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/26/1022

Re: Property at Room 2, 1 Saddle Tree Loan, Inch, Edinburgh, EH16 5RQ ("the Property")

Parties:

Mr Connell Irvine, 9 Alloway Loan, Liberton, Edinburgh, EH16 4XH ("the Applicant")

Scottletting.co.uk, 106 Edmonstone Road, Dalkeith, Midlothian, EH22 1QX ("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 One Thousand Pounds (£1000.00) Sterling

Background

1. By application dated 2 March 2026 lodged in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"), 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 6 March 2026 and referred for determination by the Tribunal.

3. The Respondent was served with the papers in this case by Sheriff Officers on 11 June 2026 conform to Execution of Service of the same date. The parties were aware that a Case Management Discussion ("CMD") was fixed for 15 July at 2pm by teleconference call. The Respondent was required to lodge any written representations with the Tribunal by 30 June 2026. No written representations have been lodged.

4. 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) Mandate from the Applicant authorising Gordon Maloney of Living Rent, to represent him; and
   (v) Case Papers

Case Management Discussion

5. The CMD took place on 15 July 2026 at 2pm by teleconference call. Mr Maloney attended to represent the Applicant, who was also in attendance. The Tribunal delayed the start of the CMD for a few minutes but there was no attendance by the Respondent

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

7. 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.

8. The Tribunal asked Mr Maloney if he wanted to add anything to the information and submissions which were contained in the papers. Mr Maloney submitted that the facts were not in dispute. The Applicant had paid a deposit and that had not been lodged in one of the approved schemes. In his submission, the Tribunal must then consider the penalty to impose and his position was that this was a case at the most serious level of the scale.

9. Mr Maloney set out a number of reasons in support of that position. First, the Respondent stated in an email (29 January 2026) that he did not notice the deposit had not been lodged until the end of the tenancy (on 10 January 2026), however he did not put it right at that stage. He could have lodged the deposit with one of the schemes then but chose not to do so. The Applicant did not have recourse to third party adjudication in the event of a dispute as a result. Second, the Respondent deducted a £100 cleaning fee which Mr Maloney submitted was unlawful. Third, the Respondent does not take its responsibilities as a landlord seriously. There is a list of issues, for example the fact that this was a fixed term contract, the contract provides for early

termination and an early termination fee, none of which are permitted or lawful. Fourth, the Respondent's website makes a great play of their history as landlords. The website claims "the Duncan family have been renting out properties in the city for over 40 years, and between us we have more than 100 years of combined landlord experience." Fifth, despite the Respondent saying in the email of 29 January 2026 that it will take steps to make sure this does not happen again, the website still speaks of the fixed term contract and £100 cleaning fee. Mr Maloney checked that before today. Sixth, the Respondent has not attended today's CMD. Mr Maloney submitted that the failure to lodge the deposit was a deliberate and reckless failure on the part of the Respondent which merited a penalty at the maximum level. Mr Maloney made reference to the case of *Rollett v Mackie [2019] UT 45* (referred to below). Whilst the Respondent's admission of failure might be seen to lessen fault, his submission was that this was not the case here.

10. Mr Maloney submitted that the Respondent was responsible for multiple breaches of tenancy legislation. Despite the Respondent saying that he had not paid the deposit into a scheme due to family issues in mid-September 2025, the deposit was paid by 21 August 2025, providing ample time for it to be lodged. The Respondent's assertion was misleading.

11. The Tribunal noted from the Applicant's written submission that the tenancy agreement provided to the Applicant was markedly different from the Scottish Government's model Private Tenancy Agreement and contained a number of terms which were unlawful, for example, the fixed term and cleaning fee.

12. Mr Maloney confirmed that the Applicant had received payment of £400.00 of the deposit on 10 January 2026 (the end date of the tenancy) and £100.00 (deducted as a cleaning fee) on 29 January 2026. Mr Maloney was not convinced that this would have been repaid had the Respondent not been challenged about it. The Applicant also clarified that he had been a part-time student whilst living at the Property.

13. The Tribunal had noted that the tenancy agreement, headed "Tenancy Letter", stated it was for the period from 1 September 2025 to 31 August 2026. The tenancy agreement referred to provisions of the Housing (Scotland) Act 1988 (see for example clause 6) which was perplexing given that tenancies under that Act could not be created from 1 December 2017 when the provisions relating to private tenancies came into force under the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"), section 1. The Tribunal had viewed the website of the Respondent and noted that it stated, "Welcome to Scott Letting - Student Rooms in Edinburgh Made Simple". Unless the Respondent could bring the tenancies it offers into one of the tenancies excluded from being a private residential tenancy under Schedule 1 of the 2016 Act, then the tenancy which the Applicant had was a Private Residential Tenancy under that Act. Student lets are excluded in terms of paragraph 5 of Schedule 1 of the Act but only in very particular circumstances. Given there was no information on this point before the Tribunal it did not require to consider it.

14. The Tribunal also noted that the Applicant served notice to end the tenancy on 22 December 2025 and the tenancy ended on 10 January 2026. There was a deposit of £500.00 payable by the Applicant and this was paid in two tranches on 6 and 21 August 2025 as evidenced by bank statements produced.

15. The Tribunal noted from the papers that between 4 and 9 January 2026, the Applicant and Respondent were in touch with each other by text discussing arrangements for the Applicant’s departure. The keys were to be handed back on 10 January. On 9 January, the Applicant asked the Respondent to provide him with the ID number for the tenancy deposit scheme. The Respondent replied to discuss departure arrangements and in relation to the Applicant’s deposit said, “We’ll get the £400 returned (£500 deposit less £100 end of tenancy cleaning fee) once we’ve collected the keys.” The Respondent did not say anything about a deposit scheme.

16. On 29 January 2026 the Applicant emailed the Respondent again to say that he had taken advice regarding his tenancy. He queried (i) why the deposit had not been lodged in one of the approved tenancy deposit schemes; (ii) questioned the legality of deducting the £100 cleaning fee when the Respondent had not complied with its obligations by reference to the case of *FTS/HPC/CV/22/4235 Erdal v Cameron* and (iii) stated that there were other terms in the lease that were unlawful, namely the fixed term and the £500 early termination fee.

17. The Tribunal noted from the copy emails dated 29 January 2026 (produced as screen shots) lodged by the Applicant, that the Respondent accepted that the deposit had not been lodged with one of the approved deposit schemes. The emails produced are not complete, but Mr Maloney confirmed that the typewritten copy provided is a copy of the email. In that email, the Respondent apologised to the Applicant “Can I just apologise if you are in any way feeling mistreated”. The Respondent confirmed that the deposit had not been lodged within the correct timeframe. He said that his wife had an operation mid-September 2025 just after the Applicant moved in and he failed to ensure this was completed as she does most of the administrative work. He had to deal with childcare. The Respondent stated “This was a mistake I only realised when you handed in your notice and I went to return it, and I can only apologise for that. Regarding the £100 cleaning deduction, I have just sent this back to you too. If you can please confirm that you have received it”. The Respondent apologised again and said that “…I can only apologise again and assure you that we will making changes going forward to ensure this doesn’t happen again.”

18. The Tribunal explained to the Applicant and Mr Maloney that given the Respondent had admitted its failure to lodge the deposit then the Respondent was in breach of the Deposit Regulations. The matter to be decided was the penalty to be imposed. The Tribunal explained this was a maximum of three times the deposit amount but could be anywhere between £1 and £1500.00 in this case. Mr Maloney submitted that, in all the circumstances, the maximum penalty should be applied. The Tribunal thanked the Applicant and Mr

Maloney for attending today and would issue its written decision as soon as possible.

Findings in Fact

19. The parties entered into a tenancy agreement in respect of the Property that commenced on 1 September 2025.

20. The tenancy agreement purported to be for a fixed term of one year between 1 September 2025 and 31 August 2026 and subject to the provisions of the Housing (Scotland) Act 1988.

21. The tenancy was, in reality, a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act").

22. The rent payable in the tenancy was £165.00 per week payable 28 days in advance. The first payment of £660.00 was to be paid at the date of entry or before and subsequent payments of £660.00 were due to be paid every 4 weeks, in terms of clause 3.1 of the tenancy agreement.

23. Clause 4 of the tenancy agreement provided that a deposit of £500.00 was payable by the Applicant at the date of entry or before.

24. The Applicant paid the deposit in two tranches on 6 and 21 August 2025.

25. The Applicant gave notice to leave to the Respondent on 22 December 2025.

26. The tenancy ended on 10 January 2026.

27. On 9 January 2026 the Applicant asked the Respondent to provide him with the deposit ID for the tenancy deposit scheme.

28. The Respondent replied by text on 9 January 2026. The Respondent did not provide the deposit ID. The Respondent confirmed that £400.00 of the deposit would be returned to the Applicant under deduction of £100.00 end of tenancy cleaning fee.

29. On 29 January 2026 the Applicant emailed the Respondent and said he had taken advice.

30. In the email of 29 January 2026, the Applicant confirmed to the Respondent that the deposit had not been lodged in any of the deposit schemes and asked for an explanation. The Applicant stated that the £100 deduction should not have been made given the Respondent's failure to comply with its legal obligations.

31. In the email of 29 January 2026, the Applicant also raised the issue of the fixed term contract and early termination fee and stated that those were unlawful.

32. On 29 January 2026 the Respondent responded to the Applicant's email.

33. The Respondent admitted that the deposit was not lodged with one of the three deposit schemes for the duration of the tenancy.

34. The Respondent claimed that the failure to lodge the deposit was a mistake which was realised when the Applicant handed in his notice and the Respondent sought to return the deposit.

35. The Respondent stated this was due to his wife having an operation in mid-September 2025 resulting in administrative tasks not being attended to by her as would be the usual case.

36. The Respondent stated that it will put changes in in place to prevent this occurring again.

37. No evidence has been produced to the Tribunal which shows what, if any, changes have been made to the Respondent's procedures since January 2026.

38. The deposit was repaid to the Applicant by the Respondent in two tranches, being £400.00 on 10 January and £100.00 on 29 January 2026.

Reasons for Decision

39. 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. The Respondent did not provide written representations to the Tribunal or attend the CMD.

40. The 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.

41. 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.*

42. 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.*

43. 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*;

44. The Respondent admitted that it failed to place the deposit in an appropriate scheme at all. Accordingly, it 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.

45. 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.

46. 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].

47. 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*".

48. In reaching a determination, the Tribunal took into account that the Respondent is in breach of Regulation 3 of the Deposit Regulations.

49. The Tribunal requires to balance any aggravating and mitigating factors. The aggravating factors are: (1) that the deposit of £500.00 had been left unprotected for the duration of the tenancy, which lasted for 4 months 10 days. The deposit ought to have been lodged within 30 working days of the beginning of the tenancy i.e. by 10 October 2025. The length of time it was unprotected was relatively short but nevertheless it was unprotected for the duration of the tenancy and it deprived the Applicant of recourse to a third party adjudication scheme in the event of a dispute; (2) The Respondent was aware of its responsibility to lodge the deposit in a deposit scheme: (3) the Respondent, by its own admission, is a long-standing family business in the rental sector and the tenancy agreement provided to the Applicant did not comply with the provisions of the 2016 Act. The Respondent ought to have been aware of this given the 2016 Act has been in force for many years and (4) the Respondent did not address the Applicant's reasonable question about the deposit or the cleaning fee until pressed.

50. The mitigating factors are: (1) the Applicant received his deposit back in full, 19 days after the tenancy ended (and most of it on the day it ended) therefore suffered no financial loss and (2) the Respondent claimed that the failure to lodge the deposit arose as a result of an oversight on the Respondent's part, due to family circumstances. In the absence of any written representations or appearance by the Respondent, the Tribunal was unable to hear from the Respondent on this point which is unhelpful. The Tribunal is prepared to accept the Respondent's explanation at face value and is prepared to accept that this failure was not intentional or deliberate.

51. In light of all of the facts and circumstances, the Tribunal considered that it would be fair and proportionate to make an order towards the higher end of the sanction available at two times the deposit amount. Accordingly, the sanction applied is £1000.00.

Decision

The Tribunal granted an Order for payment of £1000.00 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	**15 July 2026**
Legal Member/Chair	**Date**

[redacted]