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 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/25/5306

Re: Property at 12 Albert Street 2F1 (4), Edinburgh, EH7 5LG ("the Property")

Parties:

Mr Andrzej Czaplinski, Weteranów 8/1, 20-038, Lublin, Poland ("the Applicant")

Denise Borland, Sawmill Cottage, Friendly Park, Brechin, DD9 6RF ("the Respondent")

Tribunal Members:

Elaine Paton (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent had breached Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations"). The Tribunal therefore determined to make an order for payment in the sum ONE THOUSAND AND ONE HUNDRED POUNDS (£1,100) Sterling under Regulation 10.

Background

1. The Applicant's son Emil Czaplinski ("Emil") sought return of the deposit paid by his father upon entering into an initial tenancy arrangement with the Respondent. Emil (latterly a joint tenant), on behalf of the Applicant, lodged an application to the Tribunal for a payment order under Rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules") and Regulation 9 of the 2011 Regulations. In terms of the application, sanction was sought against the Respondent as a result of their failure to lodge timeously the Applicant's tenancy deposit with an approved tenancy deposit scheme.

2. The application was referred to a case management discussion ("CMD") to take place by teleconference on 30 June 2026 at 11.30am. Notification of the CMD was given to the parties in terms of Rule 17(2) of the Rules. Said notification was served upon the Respondent personally by Sheriff Officers on 28 May 2026.

3. Both parties were invited to make written representations in advance of the CMD. Authorised by the Applicant, the Applicant's letting agent Pure Property Management Edinburgh Ltd ("Pure Property") lodged written representation with supporting documentation on or around 08 June 2026 in response to the application. No further written representations were received from the parties in advance of the CMD.

4. The CMD took place on 30 June 2026. The CMD commenced by teleconference. The Applicant was not present but was represented by their son Emil. The Respondent was not present but was represented by Mr Ashley Puren of Pure Property.

5. The Tribunal had the following documents before it:- (1) Form G application form with Paper Apart; (2) copy 'short assured' tenancy agreement dated 23 April 2012 between the Applicant and the Respondent; (3) information regarding the end date of the tenancy on 31 October 2025; (4) email exchanges between Emil Czaplinski and Pure Property; (5) email dated 05 December 2025 from Safe Deposits Scotland to Emil Czaplinski; (6) written representation dated 08 June 2026 on behalf of the Respondent together with three tenancy agreement documents (2009, 2012, 2013).

6. The Tribunal explained the purpose of the CMD. For the avoidance of doubt the following constitutes a summary of the key elements of the discussion and is not a verbatim account of the proceedings.

7. In response to the Tribunal, Emil stated the Applicant wished the tribunal to order a sanction against the Respondent, their (former) landlord, as a result of the failure to lodge their deposit with Safe Deposit Scotland despite having been told by the Respondent's agent this had been done. The deposit had not been protected for the duration that it ought to have been so protected therefore the maximum sanction was being sought. Emil explained the Applicant had attended at the Clydesdale Bank located a short distance from the Property and paid the deposit into the Respondent's bank account around the time of moving into the Property in 2008/9. The Applicant did not have a copy of the initial tenancy agreement but had produced a copy agreement from 2012 which was stated to have been on the same terms albeit ought to have included Emil as a joint tenant at the time but his name was not included and had only been added sometime later. The agent listed in the tenancy paperwork was the Respondent utilising their surname in a company format, namely, Borland Flat Rental but Pure Property were now the Respondent's agent. It was stated by Emil that he and the Applicant had moved out of the Property on 31 October 2025, having provided advance notice to Pure Property at the start of September 2025, on or around 03 September 2025. In response to the tribunal, Emil stated he had approached Safe Deposit Scotland direct as there was confusion and delay at

the instance of the Respondent's agent Pure Property and Safe Deposit Scotland indicated no deposit was held by them. Furthermore in response to the tribunal, Emil stated no deposit monies had been returned to the Applicant (or him) by or on behalf of the Respondent, and he made reference to the email exchanges he had had with Pure Property. Emil also highlighted that the Housing and Property Chamber ("HPC") had corresponded with him in order that he provide an address for the landlord.

8. In response to the Tribunal, Mr Puren of Pure Property, on behalf of the Respondent, explained he had been on holiday in South Africa at the time his staff had been communicating with Emil. Mr Puren explained the company has firm procedures in place and the staff followed these to the letter in terms of the information and paperwork they had on file for the Property. Clarifying for the tribunal, Mr Puren stated that Pure Property had only taken over the management of the Property in 2020 and the only tenancy paperwork they had been provided with by the Respondent was the '2008' agreement and the same 2012 agreement that the Applicant had produced with their present application, Pure Property only deal with Safe Deposit Scotland therefore the staff believed the deposit would have been lodged with that approved scheme. Mr Puren was apologetic about the confusion and mistaken information communicated to Emil. When it transpired that Safe Deposit Scotland were not holding the deposit Pure Property had wanted to correct that error (as they believed a breakdown in the company's processes had occurred at that time) and offered to immediately repay the £550 deposit to the Applicant plus an additional sum by way of compensation for the mix up within their office. Mr Puren explained that Emil then wanted a higher sum to be paid over due to the failure, and Mr Puren felt Emil was being unreasonable. Mr Puren had intended to make good regarding what was believed to have been a failure on the part of Pure Property rather than a failure on the part of the Respondent. When Mr Puren then contacted their client, the Respondent, about the deposit they stated there was no deposit held. The deposit clause in the 2012 agreement was highlighted to the Respondent. The Respondent provided Pure Property with a different tenancy agreement dated 2013 which included Emil as joint tenant and a variation to the deposit clause, stating at clause 5 that a sum of zero deposit was due by the tenant. Mr Puren stated the Respondent indicated the Applicant had apparently been told not to pay the last month's rental sum under the 2012 tenancy arrangement as the deposit was to be applied to the rent account instead. Mr Puren explained it was at that point Pure Property withdrew its offer to repay the deposit sum plus additional compensatory figure to the Applicant. In response to the tribunal in relation to Pure Property's refusal to provide the Applicant with details of their landlord's address, Mr Puren stated that the express instruction received from the Respondent was that the Respondent's details were not to be provided to the tenant. Mr Puren acknowledged that the company was obliged to provide the requisite information if requested by a tenant (or former tenant). Responding to the tribunal, Mr Puren indicated that the Respondent had a portfolio of approximately ten properties and it was his understanding from the Respondent that they had arranged with their previous letting agent (Callum Pretsell), prior to the tenancy deposit rules coming into effect, arrangements were to be made with tenants for any deposits held to be applied to the last month's rent at which time the sum would no longer be

considered as a deposit when a new tenancy agreement would be entered into. Mr Puren stated it is the Respondent's position that the present tenancy commenced in 2013 therefore zero deposit was due to be paid by the tenant, and in any event the Applicant's present application has been lodged a significant number of years after the tenancies dated 2009 and 2012 have ended instead of within three months of the relevant tenancy agreement having ended.

9. Parties were not in dispute on the following points:

(1) the Applicant paid a deposit of £550 around the time they moved into the Property, believed to be in 2009 (or earlier);

(2) the Respondent had not returned to the Applicant the £550 deposit sum paid;

(3) the Respondent did not lodge the Applicant's deposit with any approved statutory deposit scheme at any time after the first scheme became operational on 02 July 2012;

(4) the rent figure stated in the three tenancy agreements produced to the tribunal is £550 per calendar month;

(5) there is no evidence of the £550 rental sum failing to have been paid over to the Respondent and/or their agent(s) each month, that being the position year on year.

(6) the Applicant and Emil left the Property on 31 October 2025;

10. The Tribunal gave an opportunity for any additional points or comment to be made before making closing remarks.

Relevant Law

11. The relevant law is contained within the Housing (Scotland) Act 2006 and the Tenancy Deposit Scheme (Scotland) Regulations 2011. Section 120 of the 2006 Act provides as follows:-

"120 Tenancy deposits: preliminary
(1) A tenancy deposit is a sum of money held as security for—
(a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or
(b) the discharge of any of the occupant's liabilities which so arise.
(2) A tenancy deposit scheme is a scheme for safeguarding tenancy deposits paid in connection with the occupation of any living accommodation.

12. The 2011 Regulations provide as follows:-

"3.—(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.
(1A) Paragraph (1) does not apply—(a) where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and (b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord, within 30 working days of the beginning of the tenancy
(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.
(3) A "relevant tenancy" for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—
(a) in respect of which the landlord is a relevant person; and
(b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.
(4) In this regulation, the expressions "relevant person" and "unconnected person" have the meanings conferred by section 83(8) of the 2004 Act."

"4.—Subject to regulations 47 and 48, the duties in regulation 3 apply from the date which falls on the expiry of a period of 3 months beginning with the first date on which an approved scheme becomes operational."

"9—(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."

"10. 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."

*"47***.** *Where the tenancy deposit was paid to the landlord before the day on which these Regulations come into force, regulation 3 applies with the modification that the tenancy deposit must be paid, and the information provided, within 30 working days of the date determined under paragraph (a) or (b)—*
(a) where the tenancy is renewed, by express agreement or by the operation of tacit relocation, on a day that falls three months or more, but less than nine months, after the first day on which an approved scheme becomes operational [02 July 2012]*, the date of that renewal;*
(b) in any other case, the date which falls nine months after the first day on which an approved scheme becomes operational."

Findings in Fact

13. The Property is owned by the Respondent and Ali Bell. The Respondent is the registered landlord.

14. The Applicant and the Respondent entered into a tenancy arrangement in respect of the Property, which commenced on or before 20 April 2009.

15. The Applicant paid a tenancy deposit of £550 to the Respondent upon commencement of the said tenancy arrangement.

16. The tenancy was a short assured tenancy under Section 32 of the Housing (Scotland) Act 1988. The tenancy is a relevant tenancy for the purpose of Regulation 3 of the 2011 Regulations.

17. In terms of Regulation 3(a) and (b), and Regulation 47(b) of the 2011 Regulations the deposit should have been lodged with an approved scheme by 15 May 2013 and the relative information provided to the Applicant under Regulation 42.

18. The Applicant's deposit was never paid into any of the approved tenancy deposit schemes.

19. The Applicant's tenancy arrangement ended on 31 October 2025.

20. The Applicant's deposit was not returned to them by the Respondent.

21. From 20 April 2009 until the Applicant's tenancy arrangement ended on 31 October 2025, the tenant was obligated to pay rent of £550 per calendar month in advance. The 'short assured' tenancy agreement ("made…2008") dated 20 April 2009 and 01 July 2009 between the Applicant and the Respondent; the 'short assured' tenancy agreement ("made…April 2012) dated 23 April 2012 between the Applicant and the Respondent; and the 'short assured' tenancy agreement ("made…September 2013") dated 24 September 2013 between the Applicant and Emil, and the Respondent, each stated a dfferent deposit sum(s) due by the tenant.

Reasons for Decision

22. Having considered the documents before it, including the written representation dated 08 June 2026 by Pure Property on behalf of the Respondent; and the oral submissions from Emil on behalf of the Applicant and himself, and Mr Puren's on behalf of the Respondent, the Tribunal considered it could make relevant findings in fact in order to make a decision on the application at the CMD, and in the absence of a hearing under Rule 18 of the Rules. The Tribunal determined that there were no substantive facts in dispute that would require a hearing to be fixed, and that proceeding to a decision following the CMD would be in accordance with the Tribunal's overriding objective under Rule 2 of the Rules to avoid delay so far as compatible with proper consideration of the issues.

23. The Tribunal was satisfied that the tenancy between the parties was a relevant tenancy for the purpose of Regulation 3(3) of the 2011 Regulations. The Regulations specify clear duties, which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within the specified period and provide information to the tenant regarding the deposit. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy arrangement.

24. In terms of Regulation 3 and 47(b) of the 2011 Regulations, the Respondent in this case required to pay the deposit over to a deposit scheme no later than 15 May 2013. The deposit had not been lodged with an approved tenancy deposit scheme. The Tribunal therefore found the Respondent to be in breach of Regulation 3.

25. Regulation 10 states that in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly, having been satisfied that the Respondent failed to comply, the Tribunal then had to consider what sanction to impose having regard to the particular facts and circumstances of the case. The application of the sanction must seek to act as a penalty to landlords and ensure compliance with their statutory duties in relation to tenancy deposits.

26. The Tribunal had regard to the decision of Sheriff Cruickshank in Ahmed v Russell (UTS/AP/22/0021) which provides helpful 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 same in reaching its decision. The Tribunal is then entitled to assess a fair and proportionate sanction to be anywhere between £1 and three times the sum of the deposit, which in this case is £1,650.

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."

27. The Tribunal considered the aggravating factors in this case. The failure to lodge the Applicant's deposit with any of the approved tenant deposit schemes is a failure on the part of the Respondent. The Respondent is responsible for ensuring they comply with their statutory obligations. The Respondent cannot deflect from those obligations. The Applicant was without the benefit of their deposit being protected within a statutory scheme for the period 15 May 2013 to 24 September 2013 when Emil became a joint tenant, and indeed subsequently until they left the Property on 31 October 2025 under their longstanding tenancy arrangement. The Applicant was without the benefit of the scheme's relative dispute resolution mechanism available to parties. The tribunal is not satisfied on the Respondent's explanation that no deposit was

due to be paid into the statutory scheme as they intended the monies to be applied towards a subsequent month's rental sum (absent of evidence to support the assertion) notwithstanding the statutory obligation to protect their tenant's deposit was already extant. The Applicant did not receive return of their deposit or any part thereof from the Respondent. The Applicant's son Emil obtained correspondence directly from Safe Deposit Scotland which contradicted the position that had been stated to him by Pure Property regarding the whereabouts of the Applicant's deposit. While conducting their investigations into the deposit whereabouts, it transpired the Respondent had not provided all tenancy paperwork to their agent Pure Property. This caused confusion: the Respondent's position about the deposit had contradicted the paperwork held by Pure Property at that point and appears to have contributed to a delay in the agent establishing a factual position to inform the (former) tenant. Additionally, the Respondent was said to have instructed Pure Property not to disclose their address to Emil despite the statutory obligation upon the agent to do so. There is a strict time constraint regarding application to the First-tier Tribunal under the Tenancy Deposit Schemes (Scotland) Regulations 2011 and there was a risk of the Applicant's application falling to be submitted outside of that time period. A property management agent familiar with handling private residential tenancies will be familiar with the time constraints and it is not inconceivable for an experienced landlord with a portfolio of properties likewise to be aware of the same.

28. The Tribunal went on to consider whether there were any mitigating factors in this case. The Applicant's son was not inclined, on behalf of the Applicant, to pursue a negotiated settlement with the Respondent's agent Pure Property. The tribunal noted the monthly rental sum had remained the same and without any increase since the Applicant commenced their tenancy arrangement in 2009 until they left some sixteen and a half years later on 31 October 2025. The Respondent had held the Applicant's deposit for some 3+ years when the obligation upon them to protect the deposit had come into effect, and that was a new statutory requirement upon landlords. Nonetheless, the Respondent failed in their statutory obligation to protect their tenant's deposit timeously. The Applicant had to be put to the inconvenience of their own inquiry regarding the return of their deposit and to press for the Respondent's address to be provided to them as required by the First-tier Tribunal, all while the time limit for their application regarding sanction was getting closer to expiry.

29. Accordingly, having weighed the aggravating and mitigating factors in this case the Tribunal considered that the level of culpability was significant, when measured against the nature and extent of the breach. Accordingly, the Tribunal determined a two-thirds sanction would be appropriate in this case, being two times the deposit sum, therefore a sanction of £1,100.

Decision

30. The Tribunal therefore made an order for payment in the sum of £1,100.

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.

Elaine Paton, Legal Member **03 July 2026**