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 Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/PR/25/3768

Re: Property at 1/1 96 Battlefield Road, Glasgow, G42 9JN ("the Property")

Parties:

Ms Jessica Fyfe, 1/2 51 Minard Road, Glasgow, G41 2HP ("the Applicant")

Ms Kimberley Robertson, 2/2 116 Queens Drive, Glasgow, G42 8BJ ("the Respondent")

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent failed to comply with her duty as a Landlord in terms of Regulations 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicant's Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme grants an Order against the Respondent for payment to the Applicant of the sum of ONE THOUSAND NINE HUNDRED POUNDS (£1900) STERLING.

Background

1. This is an application for an order for where it is alleged the Respondent has not paid a deposit into an approved scheme under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Application is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").

2. The Application was accompanied by a bank statement, an undated letter from the Respondent to the Applicant, a document headed Agreement for Licence to Occupy between the parties commencing 16 August 2023, an email from Safe Deposits Scotland dated 29 August 2025 and emails from Letting Protection Service Scotland and My Deposits Scotland both dated 2 September 2025, emails dated 3 July 2025 between the parties, a screenshot of a payment made by the Respondent to the Applicant, a photograph of a sink, and emails dated 3 September 2025 between the parties.

3. On 1 October 2025, the Tribunal accepted the application under Rule 9 of the Regulations.

4. After a postponement of a previous Case Management Discussion ("CMD") the Tribunal advised parties that a CMD under Rule 17 of the Regulations would proceed on 22 July 2026.

Case Management Discussion

5. The CMD proceeded by way of a teleconference call on 22 July 2026. Both parties were present and represented themselves. The case was heard together with a case for the return of the remaining deposit of £599.04 under case number FTS/HPC/CV/25/ 3835.

6. The Tribunal had before it the bank statement, the undated letter from the Respondent to the Applicant, the document headed Agreement for Licence to Occupy between the parties commencing 16 August 2023, the email from Safe Deposits Scotland dated 29 August 2025 and emails from Letting Protection Service Scotland and My Deposits Scotland both dated 2 September 2025, the emails dated 3 July 2025 between the parties, the screenshot of a payment made by the Respondent to the Applicant, the photograph of a sink, and emails dated 3 September 2025 between the parties. The Tribunal considered these documents.

7. The Tribunal stated that there had been no response from the Respondent to either application and asked her to confirm what her position was. Ms Robertson read out a prepared statement. She stated that she did not have a portfolio of properties and that the Property was the only property she had. The property was owned by her partner Mr Shand. They hoped to return to live in the property one day. When she met the Applicant the agreement for her to live in the Property was only meant to be temporary. She had taken advice and understood that she could give a Licence to Occupy. She acted in good faith in doing so. This was not an attempt to try to avoid giving the Applicant her rights. She now understands that that agreement did not reflect the law.

8. The Tribunal clarified with her that if the Tribunal understood her position, she accepted that the Licence to Occupy was a Private Residential Tenancy Agreement. Ms Robertson accepted that and again emphasised that she had acted throughout in good faith. She also accepted that the Applicant had paid £950 deposit.

9. She went on to state that she returned £350.96 of the deposit. She retained £599.04 to cover cleaning costs, problems with the plumbing, the installation of a new pedestal sink and the repair to a pipe. These losses amounted to £835 in total.

10. She stated that she accepted she had misunderstood the position. She was not a professional landlord. She did not want to place the Applicant at a disadvantage. The Tribunal confirmed had her position.

11. In response the Applicant stated she was new to the country when she was asked to sign the Licence to Occupy by the Respondent. She had nothing to compare it with but understood it would be a Private Residential Tenancy. The tenancy terminated on 20 August 2025 after she gave notice to the Respondent on 3 July 2025. The Tribunal noted the emails of 3 July 2025. The failure to return the full deposit had shocked her. It came out of nowhere. She had needed the deposit for a new tenancy. Her partner paid for the new deposit, and she squared things up with her partner in time. She felt the Respondent had taken advantage of the situation. She found it distressing when she found out the deposit had not been protected and when the Respondent retained £599.04.

Findings in Fact

12. The parties entered into a document called an Agreement for Licence to Occupy which entitled the Applicant to live in the Property from 16 August 2023.

13. The Respondent issued the Agreement for Licence to Occupy in the mistaken belief that it was the correct form of Agreement.

14. The Applicant paid the Respondent a £950 tenancy deposit.

15. The Respondent did not lodge the tenancy deposit with an approved scheme administrator in accordance with the 2011 Regulations.

16. By email of 3 July 2025 the Applicant gave notice to the Applicant that she was terminating the tenancy on 20 August 2025. The tenancy ended on or around 20 August 2025.

17. The Respondent has returned £350.96 of the deposit to the Applicant. The Respondent has retained £599.04 of the deposit.

18. The application was made on 3 September 2025.

19. The Applicant was shocked and distressed when discovering her deposit had not been protected. She was inconvenienced by not having money to pay for a new tenancy deposit for a new tenancy.

Findings in Fact and Law

20. The Agreement for Licence to Occupy is a Private Residential Tenancy under the Private Residential Tenancies (Scotland) Act 2016 and is for the purpose of Regulation 3 of the 2011 Regulations a relevant tenancy.

21. The Respondent has failed to comply with her obligations under Regulation 3 of the 2011 Regulations.

Reasons for Decision

22. For the purpose of Regulation 9(2) of the 2011 Regulations, an application where a landlord has not paid a deposit into a scheme administrator must be made within three months of the tenancy ending. The Tribunal found that the application was made in time, the application being received on 3 September 2025 following on the tenancy terminating on or about 20 August 2025.

23. Regulation 3 (1) and (2) of the 2011 Regulations provides –

    "(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.

    (2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.Regulation 10 of the 2011 Regulations provides-

    "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.

24. Despite being labelled an Agreement for Licence to Occupy, the agreement is a Private Residential Tenancy in terms of Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016. This was accepted by the Respondent who stated that the issuing of the Agreement for Licence to Occupy was in good faith after she had taken advice.

25. The tenancy was a "relevant tenancy" for the purposes of Regulation 3 of the 2011 Regulations. There is therefore a requirement to pay the deposit to a scheme administrator. The Respondent failed in that duty. In this case there is no dispute that the deposit of £950 remained unprotected throughout the two years of the tenancy.

26. The Tribunal is required to make an order for payment. There is no discretion available to the Tribunal under Regulation 10 of the 2011 Regulations if the Tribunal finds the landlord is in breach of Regulation 3. The Tribunal must make an order for payment. The Tribunal must determine the amount to be paid. The amount to be paid to the Applicant is not said to refer to any loss suffered by the Applicant. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. Being satisfied that the Respondent had failed to comply with her duties, the Tribunal went on to consider what sanction to impose having regard to the particular facts and circumstances of the case.

27. The Tribunal in assessing the sanction level must impose a fair, proportionate and just sanction in the circumstances, taking into account both aggravating and mitigating circumstances, having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Tribunal considered the decision from the Upper Tribunal for Scotland in *Ahmed v Russell (UTS/AP/22/0021)* where Sheriff Cruickshank provides 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 each in reaching its decision. The Tribunal is then entitled to assess a fair and proportionate sanction. 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."*

28. The Tribunal considered the Respondent had during the CMD admitted her failure to comply with the 2011 Regulations. The Respondent had explained this was inadvertent, was not deliberate and was due to her being under the misunderstanding there was a Licence to Occupy. The Tribunal accepted that explanation as a mitigating factor.

29. Whilst the Respondent also stated that she did not want to place the Applicant at a disadvantage that is exactly what her failure had done. She had retained and continued to retain £599.04 of the £950. This was the very sort of mischief

that the 2011 Regulations had intended to address. The Respondent was in a position of financial advantage over the Applicant. Had the deposit been lodged with a scheme administrator the distribution of the deposit would have been determined at termination. The Tribunal considered these to be relevant aggravating factors.

30. It is of no relevance to the Respondent's mitigation that the Respondent does not have a portfolio of properties. She is a landlord. The duty is on her as Landlord to understand what her duties are. Her breach to comply with the 2011 Regulations was serious, the deposit being unprotected through the duration of the two years of the tenancy.

31. The Tribunal also accepted that the Applicant was shocked and distressed about what had happened to her deposit money when she found out it was not protected and that the Respondent was retaining £599.04, The Tribunal accepted she could have used that money for another tenancy deposit and considered she was disadvantaged by not having the deposit dealt with by a scheme administrator at the end of the tenancy.

32. The sanction imposed by the Tribunal should reflect the level of overall culpability measured against the nature and extent of the breach of the 2011 Regulations. The Tribunal is required to determine a fair, proportionate and just sanction based on the facts. In the circumstances, having accepted the submissions in mitigation made on behalf of the Respondent, the Tribunal considered the breach does not justify the maximum sanction. However, the breach had adversely affected the Applicant who still had not had the deposit returned to her nearly a year after the tenancy terminating and who had been put to the trouble of raising an action in the Tribunal for its return. The tenancy had lasted a period of two years, the deposit being unprotected for that time which was a cause of distress to the Applicant when she discovered the breach. Having considered the submissions from the parties and taking into account the guidance from the Upper Tribunal, the Tribunal decided that although the appropriate award should not be the maximum, the award should reflect the seriousness of the breach.

33. In all the circumstances the Tribunal considered that a fair, proportionate and just amount to be paid to the Applicant by way of sanction was the equivalent of two times the amount of the deposit.

34. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicant of £1900.

Right of Appeal Decision

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.

Shirley Evans

Legal Member **Date: 22 July 2026**