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 Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/25/4196

Re: Property at 15 Murray Park, St Andrews, Fife, KY16 9AW ("the Property")

Parties:

Miss Caroline Lindsay, Miss Rosie Kerr, Miss Emily Johnstone, Miss Kirsty Crosbie, Miss Keira Smith, 15 Murray Park, St Andrews, Fife, KY16 9AW ("the Applicants")

Mr Bajia Palkhiwala, Mr Richard A Palkhiwala, Mrs Christine C Palkhiwala, 119 Pondfield Road 96, Bronxville, New York, 10708, United States ("the Respondents")

Tribunal Members:

Lauren Rae (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined:

- **(i)** **the Respondents are in breach of Regulation 3 of the 2011 Regulations for failing to timeously lodge the Applicants' deposits with an approved deposit scheme within 30 working days of the tenancy beginning on 1 August 2025.**
- **(ii)** **Orders the Respondents, jointly and severally, to pay to the Applicants the sum of FIFTY POUNDS STERLING (£50.00).**

Background

1. By application dated 29 September 2025, the Applicants sought an order in terms of Regulations 9 and 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("2011 Regulations") in respect of an alleged failure by the

Respondents to pay their deposit to the scheme administrator of an approved deposit scheme within 30 working days of the beginning of the tenancy.

2. The application was accepted by the Tribunal and referred for determination.

3. The case called for the first case management discussion (CMD) on 25 March 2026, where it was continued on the basis that notice of the date and time of the CMD had not been given to the Respondents.

4. The case called for the continued CMD on 10 August 2026 at 10am. Three out of five Applicants attended, namely Ms Emily Johnstone, Ms Kirsty Crosbie and Ms Keira Smith. Ms Johnstone was the nominated "spokesperson" for the Applicants. Mrs Christine Palkiwala attended in her own right and on behalf of the other two Respondents. Also in attendance, was Ms Gaye Findlay and Mr Harry Crombie from Stand Lettings Agents (the Respondents' former letting agent).

5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.

<u>The Case Management Discussion</u>

6. Ms Johnstone, on behalf of all five Applicants, invited the tribunal to find that the Respondents had breached the 2011 Regulations by failing to lodge the deposits with an approved deposit scheme provider within the 30-day working period from the beginning of the tenancy. The Applicants had become aware that their deposits had been lodged late following receipt of correspondence from Safe Deposit Scotland confirming same. By Ms Johnstone's calculation, the deposit was one working day late. In terms of impact on the Applicants, Ms Johnstone submitted that the deposit amounted to a large amount of money (£4250) and there had been no contact from the Respondents' letting agent (Stand) following payment of the deposit until after the letter from Safe Deposit Scotland. She advised that the tenancy had concluded on 31 May 2026. The deposit had been returned to the Applicants under deduction of certain costs. She was unable to confirm how much of the deposit had been retained.

7. Mrs Palkhiwala, on behalf of all three Respondents, acknowledged that the deposit was one working day later. She described it as an administrative misstep by the Respondents' letting agent, Stand. It had been unintentional and caused by a failure to factor in the time taken for a BACs payment to reach the payee. She apologised to the Applicants and advised that corrective action had been taken by Stand to avoid a repetition in future.

<u>Findings in Fact</u>

8. The Applicants and Respondents entered into a private residential tenancy agreement which commenced on 1 August 2025

9. The Applicants paid a cumulative deposit of £4250 (£850 each).

10. The deposit ought to have been lodged with an approved deposit scheme on or before 16 September 2025 (excluding bank holidays from the calculation).

11. The deposit was lodged with an approved deposit scheme on 17 September 2025 in breach of Regulation 3 of the 2011 Regulations.

12. The deposit was lodged one working day late due to administrative error on the part of the Respondents' former letting agent, Stand.

13. The tenancy agreement between the parties came to an end on 31 May 2026.

14. The Applicants received repayment of their deposit (under deduction of certain costs) from the Respondents' former letting agent at the end of their tenancy.

15. The Applicants' application to the First-tier Tribunal was made timeously in terms of Regulation 9 of the 2011 Regulations.

Reasons for Decision

16. Regulation 3 of the 2011 Regulations provides *inter alia*:

> "(*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."*

9. Regulation 9 of the 2011 Regulations provides *inter alia*:

> *"(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. Regulation 10 of the 2011 Regulations provides *inter alia*:

> *"If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal]1 —*

(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 deposit into an approved scheme; or
(ii) provide the tenant with the information required under Regulation 42."

11. The Respondent failed to place the deposit in an appropriate scheme and has breached Regulation 3 of the 2011 Regulations.

12. The present application has been made timeously in terms of Regulation 9. The Tribunal is therefore required to make an order for payment in terms of Regulation 10. The only matter to be determined by the Tribunal is the amount of the sanction.

13. The legal test to be applied in determining an appropriate level of sanction is set out in **Jenson v Fappiano 2015 GWD 04-89** and subsequent case law. Those authorities are reviewed by Sheriff Cruickshank in Ahmed v Russell **2023 SLT (Tr 33)**. He states 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 factors as may be present."

14. At para [39] he states that:-

> "The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose is not to compensate the tenant".

15. The amount awarded should represent a "fair and proportionate sanction when all relevant factors have been appropriately balanced." para [44].

16. The Tribunal also had regard to the decision of the Upper Tribunal in **Rollett v Mackie [2019] UT 45** in which Sheriff Ross states at para [13]:-

> "In assessing the level of a penalty charge, the question is one of culpability and the level of culpability requires to reflect that culpability… The finding that a breach was not intentional is...rational on the facts and tends to lessen culpability"

17. At paragraph [14], he goes on:-

> "Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant or other hypotheticals".

18. Turning to the present case, the deposit was one working day late. There is very little, if anything, in terms of aggravating factors. In terms of mitigation, the Respondent relied upon their letting agent to lodge the deposits with an approved scheme. The letting agent admits that it did so late. The reason being that the letting agent had failed to take into account the BACs payment period. Both the Respondents and their former letting agent expressed remorse. The Tribunal were advised that the letting agent had taken corrective action to avoid a repeat in the future. Clearly, the failure to lodge the deposit by one working day is at the very lowest end of the scale referred to in Ahmed and Rollett, and the Applicants could point to no impact upon them for the deposit being lodge a day late.

<u>Decision</u>

The tribunal determines that:-

(iii) the Respondents are in breach of Regulation 3 of the 2011 Regulations for failing to timeously lodge the Applicants' deposits with an approved deposit scheme within 30 working days of the tenancy beginning on 1 August 2025.

(iv) Orders the Respondents, jointly and severally, to pay to the Applicants the sum of FIFTY POUNDS STERLING (£50.00).

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.

Lauren Rae

____________________________ _______**10 August 2026**______________
Legal Member/Chair **Date**