Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Regulations") and The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/26/1513

Re: Property at 52 Fintry Place, Irvine, KA11 1JB ("the Property")

Parties:

Mr Martin Krus, 8 Drummuir Foot, Irvine, KA11 1NW ("the Applicant")

Leonard Property Holdings Ltd, Suite A4 Skylon Court, Rotherwas, Rotherwas, HR2 6JS ("the Respondent")

Tribunal Member:

Nicola Weir (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment by the Respondent in the sum of £850 should be made in favour of the Applicant.

Background

1. By application received on 7 April 2026, the Applicant applied to the Tribunal for an order for payment against the Respondent in respect of failure to carry out her duties as landlord in relation to a tenancy deposit. The failure alleged was a failure to lodge the deposit within an approved scheme within the required time limit (30 working days) in terms of the 2011 Regulations. Supporting documentation was lodged in respect of the application, including a copy of the tenancy agreement, proof of payment of the deposit of £1,390 by the Applicant, a deposit protection certificate from Safe Deposits Scotland (SDS) confirming that the deposit was lodged with them on 24 September 2025 and proof from the other two deposit schemes confirming that the deposit had not been lodged with either of them at any time. The tenancy was stated in the tenancy agreement to have commenced on 18 June 2024, although the start

date had been changed to 30 June 2024 and ended on 16 January 2026. The Applicant sought the maximum award of compensation of three times the amount of the tenancy deposit (£4,170). The Applicant stated that, apart from the terms of the tenancy agreement, he had sought specific confirmation at the commencement of the tenancy that the deposit would be lodged in a scheme, and was told it would be. He also lodged a copy email he had sent to the Respondent company on 25 September 2025, seeking an explanation as to why he had just been notified by SDS that his deposit had been lodged with them on 24 September 2025. He stated that he did not receive any response to that email. It was also clarified by the Applicant that his partner, who was the joint tenant and still lives with him, did not wish to be a party to this application.

2. Following initial procedures, on 9 April 2026, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.

3. On 30 July 2026, a copy of the application papers and details of the Case Management Discussion ("CMD") to take place were served on the Respondent by Sheriff Officers. Written representations were invited from the Respondent.

4. On 19 August 2026, Ms Kirsty Leonard, the sole director and owner of the Respondent company, submitted written representations in response to the application. She admitted the breach of the 2011 Regulations and accepted that the tenancy deposit had not be lodged in the scheme until 24 September 2025, a year and 3 months after the commencement of the tenancy. She explained that the reason for this was that her husband had been critically ill and diagnosed with stage 4 cancer in January 2024. He was undergoing treatment at the time the tenancy was entered into with the Applicant and this was the reason she had omitted to lodge the tenancy deposit in the scheme with SDS, the scheme she always used. She subsequently required to step back from work in order to support her husband through his ongoing treatment and did not return properly to work until mid-late 2025. As soon as she realised that this deposit had not been lodged, she arranged to lodge it with the scheme, on 24 September 2025. Although the deposit was very late being lodged, it had been lodged well before the end of the tenancy and this meant that the Applicant was not deprived of the resolution process provided by the scheme. She confirmed that the resolution process took place after the tenancy had ended and that the outcome, on 2 June 2026, was that the Applicant was given a partial return of the deposit. Ms Leonard stated that several properties were let out by her company and that all other tenancy deposits were properly lodged in the SDS scheme. There have not been any other Tribunal claims against her company. She has also changed her company processes to ensure that this type of error could not happen again. Ms Leonard provided some supporting documentation, being a copy of the tenancy deposit certificate from SDS and a log from SDS, showing the chronology regarding this deposit and the resolution process which took place following the end of the tenancy. Ms Leonard indicated that she could provide proof of her husband's health issues in the form of medical records, if required by the Tribunal, although she hoped this would not be necessary.

5. Ms Leonard was informed by the Tribunal Administration that the Legal Member had advised that it was not necessary for her to lodge her husband's medical records but that her consent was required to circulate her written representations to the Applicant, due to the sensitive information contained therein. There appeared to have been a misunderstanding as to whether or not Ms Leonard had consented to this, as a consequence of which her written representations were not circulated to the Applicant prior to the CMD.

Case Management Discussion

6. The Case Management Discussion ("CMD") took place by telephone conference call on 7 September 2026, commencing at 2pm. Both the Applicant, Mr Martin Krus, and Ms Kirsty Leonard of the Respondent company were present.

7. Following introductions and introductory comments by the Legal Member, it was realised that Ms Leonard's representations had not been circulated to Mr Krus. Following discussion on the matter, it was decided that the CMD would be adjourned to allow the representations to be forwarded to Mr Krus by the Tribunal Clerk and to give him an opportunity to consider them. It was agreed that the CMD would resume at 2.45pm. Parties left the conference call and re-joined at 2.45pm, when the CMD resumed.

8. Mr Krus was asked if, having read Ms Leonard's representations, his position in respect of his application remained the same in that he was seeking the maximum penalty to be imposed. Mr Krus confirmed that there had been no change in his position.

9. Mr Krus stated that he had noted Ms Leonard's admission regarding the breach and her stated reasons for this. However, he had noted that the situation with Ms Leonard's husband had been ongoing since January 2024, around 6 months before the tenancy started and the deposit was taken but not paid into a scheme. He also does not accept Ms Leonard's assertion that she has admitted the breach at the earliest opportunity. He had emailed the Respondent at the outset of the tenancy to double-check that the deposit was being paid into a scheme and was reassured that it would be. He had also emailed the Respondent on receipt of the notification from SDS the following year to query why the deposit was only being lodged with SDS now. This email was ignored. Mr Krus confirmed the reason for the tenancy ending was that he was purchasing a property of his own. He had emailed the Respondent twice at, or following, the end of the tenancy regarding return of the deposit before he received a response saying that their finance department was looking into it. He stated that it was a month or so before he became aware that he had to put in a request to SDS for return of the deposit. He does not consider that the Respondent was transparent regarding the process as he never heard directly from them. This delayed matters with the deposit return. He confirmed that the resolution process took place with SDS, as the Respondent disputed return of the full deposit to him, and that the outcome was that he received back £1,000 of the deposit of £1,390. Mr Krus stated that the burden was on him to sort this

matter out. It was time-consuming and he has had to take time away from work today for this CMD. He noted that Ms Leonard had stated that they had changed their internal systems to avoid this happening again but does not consider it should have occurred in the first place or that the tenant should have the burden of chasing their landlord up regarding these matters. The Respondent was legally required to place the deposit in a scheme within the stated time limit and had not done so.

10. Ms Leonard agreed that Mr Krus was told by her company that his deposit *would* be protected in a scheme but that they had not misled him by stating at the outset that it *had* been placed in a scheme. She has no knowledge of the email Mr Krus said he sent on 25 September 2025, after being notified by SDS that the deposit had been lodged. She assumed that it was either was not sent or received. Reference was made to the email [page 116 of the case papers] and its details read out to Ms Leonard. She stated that she had not noticed this email in the case papers and reiterated that it had not been brought to her attention at the relevant time, for which she apologised. Ms Leonard was asked about her representations that she had had to step back from work over much of the relevant period and what arrangements she had put in place regarding the running of her company at that time. Ms Leonard confirmed that her company managed a property portfolio and that she had personal assistants who covered day-to-day matters for her. However, they still reported to her and she was still overseeing things despite being away from the business much of the time. Ms Leonard stated there had unfortunately been an oversight in respect of this particular deposit, as per her written representations, but no other issues had arisen with other deposits, which are always placed in the SDS scheme. Ms Leonard confirmed that, as the deposit had been lodged, the SDS adjudication process took place at the end of the tenancy and that the outcome was that Mr Krus was not awarded his full deposit back. The timescale for this process to be completed was not as a consequence of the late lodging of the deposit. She argued that the late lodging of the deposit had had little impact on Mr Krus as the adjudication process was available to him and the outcome of the process would still have been the same. She dies not think it is relevant that Mr Krus has spent time on his Tribunal application or has taken time off work to attend the CMD today. Ms Leonard provided some further information regarding her husband’s health at the relevant time. She explained that he had been 41 years old when he was diagnosed and that they were married three weeks after his diagnosis as they were essentially told that he would die. Ms Leonard stated that she required to step back from her business to provide her husband with the support he required. She regrets that this happened with this deposit but it was an absolute necessity for her to step back and would do the same again. She considers that the penalty imposed should be minimal in these circumstances.

11. The Legal Member confirmed that, given that there is an admission by the Respondent company to the breach and the application appeared to be in order, she would grant the Applicant a payment order in compensation but would determine the appropriate level of compensation following the CMD and issue her decision in writing. Parties were advised regarding the appeal period

(30 days). The parties were thanked for their attendance and the CMD concluded.

Findings in Fact

1. The Respondent was the owner and landlord of the Property.

2. The Applicant was the joint tenant of the Property by virtue of a Private Residential Tenancy which commenced in June 2024.

3. The tenancy ended on 16 January 2026, following the Applicant giving notice due to a change in their circumstances.

4. The tenancy deposit was £1,390 and was paid by the Applicant to the Respondent at the start of the tenancy.

5. The Applicant sought confirmation from the Respondent at the start of the tenancy that their deposit would be placed in a tenancy deposit scheme and the Respondent confirmed that it would be.

6. The Respondent lodged the tenancy deposit in the Safe Deposits Scotland (SDS) tenancy scheme on 24 September 2025.

7. The deposit was lodged outwith the 30 working day time limit specified in the 2011 Regulations, being lodged around 15 months after the start of the tenancy.

8. The Applicant was notified by SDS of the late lodging of the deposit on 24 September 2025.

9. The Applicant was not notified of the late lodging of the deposit by the Respondent.

10. The Applicant emailed the Respondent on 25 September 2025, seeking an explanation as to the late lodging of the deposit, but received no response.

11. At the end of the tenancy, a dispute arose regarding return of the deposit to the Applicant and the adjudication process through SDS took place.

12. The Applicant had initially requested return of the deposit through the Respondent and stated that they had failed to inform him of the correct process.

13. The adjudication process completed in June 2026, the outcome being that the Applicant was awarded partial return of the deposit, in the sum of £1,000.

14. The Respondent admitted the breach of the 2011 Regulations, but provided explanation and mitigating circumstances.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation from the Applicant, the written representations and supporting documentation from the Respondent and the oral information provided at the CMD by both parties.

2. The Tribunal found that the application was in order and that the application had been submitted timeously to the Tribunal in terms of Regulation 9(2) of the 2011 Regulations [as amended to bring these matters within the jurisdiction of the Tribunal], the relevant sections of which are as follows:-

*“**9.**—(1) A tenant who has paid a tenancy deposit may apply to the sheriff 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 by summary application and must be made no later than 3 months after the tenancy has ended.

***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.”

Regulation 3 [duties] referred to above, is 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.

(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."

The Tribunal was satisfied from all of the information before it that the Respondent was under the duties outlined in Regulation 3 above and had failed to ensure that the deposit paid by the Applicant was paid into an approved tenancy deposit scheme within 30 working days of the start of the tenancy, contrary to Regulation 3 of the 2011 Regulations. The breach was admitted by the Respondent. The Tribunal was satisfied that, in these circumstances, the application did not require to be continued to a further hearing and that, in terms of Regulation 10 above, a sanction must be imposed on the Respondent in respect of this breach of the 2011 Regulations.

3. In determining the appropriate amount of the sanction to be imposed on the Respondent for payment to the Applicant, the Tribunal considered all the background circumstances and the information received from both parties in the matter. As the deposit here was £1,390, in terms of Regulation 10(a) above, the maximum possible sanction is £4,170. There is no minimum sanction stipulated in the 2011 Regulations. The Applicant had sought the maximum penalty and the Respondent had requested leniency, based on the mitigating circumstances she had put forward. The Tribunal considered that the amount of the sanction should reflect the gravity of the breach.

4. As to assessing the gravity of the breach, the Tribunal considered as 'aggravating' factors the fact that the deposit was lodged in a scheme very late, around 15 months after the start of the tenancy, so for much of the tenancy, the deposit had been unprotected; and the lack of direct communication from the Respondent to the Applicant regarding the matter when the Respondent had realised their oversight and lodged the deposit in September 2025. The Tribunal considered that this was compounded by the fact that the Applicant had specifically requested confirmation at the outset that the deposit would be lodged in a scheme and was assured that it would be, and nor had he received any response to his email enquiry to the Respondent in September 2025 seeking explanation as to why his deposit had been lodged so late. The Tribunal considered that the latter had been a missed opportunity for the Respondent to clarify the position to the Applicant and perhaps help alleviate the concerns he clearly had regarding what had happened with his deposit.

5. However, the Tribunal considered that there were also some 'mitigating' factors to be taken into account in assessing the gravity of this breach. The Respondent had made a clear admission to the Tribunal regarding the breach of the 2011 Regulations and had provided a detailed explanation as to what had occurred and the mitigating circumstances concerning her husband's serious health issues over the relevant period. The Tribunal accepted her

explanation as to her initial oversight in not lodging the deposit at the outset of the tenancy and also why the oversight was not realised until September 2025. The Tribunal did not consider that there was any material before it to suggest that there had been any deliberate intention to mislead the Applicant regarding the lodging of the deposit. The Tribunal also accepted the Respondent's position that the Applicant had not been financially prejudiced by the late lodging of the deposit, given that parties were able to take advantage of the adjudication process provided free of charge at the end of the tenancy by the tenancy deposit scheme. The outcome of the adjudication process had nothing to do with the late lodging of the deposit and the Tribunal, having had regard to the SDS process chronology lodged by the Respondent, did not consider that the process had been delayed unduly, either because of the late lodging of the deposit or due to any action/inaction on the part of the Respondent. The Respondent had stated that her company managed a portfolio of several properties, always used the SDS scheme for tenants' deposits and had never had any other such issues or cases before the Tribunal concerning tenancy deposits. Again, there was no information before the Tribunal to suggest otherwise.

6. Weighing all the above factors, the Tribunal determined that this was neither a very minor, or nominal, breach of the 2011 Regulations, nor a breach which should attract a very high or maximum sanction. The Tribunal assessed the appropriate amount of the sanction to be paid by the Respondent to the Applicant in this application should amount to £850.

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.

Nicola Weir

____________________________ 7 September 2026

Legal Member/Chair Date