



Decision with Statement of Reasons 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/25/3075

Re: Property at 5 Ochil View, Shieldhill, Falkirk, FK1 2DP ("the Property")

Parties:

Miss Jordee Stalker, 8 Lint Riggs, Flat 4 Temperance House, Falkirk, FK1 1DG ("the Applicant")

Mr Simon Bence, Lorena Miquelia Bence, 62 Local Avenue, Sherburn Hill, Durham, DH6 1HQ ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Tony Cain (Ordinary Member)

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") made an award in terms of Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ordering that the Respondents pay the Applicants the sum of £1,400.00, being an amount equal to two times the value of the relevant tenancy deposit.

Background

[2] The Applicant seeks an award under the Regulations in respect of the failure of the Respondents to lodge a relevant tenancy deposit paid in the sum of £700.00 into an approved scheme as required by Regulation 3 until after the tenancy had ended. The Respondents have submitted information setting out their position about the Application. This includes material which may not be relevant as it appears to focus on the condition in which the Property may or may not have left by the Applicant at the end of the tenancy.

Prior Procedure

[3] The Application initially called for a Case Management Discussion (CMD) by conference call at 2pm on 12 January 2026. The parties were all personally present.

[4] The Tribunal decided to adjourn the Application to an evidential Hearing by conference call for evidence to be heard and a final decision to be made. The parties were directed to submit any further evidence or representations to the Application to be relied on at the Hearing by 12 February 2026.

[5] The Tribunal explained that it did not consider it appropriate or relevant for a Hearing of this nature to include detailed evidence about what condition the Applicant may or may not have left the Property in. Such an issue would have been relevant to a deposit adjudicator when the deposit was ultimately placed in a scheme. However, this Tribunal is not then tasked with stepping into the shoes of the deposit scheme and conducting the same exercise that might have taken place had the deposit been registered appropriately. This Tribunal is instead concerned with establishing the facts around any failure to register a deposit, considering any relevant mitigation and thereafter determining what, if any, sanction ought to be made in terms of the Regulations. Accordingly, the Tribunal explained that it would not allow parties to lead detailed evidence about the cleanliness of bedrooms and bathrooms etc in the Property at the end of the tenancy.

The Hearing

[6] The Application thereafter called for a Hearing by conference call at 10 am on 23 July 2026. The Applicant was present along with both Respondents. Mr Bence explained that he would principally do the talking for the Respondents. Neither party had any preliminary matters to raise. The Tribunal heard from both parties. The Applicant's position was clear and required little further explanation. She entered into a tenancy at the Property and paid the Respondents a deposit of £700.00 on 1 July 2022. The tenancy ended on 25 June 2025 and the deposit was not registered into an approved scheme until three weeks after the ending of the tenancy and after an exchange of emails between the parties regarding the matter.

[7] The Respondent had submitted representations setting out their position and Mr Bence spoke to those. He explained that he has difficulties with autism and problems understanding such matters. His evidence here was somewhat woolly as he appeared capable of holding down employment and having entered into various property transactions around the same time. There was some dispute about exactly what prompted the Respondent to pay the money into the scheme and whether this was because of the Applicant chasing, or a sudden realisation on the part of the Respondent. Mr Bence accepted, when asked directly by the Tribunal, that the truth of the matter was

that initially he was not going to return the deposit due to his own analysis of the condition of the Property. The Tribunal considered that to be a less than helpful element of his case. The Respondent explained that he had also rented out another Property. When asked directly why he didn't put the money into the scheme, his reply was that it was a stupid mistake and an oversight. He explained that he couldn't give a definite yes or no to the question of whether he knew about the Regulations and forgot about them or whether he had never known about the Regulations at all.

[8] Having heard from parties, the Tribunal made the following findings in fact.

- 1) *The Respondents let the Property to the Applicant with a tenancy commencing on 1 July 2022. The Applicant's tenancy ended and she vacated the Property on 25 June 2025.*
- 2) *At the commencement of the tenancy, the Applicant paid the Respondents a tenancy deposit in the sum of £700.00.*
- 3) *The Respondents failed to register the deposit into an approved scheme at any point during the tenancy.*
- 4) *The Respondent paid the deposit into the scheme three weeks after the end of the tenancy who then carried out the necessary adjudication process.*

[9] Having made the above findings in fact, the Tribunal had to determine what, if any, award ought to be made under Regulation 10. The Tribunal proceeded on the basis that the determination of the award required the Tribunal to exercise its judicial discretion to consider what would be fair, proportionate and just in the circumstances of the case.

[10] In forming its approach to where this particular breach sat on the scale of sanctions open to the Tribunal, 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 requires to identify the relevant aggravating and mitigating factors and apply appropriate weight to them in reaching its decision. The Tribunal is then entitled to impose a fair, proportionate and just sanction of between £1 and three times the amount of the tenancy deposit, which in this case would be £1,500. As Sheriff Cruickshank observed at paragraph 39 of *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."

[11] The Tribunal considered that the principal aggravating factors were that the deposit remained unprotected throughout the entire tenancy. In mitigation, the Tribunal took

account of the fact that the Respondents ultimately did pay the money into the scheme three weeks after the end of the tenancy. Balancing all these factors, and applying the guidance in *Ahmed*, the Tribunal determined that a sanction of £1,400.00 being two times the tenancy deposit, was fair, proportionate and just.

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 McLaughlin

Legal Member/Chair

7 September 2026

Date