



**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**

Chamber Ref: FTS/HPC/PR/26/1151

Re: Property at 4/9 Lyne Street, Edinburgh, EH7 5DW (“the Property”)

Parties:

**Mr Matthew Smith, Cent Etoiles Cottage, Rue de la Fontaine, St Peter, Jersey,
JE3 7EB (“the Applicant”)**

**Mr Brian Cunningham, 65 Dollar Crescent,, Kirkcaldy, KY2 6NU (“the
Respondent”)**

Tribunal Members:

Steven Quither (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent is to pay to the Applicant ONE
THOUSAND TWO HUNDRED AND FIFTY POUNDS (£1250) STERLING ONLY.**

BACKGROUND

1. This is an application dated and lodged on 10 March 2026 seeking an order for payment from the Respondent relating to a deposit of £1000 paid in a Private Residential Tenancy (“PRT”) between the parties in respect of the Property commencing 16 February 2025.
2. The application was accepted by Notice of Acceptance of 17 March and a Case Management Discussion (“CMD”) was duly assigned for 25 August, both 2026.

CASE MANAGEMENT DISCUSSION on 25 AUGUST 2026

3. The Hearing took place by teleconference and duly commenced shortly after 2pm with both parties in attendance.
4. The Applicant’s position per the casefile was that he felt an award should be made on the basis that his deposit was not protected for the whole period he

was occupying the Property in terms of the PRT, which ended on 6 March 2026, after which date the deposit was refunded to him direct by the Respondent. It was that direct payment to him which led him to check what had happened to the deposit.

5. In the casefile also was a very full explanation and apology from the Respondent about his failure to lodge the deposit with an approved scheme. His position was that he had had a lot of refurbishment work to do to make the Property fit to live in, this was and remains his only tenanted property as a first time landlord, there were no issues between the parties for the duration of the tenancy, he made immediate repayment in full at the end of the tenancy, he had complied with all other relevant regulations for letting the Property, he dealt promptly with an urgent repair to the hot water timer system, the deposit was held safely in a dedicated bank account throughout the tenancy, he has not had any other Tribunal cases against him and none are outstanding, the Applicant did not lose out in any way and he has learned a valuable lesson from this case against him. His omission was simply an oversight. Appropriate vouching was produced in respect of several of these factors.
6. At the Tribunal, he referred to his written representations and advised he has a system now in place to prevent any similar difficulty arising in future. The Property has been relet and the deposit placed in an approved scheme. He decided to let out the Property when he began living with his partner. He does not let out any other properties.

FINDINGS IN FACT

7. The parties entered into a PRT which commenced on 16 February 2025 and ended on 6 March 2026.
8. The Applicant paid a deposit of £1000, which was returned in full at the end of the tenancy.
9. The deposit was not lodged with an approved tenancy deposit scheme throughout the duration of the tenancy.

REASONS FOR DECISION

10. In **Ahmed v Russell [2023] UT 07**, Sheriff Cruickshank stated, after reviewing relevant caselaw “[38] 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.”... “[39] The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose is not to compensate the tenant” and that “[44] (the amount awarded should be) a fair and proportionate sanction when all relevant factors have been appropriately balanced.”.

11. Also, in **Rollett v Mackie [2019] UT 45** Sheriff Ross stated “[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.” and “[14] “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”.
12. The Tribunal was content that none of these aggravating factors were present in this case and, as referred to previously, there was much mitigation in the Respondent’s favour. However, it also had to take into account that the Applicant’s deposit was unprotected for the entire duration of the tenancy, a period of just over a year. In all of the circumstances, the Tribunal considered it would be fair and proportionate to make an order for £1250.
13. The Respondent seemed somewhat taken aback by the order made and enquired as to whether he could “contest” same. The Tribunal advised of the availability of the Tribunal appeal process and explained that had the Respondent been operating on a wider level of letting, involving more tenants, an order at a higher level might well have been considered appropriate, even the maximum. He seemed content with this further information and explanation.

OUTCOME

14. To grant the order for payment sought by the Applicant against the Respondent in the sum of £1250.

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.

SR QUITHER

Legal Member/Chair

Date: 27th August 2026