



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/26/0875

Re: Property at Flat A, 14 Merkland Road East, Aberdeen, AB24 5PR (“the Property”)

Parties:

Mr Mohammed Shiyaf Nellikunnan, Flat E, 3 Froghall Gardens, Aberdeen, AB24 3JQ (“the Applicant”)

Mr Muhammad Abdullah Javed, Flat 4, 203 Uttoxeter New Road, Derby, DE22 3NP (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £800.00 be made in favour of the Applicant.

1. Background

- 1.1 This is an application under rule 103 of the Chamber rules whereby the Applicant sought an order for payment in respect of an alleged failure by the Respondent to comply with their obligations under the 2011 Regulations. The application was accompanied by, amongst other things, copies of the messages between the parties, correspondence from the deposit schemes and evidence of payment of the deposit.
- 1.2 The Respondent lodged written representations together with supporting documents as well as a hand written statement from the Respondent in advance of the Case Management Discussion. The Applicant lodged a further written submissions in response to that lodged by the Respondent.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 24 August 2026 by teleconference. Both parties attended personally.
- 2.2 The Tribunal made parties aware of the scope of the application. Much of the written representations lodged dealt with the issue of the return of the deposit and an apparent agreement between the parties to mediate the dispute regarding that. The Tribunal indicated that the application did not concern repayment of the principal sum and, as such, much of that may not be relevant.
- 2.3 The Tribunal heard from the Applicant. His agreement with the Respondent began on 1 September 2025. He took occupancy on 6 September 2025. The terms of his occupancy were contained in the Whatsapp messages with the Respondent. He paid £100.00 of the deposit on 20 August 2025, with the balance of £200.00 paid on 7 September 2025. In terms of his occupancy, he had sole use of one bedroom, being the left bedroom as you entered the Property and shared use of a living room, kitchen and bathroom. There was another tenant occupying the other bedroom. The Respondent gave him notice to end their agreement and it came to an end on 31 January 2026 when he vacated the Property. The deposit he paid was not lodged with any scheme. He had not received repayment of it since leaving the Property.
- 2.4 The Respondent confirmed he was in agreement with the terms upon which the Applicant occupied the Property, as had been narrated. The Respondent's brother, Abdullah Javed, was the principal tenant of the Property. He had moved to Derby for a period and had tasked the Respondent with letting the Property. The Respondent advised that he was not acting as a letting agent for his brother. He entered into the agreement with the Applicant. He lived at a neighbouring property for the duration of the Applicant's occupation. He had advertised the Property for let on Facebook marketplace. The Applicant had contacted him and arranged to take occupation of the Property. He was the sole point of contact with the Applicant. He accepted that the deposit was taken in instalments as detailed by the Applicant. He had intended to lodge it with Safe Deposits Scotland but did not have the Applicant's full name. He knew him only as Shiyaf and believed he needed to verify his full name before lodging the deposit. He had requested the Applicant register for council tax at the Property. The Applicant advised he had done that on 19 December 2025 but he had never received evidence of it. The Applicant's occupation of the Property ended on 31 January 2026. The deposit was with a third party whom parties had agreed would mediate the dispute regarding its return. There was an ongoing dispute about the Applicant notifying the local authority of his liability for council tax. His brother's lease of the Property had now ended and the Applicant was not letting the Property anymore.
- 2.5 The Applicant accepted he had not provided his full name but that his Facebook profile would display the name Mohammed Shiyaf. The issue of

identification and council tax liability was not raised with him until 12 December 2025, when the time limit for lodging the deposit had already expired. He contacted the local authority on 19 December and provided the necessary information. He had not received repayment of the deposit.

2.6 The Tribunal indicated the Case Management Discussion would be adjourned and the Tribunal would consider the application further.

3. Findings In Fact

3.1 The Respondent had advertised the Property for let through Facebook Marketplace. The Applicant had contacted the Respondent and made an agreement through messages with the Respondent.

3.2 The Property is a two bedroom property. In terms of his occupation, the Applicant had sole use of one bedroom and shared use of the living room, bathroom and kitchen. The agreement between the parties began on 1 September 2025.

3.3 The Applicant took occupation on 6 September 2026. In connection with his occupation, he paid a deposit of £300.00 as agreed by Whatsapp messages with the Respondent.

3.4 The Applicant paid £100.00 of the deposit on 20 August 2026 and the remaining £200.00 on 7 September 2026. private residential tenancy between the parties commenced on 23 October 2025.

3.5 The Property was previously occupied by the Respondent's brother, Abdullah Javed. He was principal tenant during the Applicant's occupation. He had authorised the Respondent to let the Property.

3.6 The agreement between the parties and the Applicant's occupation ended on 31 January 2026.

3.7 The deposit was held by the Respondent throughout the duration of the Applicant's occupation. Following the end of the agreement, the Respondent remitted the deposit to a third party.

3.8 No information regarding the lodging of the deposit was given by the Respondent to the Applicant.

3.9 The parties have been in dispute regarding the return of the deposit since the end of their agreement. The deposit has not been returned by the Respondent.

4. Finding In Fact & Law

4.1 The Respondent is in breach of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 by virtue of his failure to lodge the

deposit within an approved tenancy deposit scheme and provide the Applicant with the prescribed information within thirty working days of the commencement of the tenancy.

5. Reasons For Decision

5.1 The Tribunal considered that the factual background to the application was sufficiently agreed that it could decide the application and a hearing was unnecessary. It was agreed that a deposit of £300.00 had been paid in connection with the parties agreement and that this had not been lodged with a scheme. Furthermore, the deposit had not been returned to the Applicant and the parties were in dispute over its return.

5.2 The Tribunal had required to consider whether the deposit required to be lodged. There appeared to be a convoluted arrangement in respect of the Property, where the Respondent's brother was principal tenant who was residing it elsewhere. The Respondent was, essentially, subletting it on his behalf. The duties in respect of a deposit are set out in regulation 3 of the 2011 Regulations, which are 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.

(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—

(a) the references to deposit were to each instalment of the deposit, and

(b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.

(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.

- 5.3 Regulation 3(3) sets out to whom the duties apply. In the present case, the Respondent is an unconnected person in that he is not a member of the Applicant's family. The Applicant's occupation is not one excluded by section 83(6) of the Antisocial Behaviour etc (Scotland) Act 2006 ("the 2006 Act"). In order to be a "relevant person" the Respondent simply must not be either a local authority, a registered social landlord or Scottish Homes, which he was not. Given that the Respondent was not the proprietor of the Property, nor was he the principal tenant, the Tribunal also considered whether he was a landlord within the meaning of the 2011 Regulations. Regulation 2 of the 2011 Regulations imparts the definition of landlord from the Housing (Scotland) Act 2006 ("the 2006 Act"). Section 196 of the 2006 Act defines landlord as "any person who lets a house under a tenancy, and includes the landlord's successors in title". It appears to the Tribunal that, as the Respondent was the person with whom the Applicant made an agreement and that he was acting under authority from his brother, he can be considered a landlord in terms of the 2011 Regulations, which apply to him.
- 5.4 In terms of Regulation 3 of the 2011 Regulations, the Respondent was obliged to lodge the deposit with an approved third party scheme within 30 working days of receipt of the instalments of the deposit and provide the Applicant with the information contained within Regulation 42. Therefore, the Respondent ought to have lodged the deposit with a scheme no later than 17 October 2025. The Respondent had failed to lodge the deposit within the prescribed time frame or provide the prescribed information to the Applicant.
- 5.5 Regulation 10(a) of the 2011 Regulations requires the Tribunal to make an order for payment in favour of the Applicant where the Respondent has breached the aforementioned duties. In that, the Tribunal has no discretion. The discretion of the Tribunal is limited to the amount the Respondent must pay which must not exceed three times the deposit taken. The Tribunal could therefore make an order for an amount up to £900.00.
- 5.6 In determining the appropriate sum, the Tribunal approached the matter of the amount by following the Upper Tribunal's reasoning in *Ahmed v Russell* 2023 S.L.T. (Tr) 33. The order for payment was a sanction upon the Respondent, not compensation for the Applicant, and ought to reflect the level of overall culpability measured against the nature and extent of the breach.
- 5.7 In the present case, the deposit had not been lodged at any point during the tenancy. The deposit was unprotected at all times. The Respondent had not returned the deposit to the Applicant. There had been a dispute between them as to whether it ought to be returned. The Applicant had been deprived of the dispute resolution process afforded by the approved schemes. The only mitigation offered by the Respondent was that he was not a professional landlord and is no longer letting any property however, this is of limited weight as it was incumbent upon him to ensure he was aware of his obligations before undertaking to let the Property to the

Applicant. Even if the Tribunal accepted that he was prevented from lodging the deposit by not having the Applicant's full name, this is just a further example of the irresponsible approach taken by him, by letting the Property to someone without satisfying himself as to who they were. Objectively, the agreement between the parties was of short duration and the Tribunal took this into account. The Tribunal therefore selected the sum of £800.00 as appropriate in the circumstances.

- 5.8 The parties had lodged representations relating to the performance of other obligations under the tenancy agreement including the Applicant making the local authority aware of his occupation for council tax purposes and an apparent agreement regarding mediation over the return of the deposit. Although these may have been the subject of dispute, the Tribunal placed no weight on these matters, given that they were not relevant to extent of the breach or culpability of the Respondent. A hearing was not necessary to consider evidence relating to these issues. Should either party wish to pursue the issue of the deposit or any other loss, the present application is not the appropriate forum for those to be considered.

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.

A. Houston

Legal Member/Chair

24 August 2026
Date