and 17 June (11:05). The first email advised that K Property had been asked by the Respondent to submit representations on his behalf as he was out of the country and could not do so. Written representations were attached to the email. The second email stated that neither the Respondent nor, it transpired, anyone from K Property could attend the CMD. K Property, on behalf of the Respondent, asked that the written representations be taken into consideration as those contained all relevant information.
5. The Tribunal asked that the written representations be emailed immediately to the Applicant.
6. The Tribunal considered the Respondent's actions regarding his and his representative's inability to attend the CMD disrespectful given the Respondent had been informed of the CMD on 14 May 2026. The Applicant or his representative could and should have made contact with the Tribunal much sooner to advise it of the situation. There was no explanation provided as to why someone could not attend the CMD on the Respondent's behalf or why the written representations were lodged late.
7. The Tribunal had before it:
 - (i) The Application Form G;
 - (ii) The Tenancy Agreement between the Applicant and the Respondent;
 - (iii) Confirmation from the Scottish Landlord Register that the Respondent is a registered Landlord for the Property;
 - (iv) Notice to Leave dated 4 August 2025
 - (v) Confirmation that the deposit was lodged with SafeDepositsScotland on 12 February 2024; and
 - (vi) Case Papers

Case Management Discussion

8. The CMD took place on 17 June 2026 at 11.30am by teleconference call. For the reasons already outlined neither the Respondent nor his representative attended. The Tribunal explained to the Applicant the reason for the Respondent's absence. The Tribunal noted that the Applicant had not yet received an email from the Tribunal's administration with the Respondent's written representations. The Tribunal explained the general tenor of the Respondent's representations to the Applicant. These were (i) that the deposit had not been lodged timeously due to an oversight by K Property, the letting agent, at a time when they were moving office (ii) implementing a new payment portal and property management system (iii) the tenancy deposit

was entered incorrectly into the new system so it was not lodged within the statutory timeframe (iv) the deposit was returned quickly after the end of the tenancy and (v) it was accepted that the deposit had been lodged late.

9. The Tribunal indicated to the Applicant that this was an unsatisfactory state of affairs and it suggested 2 ways forward. Given the representations submitted by the Respondent contained information which the Tribunal would wish to take into account (even though lodged late) but recognising that the Applicant had not seen those yet, it could either continue the CMD to another date or there was provision within the procedural rules which would allow the Tribunal to deal with matters on the papers and take account of any additional information the Applicant could provide. The Applicant said she would prefer that the matter be dealt with today because she had taken time off work to attend the CMD. She did not want to take more time off or have further delay.
10. Having regard to the Applicant's position and to Rule 18 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the procedural rules") as both parties had lodged written representations and, having regard to the overriding objective of the Tribunal to deal with proceedings justly and without delay, the Tribunal determined that the CMD should proceed in the absence of the Respondent. The Tribunal considered it had sufficient information from the papers to proceed and did not consider it reasonable to delay matters.
11. The Tribunal explained the purpose of the CMD and the powers of the Tribunal to determine matters. The Tribunal asked various questions of the Applicant with regard to the application.
12. The Tribunal explained to the Applicant the order 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.
13. The Applicant confirmed that she had entered into a Private Residential Tenancy with the Respondent in relation to the Property for the period from 20 November 2023. She had left the Property on 20 November 2025 after receiving a Notice to Leave (dated 4 August 2025) from the Respondent on the ground that he intended to sell the property.
14. The Applicant had paid a deposit of £950.00 to the Respondent. It was only after the tenancy ended that she discovered through SafeDepositsScotland that the deposit had not been lodged until 12 February 2024 which was outwith the required 30 working day limit in terms of the Deposit Regulations. Neither the Respondent nor his letting agent K Property told the Applicant that the deposit had been lodged late. The Tribunal calculated that the deposit should have been lodged with one of the deposit schemes by 4 January 2024 (30 working days from 20 November 2023, excluding Christmas and New Year public holidays). It was not lodged until 12 February 2024 which was therefore 28 working days or 39 days including weekends from 4 January).

15. The Applicant was aware that the Tribunal must order the Landlord to make payment to the tenant of an amount not exceeding three times the deposit if it was found to have breached the Deposit Regulations. The Tribunal explained that it had to take into account all the facts and circumstances and it therefore had a discretion as to the level of penalty it could impose under the Deposit Regulations. The Applicant accepted that she had received her deposit back after the tenancy ended. The Applicant also mentioned that she is attending another CMD next week as she has raised an application before the Tribunal on the basis that the Respondent had terminated her tenancy wrongly. The Applicant said that the Respondent had moved tenants into the Property within two weeks of her leaving. The Tribunal member explained she had no knowledge of that application and it was not relevant to this application, but noted the position.

Findings in Fact

16. The parties entered into a private residential tenancy in respect of the Property that commenced on 20 November 2023 and ended on 20 November 2025 when the Applicant moved out.

17. The monthly rent payable in the tenancy was £950.00.

18. Clause 11 of the tenancy agreement provided that a security deposit of £950.00 was payable by the Applicant at the start date of the tenancy and that the Respondent would lodge this with SafeDepositsScotland.

19. The Applicant paid the deposit.

20. The deposit should have been lodged with SafeDepositsScotland by the Landlord by 4 January 2024.

21. The deposit was not lodged and protected by SafeDepositsScotland until 12 February 2024.

22. The deposit was lodged late by 28 working days or 39 days including weekends from 4 January 2024.

23. The Applicant found out from SafeDepositsScotland that the deposit had been lodged late, after she left the Property.

24. The Applicant received her deposit back in full.

25. The Respondent admits that the deposit was lodged outwith the statutory time limit as required by the Deposit Regulations.

26. The Respondent's letting agent, K Property was responsible for lodging the deposit.

27. The delay in lodging the deposit arose at a time when K Property were moving office and implementing a new payment portal and property management.
28. The deposit was incorrectly entered into the new system due to an administrative oversight.
29. K Property have reviewed their procedures to avoid a similar situation arising in the future.

Reasons for Decision

30. 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.
31. 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.
32. 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.*
33. Regulation 9 of the 2011 Regulations provides:
- (i) 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.*
- (ii) An application under paragraph (1) must be made [...] no later than 3 months after the tenancy has ended.*
34. 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]¹ —*
- (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;*

35. It is clear that in this case the Respondent has failed to place the deposit in an appropriate scheme timeously and has breached Regulation 3 of the 2011 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 to comply with both duties timeously.
36. The present application has been made timeously in terms of Regulation 9. The Tribunal is required to make an order for payment in terms of Regulation 10. The only matter to be determined by the Tribunal is the amount of the payment.
37. 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].
38. 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”*.
39. In reaching a determination, the Tribunal took into account that the Respondent is in breach of Regulation 3 of the Deposit Regulations.
40. The Tribunal took into account that the deposit of £950.00 had been left unprotected for 28 working days or 39 full days from the date it ought to have been lodged, 4 January 2024, which was a relatively short period of time in comparison to the length of the tenancy of 2 years. The Tribunal gave weight to the fact that the failure to lodge the deposit had not been intentional or deliberate but arose as a result of an administrative error in the Letting agent’s office which occurred during an office move and changeover of business systems. The error was rectified once discovered. The Tribunal also gave weight to the fact that the Letting agent has reviewed its procedures to avoid a similar event occurring in the future. The Tribunal took account of the fact that the deposit had been returned to the Applicant after the end of her tenancy. In

light of all of the facts and circumstances, the Tribunal considered that it would be appropriate to make an order at the lower end of the available scale.

41. The Tribunal determined that the sanction should be £475.00 (one half of the deposit) in the particular facts and circumstances of this case.

Decision

The Tribunal granted an Order for payment of £475.00 in terms of Regulation 10 (a) 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
Legal Member/Chair**

**17 June 2026
Date**