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

Chamber Ref: FTS/HPC/PR/26/0184

Re: Property at 38/5 Hutchison Road, Edinburgh, EH14 1PF ("the Property")

Parties:

Miss Shivani Sachin Danage, Apartment 18, Shackleton Glebe, Lucan, Dublin, K78F8YO, Ireland ("the Applicant")

Ms Flora N Tina, 11 Stevenson Road, Edinburgh, EH11 2SF ("the Respondent")

Tribunal Members:

Elaine Paton (Legal Member)

Decision

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 THREE THOUSAND AND ONE HUNDRED POUNDS (£3,100) Sterling under Regulation 10.

Background

1. 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 the Applicant sought a sanction 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 2pm. 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 29 May 2026.

3. Both parties were invited to make written representations in advance of the CMD. The Respondent submitted a response to the application dated 15 June 2026. 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. Both parties were present and represented themselves.

5. The Tribunal had the following documents before it:- (1) Form G application form dated 12 January 2026; (2) copy tenancy agreement papers regarding the Property; (3) evidence in relation to payment of the deposit sum; (4) evidence regarding the end date of the tenancy; (4) screenshots of communications from The Letting Protection Service Scotland, My Deposit Scotland, and Safe Deposits Scotland; and (5) submission by the Respondent dated 15 June 2026 with pages from a tenancy agreement, evidence of repaying of the deposit (under a deduction) and screenshot text message.

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, the Applicant stated they wished the Tribunal to order a sanction against the Respondent, their (former) landlord, as a result of the failure to lodge their deposit with one of three approved tenancy deposit protection schemes within 30 working days of the commencement of their tenancy on 10 May 2024. The Applicant stated she generally handled the payment obligations on behalf of herself and the two other tenants in the Property and that the Respondent handled all the tenancy matters albeit her husband was noted as a second landlord in the tenancy paperwork. The Applicant explained the other tenants had transferred their share of the deposit to her and would also transfer their share of the ongoing rental to her. The Applicant continued to explain that even if the other tenants were still to transfer their share of the rent to her, she would ensure the rent was paid to the Respondent on or around the due date each calendar month. In response to the Tribunal, the Applicant stated she transferred two sums of £3,000 and £100, thus a total of £3,100, from her Classic Vantage account to the Respondent's bank account on 01 May 2024, which payments represented the deposit of £1,550 plus the tenants' first month rent of £1,550 regarding the tenancy which commenced on 10 May 2024. The Applicant stated the parties were agreed that the tenancy would end on 15 October 2025 and explained the last rent payment of £1,550 was paid to the Respondent on or around 10 September 2025. The Applicant confirmed the tenancy deposit had been repaid to her directly by the Respondent under deduction of a sum of £200 which represented a restricted sum of rent for the period 10 to 15 October 2025. In response to the Tribunal, the Applicant confirmed that she had paid over the to the other tenants their respective share of the returned deposit. The deposit payment to the Respondent was evidenced in a screenshot of the Applicant's bank transactions. Lodged with the application were three screenshots from each of the approved tenancy deposit schemes, namely The Letting Protection

Service Scotland, My Deposits Scotland, and Safe Deposits Scotland, stating there was no record of any deposit held by them on behalf of the Applicant in relation to the Property. Responding further to the Tribunal, the Applicant stated she had not considered what figure of sanction ought to be ordered and there would have been no application made to the Tribunal had it not come to the Applicant's attention that a package comprising clothing and some deeply personal items that had been sent to the Property and received there sometime after the tenancy ended had apparently been disposed of by the Respondent and without attempt to contact her to arrange collection; also that the new tenants had been asked by the Respondent not to communicate with the Applicant.

8. The Respondent confirmed that the tenancy commenced on 10 May 2024 and had ended on 15 October 2025. The Respondent explained that before moving into the Property she had discussed tenancy terms with the Applicant and the Applicant had wanted a lower rent figure than the £1,600 the Respondent was seeking. The Respondent continued to explain that the Applicant had paid £3,000 in relation to two month's rent as this reflected the monthly sum of £1,500 that the Applicant wanted to pay however the Respondent had insisted that the rental figure could only be reduced by £50, to £1,550 per month. The Respondent stated this was why the Applicant had paid two sums: £3,000 plus £100 on 01 May 2024. The Respondent confirmed that she dealt with the tenancy matters and was the owner of the Property. The Respondent stated her husband was listed as a joint landlord on the tenancy agreement but she had only included him in case he needed to become involved if she became unwell, explaining that she had a health condition. Responding to the Tribunal on why the Property did not appear on the landlord register the Respondent was confused and stated she was registered and went on to provide a note of her landlord registration number. At this time the Respondent alluded to having more than one rental property. The Respondent stated most communications about the tenancy were with the Applicant however the other two tenants, one being the Applicant's boyfriend at the time and a friend of theirs, another male, did contact her also, generally if there was a minor item at the Property needing attention. The Respondent stated her position regarding the deposit sum in the same terms as her written representation dated 15 June 2026: she accepted an advance payment equivalent of two months' rent however having sought advice from Citizens Advice Bureau and the Scottish Association of Landlords she had noted an amount in excess of the monthly rental sum might be regarded as a deposit which required to be protected in an approved tenancy deposit scheme. The Respondent apologised for her mistake and stated she was now fully understanding of her obligations going forward. The Respondent produced two pages of a tenancy agreement which purported to support her understanding of the tenancy arrangement regarding the rent and deposit sums at the start of the tenancy arrangement. In relation to the tenancy end date, the Respondent stated this had originally been expected to be 10 October 2025 however the tenants stayed in the Property until 15 October 2025. The Respondent spoke to the tenants regarding the rent for the additional days, and explained she had calculated this on a daily charge totalling £258.33 but following discussion she agreed to restrict this sum to £200. The tenants had acknowledged rent was due and accepted the reduced sum of £200 therefore

it was agreed £200 would be deducted from the £1,550 held and the Respondent returned £1,350 to the tenants via a payment of this amount to the Applicant's bank account. The payment of £1,350 was evidenced by a screenshot of that amount sent to the Applicant's bank account and had been paid on 16 October 2025. In response to the Tribunal regarding a screenshot of a text message amongst her submission papers, the Respondent explained that she had offered to get cleaners to clean the Property as the tenants were moving out imminently but they declined, the Applicant indicating they were doing all of the cleaning before leaving. The Respondent stated the Applicant had wanted the deposit returned before the tenants had left the Property. The Respondent stated the tenants left without the Property having been properly cleaned. By way of explanation, the Respondent stated she had completed a full renovation of the Property, then it had then been messed up by other tenants however, despite the Property not having been returned to the renovated condition, the Applicant and her friends had wanted to move in. The Respondent mentioned that the Property had not been left in a good state of cleanliness when the Applicant had left. Instead of instructing a cleaning company, the Respondent stated she had obtained assistance from prospective new tenants to clean the Property as they were keen to move into the Property. Consequently, the Respondent had not had to consider a reduction to the deposit in relation to the cleaning costs.

9. Both parties explained the relationship between them had originally been good however they each then had issues in relation to the other and the relationship had become acrimonious. The Tribunal summarised the various points it had noted and explained that each party would be invited to provide any further comment relevant to the application that they wished the Tribunal to be take into consideration before the hearing would be brought to a close. The Respondent stated that it was not appropriate for the Applicant to have arranged for packages to be delivered to the Property after she had already moved out and the Applicant was no longer residing in Scotland; also, that the Applicant had made accusations about her disposing of personal items belonging to the Applicant which she denied. The Applicant stated that she wanted to highlight to the Tribunal that the tenancy agreement pages produced by the Respondent did not reflect the agreement that she had in front of her – for example: there was a phrase at clause 8 "+ one month advance rent" added in handwriting that was not on her copy, also at clause 11 "no deposit" is written and that was not on her copy. Parties' oral submissions had become heated. The Tribunal instructed both parties to remain on mute as it would be making closing remarks, however there was then cause to remind both parties to mute themselves. The hearing was brought to a close and parties were asked to leave the call however both delayed and required further prompting to hang up. The Respondent continued to stay on the call despite being told again to hang up, the clerk ultimately having to expel the Respondent from the telephone conference call.

Relevant Law

10. 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.

11. 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."

"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."

Findings in Fact

12. The Applicant and the Respondent (with others) entered into a tenancy agreement in respect of the Property, which commenced on 10 May 2024.

13. The Applicant is a tenant and the Respondent is a landlord in terms of the tenancy agreement.

14. The Respondent is a registered landlord however there is no entry for the Property in the Scottish Landlord Register.

15. The tenancy was a private residential tenancy under section 1 of the Private Housing (Tenancies) (Scotland) Act 2016. The tenancy is a relevant tenancy for the purpose of Regulation 3 of the 2011 Regulations.

16. On or around 01 May 2024 the Applicant paid a tenancy deposit of £1,550 to the Respondent.

17. In terms of Regulation 3(a) and (b) of the 2011 Regulations the deposit should have been lodged with a scheme within 30 working days of 10 May 2025, and the relative information provided to the Applicant under Regulation 42.

18. The Applicant’s deposit was not paid into an approved tenancy deposit scheme.

19. The Applicant’s tenancy ended on 15 October 2025.

20. The tenancy deposit was returned to the Applicant by the Respondent on or around 16 October 2026, under deduction of a restricted sum of £200 for the regarding the tenant’s occupancy of the Property during the period 10-15 October 2025. The Applicant received return of £1,350.

Reasons for Decision

21. The Tribunal considered it could make relevant findings in fact in order to make a decision on the application, having considered the documents before it and the submissions from the Applicant and from the Respondent 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.

22. 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 thirty working days of the beginning of the tenancy 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.

23. In terms of Regulation 3 of the 2011 Regulations, the Respondent in this case required to pay the deposit over to a deposit scheme no later than 21 June 2024. The deposit was not lodged with any of the approved tenancy deposit schemes during the currency of the tenancy arrangement. The Tribunal therefore found the Respondent to be in breach of Regulation 3.

24. 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 Respondents 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.

25. 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 £4,650.

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."*

26. The Tribunal considered the aggravating factors in this case. The failure to lodge the Applicant's deposit 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. There was no agent employed by the Respondent to handle the tenancy arrangements. The Applicant was without the benefit of their deposit protected within a statutory scheme for the entire duration of their occupation of the Property under the tenancy agreement. There is a strict time constraint regarding application to the First-tier Tribunal under the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Property is not registered in the Scottish Landlord Register.

27. The Tribunal went on to consider whether there were any mitigating factors in this case. The Respondent had admitted the Applicant's deposit had not been lodged with an approved tenancy deposit scheme. The Respondent apologised for her failure and having obtained advice, she was now fully aware of her obligations. The Applicant had received return of the full deposit sum under deduction of the rent for the period 10 to 15 October 2025 which the Respondent had restricted to a lower figure in consultation with the tenants. No

cleaning charge was made to the tenants after they had left the Property. The deposit payment was made by the Respondent to the Applicant the day after the tenancy ended. The Applicant continued to use the Property address in relation to the delivery of packages despite no longer residing there, nor indeed residing in Scotland. The Respondent failed in her obligation to protect the tenants' deposit for the entire period of their tenure in the Property and the Property is not registered in the Scottish Landlord Register.

28. 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 that a fair and proportionate sanction in this case would be two times the deposit sum, therefore a sanction of £3,100.

Decision

29. The Tribunal therefore made an order for payment in the sum of £3,100.

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 **06 July 2026**