Housing and Property Chamber
First-tier Tribunal for Scotland

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The Regulations")

Chamber Ref: FTS/HPC/PR/26/0701

Re: Property at 26C James Street, Stirling, FK8 1UG ("the Property")

Parties:

Mr Lewis Simpson, 229 Grahamsdyke Street, Laurieston, Falkirk, FK2 9NA ("the Applicant")

Mrs Susan Fullerton, 14 Glen Lochay Gardens, Cumbernauld, Glasgow, G68 0DY ("the Respondent")

Tribunal Members:

Robert MacDonald (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order is granted against the Respondent for payment of the Sum of One thousand two hundred pounds (£1200) Sterling to the Applicant.

<u>Background</u>

1. By application dated 12th February 2026 the Applicant sought an order for payment in respect of the failure of the Respondent to comply with Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("The 2011 Regulations"). The Applicant complained that the Respondent had failed to lodge his deposit of £1200 in respect of a Private Residential Tenancy with an approved Tenancy Deposit Scheme.

2. The application was accepted by the Tribunal on 24th February 2026. A Case Management Discussion was assigned for 5th August 2026 by teleconference. A copy of the application was served on the Respondent by Sheriff Officer

depositing it at her place of residence on 1st July 2026. The Respondent was invited to lodge written submissions with the Tribunal by the 21st July 2026.

3. On 19th July 2026, the Respondent lodged a submission in writing with the Tribunal. The submission was copied over to the Applicant by the Tribunal on 4th August 2026.

Case Management Discussion

4. A Case Management Discussion was held by teleconference at 10am on the morning of 5th August 2026. Both parties were personally present.

5. The Tribunal noted that the submission by the Respondent, which had been lodged timeously, had been sent out to the Applicant the previous day. As a preliminary point, the Tribunal discussed with the Applicant whether he required further time to consider the submission which had been lodged on behalf of the Respondent, or whether he was content that the Case Management Discussion proceeded that day. The Applicant advised the Tribunal that he had read through the Respondent's submission and that there was nothing in the submission that he had not expected to see and that he was content for the Tribunal to continue with the Case Management Discussion.

The Applicants Submission

6. The Applicant confirmed to the Tribunal that he had paid a deposit of £1200 to the Respondent at the start of the tenancy.

7. Prior to the tenancy agreement being signed he received an email sent by the Respondent to the Applicant dated 3rd November 2022 which stated: -

   Once I receive your deposits, I will be paying them across to Safe Deposits Scotland. This is an independent charity who will hold your deposit for the length of the tenancy.

   The terms of clause 10 of the Private Residential Tenancy Agreement that was subsequently entered into between the parties, dated 4th and 10th November 2022, included the provision that:-

   The Landlord must lodge any deposit they receive with a tenancy deposit scheme within 30 working days of the start date of the tenancy. A tenancy deposit scheme is an independent third-party scheme approved by the Scottish Ministers to hold and protect a deposit until it is due to be repaid. The scheme administrator is Safedeposits Scotland and their contact details are: https://www.safedepositsscotland.com/ info@safedepositsscotland.com

On the basis of what had been agreed the Applicant had understood that the tenancy deposit was being placed by the Respondent with SafeDeposits Scotland. The Applicant was not aware that when a tenancy deposit was paid to an approved tenancy deposit scheme that he would receive notification from the scheme administrator that they had received it. He had no reason to believe that the deposit had not been placed with the SafeDeposits Scotland as the Respondent had advised it would be.

8. At the end of the tenancy on or about 18th December 2025 the Applicant received a Whatsapp message from the Respondent which included the following: -

   I have the deposit in my own bank account which will mean a much quicker refund of the deposit. I would just need you to confirm your bank details for me to refund you as I don't have a note of that.

   The Applicant's position was that this was the first intimation he had received that the Respondent had not paid the deposit to a recognised provider and that it was in her bank account. He confirmed that he left the property on or about 29th December 2025 having received notice from the Respondent that she intended to sell the property, and that the Respondent had thereafter repaid the tenancy deposit to him in full two days later.

   He pointed out that his deposit had been unprotected for the whole of what had been a relatively long tenancy. Although ultimately, he had received his deposit back without delay, that didn't take away from the fact that the tenancy deposit had been at risk. Whereas he had considered the medical evidence lodged on behalf of the Respondent, he noted that her diagnosis predated the commencement of the tenancy. The Respondent must have been aware as a result of the diagnosis that her ability to deal with organisational matters might be impaired. There were steps she could have taken, such as hiring an agent to deal with the tenancy, that would have prevented this situation arising.

<u>The Respondents Submission</u>

9. The Respondent had submitted a detailed written response to the Tribunal and had little to add to that. She accepted that the deposit had not been placed with an approved deposit scheme provider as required in terms of the Regulations and as set out in the Private Residential Tenancy Agreement and her earlier email to the Applicant. In response to a question from the Tribunal about the circumstances under which the deposit was not placed on with a recognised deposit scheme provider, she confirmed that her position was that she had intended to do so when the deposit was taken. She said that she had previously had two other sets of tenants in this property and their deposits had been placed with a recognised deposit scheme provider. She had understood this was good practice for a responsible landlord. She had described her failure to do so as an oversight in her written submission to the Tribunal. She clarified this by

explaining that her “oversight” was not realising that there was a legal requirement to do so. It hadn’t occurred to her thereafter during the term of the tenancy that she should put the deposit on with a recognised provider.

10. The Respondent advised the Tribunal that this was the only property she had rented out and after she had recovered possession from the Applicant, she had sold the property. She is not currently a landlord. She said that she genuinely didn’t realise it was a legal requirement to put the deposit on with a recognised deposit scheme provider. She directed the Tribunal to the medical evidence submitted in relation to a diagnosis of ADHD which she said affected her organisational abilities. She reminded the Tribunal that the Applicant had not sustained any loss as a result of her failure. She submitted that the statutory maximum of three times the tenancy deposit sought by the Applicant was neither fair, proportionate, or just in all the circumstances. She pointed out that there had been no delay in the deposit being repaid to the Applicant.

11. The Tribunal advised the parties that it would take some time to consider the detailed submissions made both in writing and at the Case Management Discussion and would issue a decision in due course.

<u>Findings in Fact and Law</u>

12. The parties entered into a Private Residential Tenancy Agreement which commenced on 10th December 2022.

13. The Respondent advised the applicant prior to the commencement of the Private Residential Tenancy agreement that his deposit would be placed with SafeDeposits Scotland.

14. In terms of the Private Residential Tenancy Agreement the Respondent had contracted with the Applicant that the deposit would be placed with SafeDeposits Scotland.

15. The Applicant paid a deposit of £1200 to the Respondent on 23 December 2022.

16. The Respondent failed to lodge the deposit of £1200 with SafeDeposits Scotland or any other approved tenancy deposit scheme under Regulation 3 of the 2011 Regulations.

17. The tenancy ended on the 29th of December 2025.

18. The Respondent returned the tenancy deposit in full to the Applicant on 31st December 2025.

19. The Respondent was in breach of her duties under Regulation 3 of the 2011 Regulations which provide

> *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.*
>
> *(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.*

20. The Tribunal must grant an order in terms of Regulation 10 which provides

> *10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—(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 sheriff 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.*

Reasons for Decision

21. Rule 17 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 allows the Tribunal to do anything at a Case Management Discussion which it may do at a hearing including making a decision. The Tribunal was satisfied that there was sufficient information available to it to make a decision at a Case Management Discussion. Both parties agreed that no further procedure was required.

22. The Tribunal was satisfied that the Respondent had failed to comply with the duties set out in Regulation 3. The deposit had not been placed with a scheme administrator of an approved scheme at any time during the tenancy.

23. The Tribunal determined that the Respondent's failure to lodge the deposit with an approved Tenancy Deposit Scheme was serious. She had made it clear to the Applicant prior to the tenancy agreement being entered into that such a payment would be placed with a Tenancy Deposit Scheme provider in this case Safe Deposits Scotland. Her position was that the oversight on her part was not realising that there was a legal obligation to place it with a recognised deposit provider. She had understood that it was good practice to do so and she accepted she hadn't done it in this case, but it appeared as if the failure to place it with a provider was not itself the oversight, it was a failure to understand the legal position.

24. The Tribunal noted that it was accepted by the Applicant that the deposit had been paid back to him in good time at the end of the tenancy and that he hadn't sustained a loss. The tenancy deposit was however unprotected for the whole of the duration of the 3 year tenancy agreement.

25. The 2011 Regulations had been in place for more than ten years prior to the commencement of this tenancy agreement. The onus lay with the Respondent as a landlord to familiarise herself with the legal requirements imposed on landlords in terms of the Regulations. The Respondent knew that deposits could be placed with a recognised provider because she accepted that she had done that in the past. The purpose of the Regulations is to protect tenants deposits and to avoid tenants being disadvantaged when tenancies come to an end, as there is an independent process to resolve any disputes between landlords and tenants which is carried out by the approved deposit scheme. In this case there was no dispute and the money was repaid to the Applicant quickly.

26. In terms of Regulation 10 if it is satisfied that the landlord did not comply with their obligations under Regulation 3 the Tribunal is required to make a payment

order of up to 3 times the deposit. In this case the maximum penalty the Tribunal could impose is £3600.

27. Having taken into account all the facts and circumstances of this particular case, the Tribunal took the view that the Respondent's failure was serious and prolonged, but that it was not at the most egregious end of the scale. The purpose behind the deposit regulations had not been circumvented by the failure to place the deposit on with an approved provider.

28. The Tribunal decided that a fair, reasonable and proportionate sum that the Respondent should be ordered to pay to the Applicant would be one thousand two hundred pounds £1200.

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.

Robert MacDonald	06.08.2026
Legal Member/Chair	**Date**