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 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/25/5166

Re: Property at 9 Birch Road, Killearn, Glasgow, G63 9SG ("the Property")

Parties:

Mrs Lynne MacColl, 36 Station Road, Killearn, G63 9NY ("the Applicant")

Mr Frank Nuttall, Ms Louise Nuttall, ST Donat's, Miskin Road, Miskin, CF72 8JN; St Donat's Miskin Road, Miskin, CF72 8JN ("the Respondent")

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Second Named Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Landlord is in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("Regulation 3"). The Respondent shall make payment to the Applicant in the sum of £3200 (THREE THOUSAND TWO HUNDRED POUNDS).

Background

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 which was dated on 25th November 2025. The Application stated that a deposit of £3200 had been paid but not lodged in an approved scheme within 30 working days from the start of the tenancy.

2. On 26th May 2026, all parties were written to with the date for the Case Management Discussion ("CMD") of 29th June 2026 at 10am by teleconferencing. The letter also requested all written representations be submitted by 16th June 2026.

3. On 27th May 2026, sheriff officers served the letter with notice of the CMD date and documentation upon both the Respondents which was received for both by personal service upon the Second Named Respondent. This was evidenced by Certificate of Intimation dated 27th May 2026.

The Case Management Discussion

4. A CMD was held on 29th June 2026 at 10am by teleconferencing. The Applicant was present and represented herself. The First Named Respondent was not present but was represented by Carla Boylan, Partner, Russells Gibson and McCaffrey. The Tribunal proceeded in terms of Rule 29 of the Rules in terms of the Second Named Respondent. The Second Named Respondent did not may any representations in advance of the CMD.

5. The Tribunal explained the purpose of the CMD, the overriding objective of the Tribunal and the powers available to the Tribunal to determine matters.

6. The Applicant said that she moved into the Property on 1st September 2023 and left on 1st September 2025. The Applicant said that she paid her deposit to the Respondents when she moved in. She has received her full deposit back. Ms Boylan said that the Respondents returned the deposit within 14 days of the end of the tenancy. She said that there were disputes over damages but that the deposit was returned regardless. She considers this to be a mitigating factor in terms of any penalty.

7. Ms Boylan said that the First Named Respondent admitted the breach. The Second Named Respondent was not involved with the process at all. The Tribunal said that both Respondents were jointly and severally liable. Ms Boylan agreed on that point and that it was not in dispute. The Second Named Respondent has not instructed her.

8. The Applicant said that she was upset that her deposit had not been protected for the duration of the tenancy. She said that the Respondent had removed the clause about tenancy deposits from the lease. She said that she had lived in the Property because she wanted to remain in the village. She had lived in the village prior to moving into the Property. She bought a house in the village after leaving the Property. She is aware that the Property has since been rented out again. She believes that the deposit has again not been lodged in an approved scheme. The Applicant said that she is very frustrated by the Respondents approach regarding not adhering to the law.

9. Ms Boylan said that the First Named Respondent sought legal advice on 27th May 2026. He had been served with the papers on 27th May 2026. Ms Boylan was on annual leave from 2nd – 11th June 2026. She was then able to advise him in terms of his legal obligations in terms of being a landlord. He had not lodged either the Applicant's deposit or the new tenant's deposit in an approved scheme. Once he had been advised by Ms Boylan he lodged the new tenant's deposit in an approved scheme. Ms Boylan explained that while it is late being deposited in an approved deposit scheme the Respondent was under the misbelief that lodging a deposit in an approved deposit scheme was a best practice as opposed to a legal requirement. He was of the view that he did not require to do this so did not do it. He now is aware that this is not the case and that it is a legal requirement to lodge a deposit in an approved deposit scheme.

10. The Tribunal noted that there was mention of repairs and damage in the Property. This is not an issue for this Tribunal under Rule 103. As such it did not pursue further evidence on these points.

11. The Tribunal was satisfied that it was appropriate to grant an order for one times the deposit in favour of the Applicant as the breach had been admitted. The Respondent has taken steps to ensure that all future deposits are lodged in an approved scheme once he had been served with these papers and had sought the appropriate legal advice.

Information for parties

12. 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 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy.

13. Regulation 9 of the 2011 Regulations indicates that if a landlord does not comply with any duty in regulation 3 then the Tribunal must order that a Landlord makes payment to the Tenant of an amount “not exceeding three times the amount of the tenancy deposit”. Those duties are twofold. 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.

14. It seems to be conceded by the Respondents that the deposit had not been paid into an approved tenancy deposit scheme in accordance with the 2011 Regulations with a period of 30 working days from the commencement of the tenancy and that in this case the Respondents are in breach of the 2011 Regulations.

15. If that is the case, then the Tribunal is required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment. It is a matter of judicial discretion as to the amount of the penalty, this is based upon the evidence before the Tribunal.

16. Parties should be aware that there are numerous decisions available on the Tribunal website setting out how the Tribunal has determined these applications.

17. Prior to the jurisdiction to determine these applications becoming part of the jurisdiction of the First-tier Tribunal, the applications were determined in the Sheriff Court. There were numerous Sheriff Court decisions which have been reported. In many of these cases, the Sheriff Courts have indicated that the Regulations were introduced to address what was a perceived mischief and that they will be meaningless if not enforced.

18. One such reported case is ***Phoebe Russell-Smith, Stephanie Dion-Jones and Alexis Herskowit v. Ijeoma Uchegbu*** ([2016] SC EDIN 64) a decision by

Sheriff Welsh. In that case the sheriff calculated the award to be made by considering two broad aspects to the sanction, firstly an element to mark the sustained period of time which subjected the tenants and the deposit to a risk the regulations were designed to avoid and secondly, a weighting (or financial penalty) to reflect the fact that the landlord was aware of their obligations and still failed to comply. It should be noted that this is not the only method which a Tribunal can use to determine the amount to be awarded.

19. In a decision by Sheriff Principal Stephen at Edinburgh Sheriff Court in December 2013, the Sheriff Principal indicated that the court was "entitled to impose any penalty including the maximum to promote compliance with Regulations". (***Stuart Russell and Laura Clark v. Samdup Tenzin*** 2014 Hous.L.R. 17).

20. The Tribunal notes that in an Upper Tribunal decision, (***Ahmed v Russel*** UTS/AP/22/0021 2023UT07) Sheriff Cruickshank 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 relevant factors as may be present***". The amount awarded should represent "***a fair and proportionate sanction when all relevant factors have been appropriately balanced***".

Findings and reason for decision

21. A Private Residential Tenancy Agreement commenced 1st September 2023. The tenancy ended on 1st September 2025.

22. A deposit of £3200 was paid on or around 1st September 2023.

23. The deposit was not lodged within an approved deposit scheme within 30 days from the start of the tenancy.

24. The Respondents admits the breach of the Regulations. The First Named Respondent has now taken legal advice from a solicitor as to his legal obligations as a landlord including his obligation to lodge any deposit within an approved scheme within 30 working days from the start of the tenancy. The First Named Respondent managed all the tenancy aspects of the tenancy.

25. The Applicant was returned her full deposit within 14 days of the end of the tenancy.

26. The First Named Respondent and the Second Named Respondent are both jointly and severally liable for the penalty regardless of which of the Respondents dealt with the management of the Property.

27. The Respondent has failed to comply with the regulations to ensure that the deposit was lodged in an appropriate scheme within 30 days from the start of the tenancy. The Respondent has engaged with the Tribunal process to advise

why this has happened and what steps have been taken to ensure that it will not happen again.

Decision

28. The Respondents have a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The First Named Respondent, who dealt with the management of the Property, did engage with the Tribunal process to explain why the deposit was late and what steps had been taken to prevent such a situation happening again. The Respondents returned the full deposit to the Applicant within 14 days of the tenancy ending. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant one times the amount of the deposit (£3200).

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.

Gabrielle Miller

29th June 2026

Legal Member/Chair **Date**