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 Section Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/26/0803

Re: Property at 62/5 St Leonards Street, Edinburgh, EH8 9SW ("the Property")

Parties:

Mr Gabriel Oghughu, 5 Manor Crescent, Aberdeen, AB167UF ("the Applicant")

Misbah Javid, Merith House Hotel, 2-3 Hermitage Place, Leith, Edinburgh ("the Respondent")

Tribunal Members:

Elaine Paton (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent had breached Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations"). The Tribunal therefore determined to make an order for payment in the sum TWO THOUSAND AND SIXTY-TWO POUNDS AND FIFTY PENCE (£2,062.50) Sterling under Regulation 10.

Background

1. The Applicant applied to the Tribunal for a payment order under Rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules") and Regulation 9 of the 2011 Regulations. The Applicant sought a sanction against the Respondent as a result of their failure to lodge timeously the Applicant's tenancy deposit with an approved tenancy deposit scheme.

2. The application was referred to a case management discussion ("CMD") to take place by teleconference on 21 August 2026 at 10am. Notification of the CMD was given to the parties in terms of Rule 17(2) of the Rules and parties were advised they were required to participate. Said notification was served upon the Respondent by Sheriff Officers on 20 July 2026. Also served upon the

Respondent at this time was the notification and application papers regarding the related civil payment application under Chamber Reference. CV/26/0811 being heard alongside the present application.

3. Both parties were invited to make written representations in advance of the CMD. On 07 August 2026, the Respondent lodged written submission and supporting documents with the Housing and Property Chamber ("HPC") administration which was crossed over to the Applicant. Correspondence was sent to the Respondent to advise that the tenancy papers lodged were illegible in parts and the document was incomplete therefore the full agreement in legible format was to be produced. The full and legible tenancy agreement was forwarded to the tribunal on the morning of the hearing, and had been crossed over to the Applicant also. No further representations or documents were received.

The CMD

4, The CMD took place on 21 August 2026 at 10am by teleconference. The Applicant and the Respondent were present and represented themselves.

5. The Tribunal had the following documents before it:- (1) Form G application form dated 17 February 2026; (2) evidence of tenancy arrangement details regarding the Property in terms of screenshots of WhatsApp messages exchanges between the Applicant and the Respondent's son who was handling communications with the tenants on behalf of his mother, the Respondent; (3) evidence of the agreed end date of the tenancy arrangement; (4) bank transaction receipt detailing a sum of £1,650 was paid by the Applicant to the Respondent on or around 30 November 2025; and (5) emails from the three statutory approved tenancy deposit scheme providers stating the Applicant's deposit was not lodged with them, more particularly emails dated 16 February 2026 from Safe Deposit Scotland and the Letting Protection Scotland, and an email dated 17 February 2026 from My Deposits Scotland.

6. The Tribunal explained the purpose of the CMD and asked the Applicant to present and clarify, as necessary, their submissions on the applications, before the Respondent, then presented her submissions in response before dealing with a preliminary matter. For the avoidance of doubt the following constitutes a summary of the key elements of the discussion and is not a verbatim account of the proceedings.

7. The tribunal checked with the Applicant that they had received the full legible copy of the tenancy agreement that had been crossed over to him shortly before the hearing which he confirmed he had. The Applicant was given time to read the document and confirmed to the tribunal that he had now read this.

8. In response to the tribunal the Applicant stated he wished the Tribunal to order a sanction against the Respondent as a result of the Respondent's failure to lodge his deposit with any of the approved tenancy deposit schemes within 30 working days of the commencement of his tenancy on or around 30 November 2025. The Applicant stated he had been quite persistent that the deposit he

paid be lodged with a tenant deposit scheme however this was never done. The Applicant stated he had asked for a copy of the tenancy agreement but he did not receive this in response to his request. In clarification to the tribunal, the Applicant stated he was seeking the maximum sanction of three times his £825 deposit paid as the deposit had not been protected. The Applicant provided the requisite notice to the Respondent regarding the end of the tenancy arrangement and the end date of the tenancy was agreed as 15 February 2026, albeit the Applicant had moved out the previous day.

9. The tribunal clarified with the Applicant then the Respondent in turn regarding the payments made by the Applicant and received by the Respondent during the currency of the tenancy arrangement. There was no dispute between the parties regarding the following:

(a) the Applicant paid £1,650 on 30 November 2025 regarding his share of the rent for the month of December 2025 (being £875) plus another £875 (held by the Respondent regarding the tenant's last month's rent);

(b) the Applicant paid rent of £825 for the month of January 2026;

(c) The Applicant made no payment for the half-month rental sum of £412.50 for February 2026;

(d) The tenancy ended on 15 February 2026 and the Applicant had moved out before that date;

(e) The Respondent applied £412.50 of monies held by her towards the February half-month rental sum;

(f) No outstanding rent was due by the Applicant when the tenancy end at 15 February 2026.

11. The Respondent stated she had previously let the Property through her letting agent however the Applicant's co-tenant had known her son for a number of years and he had approached the Respondent's son to rent the Property. The Respondent had never met either of the tenants and her son did not know the Applicant; she had however obtained the tenants' respective identification information but had dispensed with obtaining references. The tribunal asked the Respondent about the Model Private Residential Tenancy Agreement produced and the different wording at clause 11 in relation to the Deposit which had been inserted to replace the usual wording of the model agreement, which alternative typewritten text left a significant blank space to the next clause. The Respondent stated she had approached the letting agent to explain the position and they had given her the alternative wording from a format that they had previously used. The Respondent stated that the letting agent had indicated to her that she would probably have to lodge monies with a tenancy deposit scheme. The Respondent said she had told the agent it was a private arrangement so that would not be necessary, explaining she wanted to try and keep the costs to a minimal for her son's friend and the Applicant. The Respondent explained that renting the Property through the letting agent would

mean the tenants would need to pay an extra sum on top and her son's friend was not positioned to pay a deposit.

12. Responding to the tribunal, the Respondent confirmed that at the time the Applicant moved into the Property there was no end date envisaged in relation to the tenancy arrangement and the £825 payment the Applicant had paid on 30 November 2026 in addition to the rent for the month of December 2025 would be held by her until the tenancy came to an end, whenever that might be. The Respondent accepted the purpose of a tenancy deposit scheme is to offer protection to the parties, including the landlord whereby a tenant fails to pay rent and/or leaves the property in a somewhat damaged or dirty condition. The tribunal noted that the WhatsApp messages produced with the application papers refer to the £825 or balance due from that sum in the context of a deposit with that word used in the messages by/on behalf of the Respondent. The WhatsApp messages produced make reference to the tenancy agreement having being printed off from the Scottish Government website "just a generic lease document" and to the agreement being signed by the parties on or around 30 November 2026. The Respondent stated that one copy of the tenancy agreement was left in the Property for the tenants, and although the Applicant did have access to that, it may be that it was kept somewhere by the other tenant. The Respondent stated the balance of monies she held from both tenants (£825) was repaid to the Applicant's co-tenant, under explanation that the Applicant had become increasingly difficult to deal with towards the end of the tenancy arrangement and she requested the co-tenant pass on the Applicant's balance of £412.50. The Applicant confirmed that he had received return of £412.50 from his co-tenant although this had been some time later, possibly a couple of months or so.

10. Discussion also took place regarding the related civil payment application (CV/26/0811) including submissions and documents lodged regarding cleaning costs incurred after the tenancy end date and in connection with other bills arising subsequently.

11. The Tribunal gave an opportunity to both the Applicant and the Respondent to make any additional points or comment before making closing remarks.

Relevant Law

12. The relevant law is contained within the Housing (Scotland) Act 2006 and the Tenancy Deposit Scheme (Scotland) Regulations 2011. Section 120 of the 2006 Act provides as follows:-

"120 Tenancy deposits: preliminary
(1) A tenancy deposit is a sum of money held as security for—
(a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or
(b) the discharge of any of the occupant's liabilities which so arise.
(2) A tenancy deposit scheme is a scheme for safeguarding tenancy deposits paid in connection with the occupation of any living accommodation.

13. The 2011 Regulations provide 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.
(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."

"9—(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. If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal—
(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 tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42."

Findings in Fact

14. The parties entered into a tenancy arrangement in respect of the Property, which commenced on or around 30 November 2025.

15. The tenancy was a private residential tenancy under section 1 of the Private Housing (Tenancies) (Scotland) Act 2016. The tenancy is a relevant tenancy for the purpose of Regulation 3 of the 2011 Regulations.

16. In terms of the tenancy arrangement the Applicant is the tenant and the Respondent is the landlord. The Respondent is the registered landlord for the Property.

18. On 30 November 2025 the Applicant paid a sum of £1,650 to the Respondent including one month's rent for the month of December 2025, and an additional sum £825 held by the landlord.

17. In terms of Section 120 of the 2006 Act, monies paid by a tenant to a landlord and held by the landlord in security for performance of the tenant of an obligation arising from their occupancy or tenancy arrangement is a "tenant deposit".

18. In terms of Regulation 3(a) and (b) of the 2011 Regulations the deposit should have been lodged with a scheme within 30 working days from 30 November 2025, and the relative information provided to the Applicant under Regulation 42.

18. The Applicant's deposit was not paid into any of the approved tenancy deposit schemes.

19. The Applicant's tenancy ended on 15 February 2026.

20. The balance of the Applicant's deposit was returned to them via payment from the Applicant's co-tenant who had received return of both tenants' deposits following upon deduction of the sum of one-half month's rent due for the Property for the month of February 2026.

Reasons for Decision

21. Having considered the documents before it, including the Respondent's written representations dated 07 August 2026 in response to the application; the oral submissions from both the Applicant and the Respondent, the Tribunal considered it could make relevant findings in fact in order to make a decision on the application at the CMD, and in the absence of a hearing under Rule 18 of the Rules. The Tribunal determined that there were no substantive facts in dispute that would require a hearing to be fixed, and that proceeding to a decision following the CMD would be in accordance with the Tribunal's overriding objective under Rule 2 of the Rules to avoid delay so far as compatible with proper consideration of the issues.

21. In terms of Section 120 of the 2006 Act a sum of money held as security for the performance of any of the occupant's obligations arising under or in connection with a tenancy arrangement is a "tenancy deposit". The Tribunal was satisfied that the Applicant paid a sum of £825 to the Respondent upon commencement of the tenancy arrangement which the Respondent held as security regarding the fulfilment of the payment of rent by her tenant, an obligation arising in connection with the tenancy arrangement regarding the Property, at a future unknown date. The Tribunal considered the £825 paid by the Applicant to the Respondent on 30 November 2025 to be a tenancy deposit.

22. The Tribunal was satisfied that the tenancy between the parties was a relevant tenancy for the purpose of Regulation 3(3) of the 2011 Regulations. The Regulations specify clear duties, which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy and provide information to the tenant regarding the deposit. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.

22. In terms of Regulation 3 of the 2011 Regulations, the Respondent in this case required to pay the deposit over to a deposit scheme no later than 09 January 2026. The deposit had not been lodged with an approved tenancy deposit scheme. The Tribunal therefore found the Respondent to be in breach of Regulation 3.

23. Regulation 10 states that in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. Accordingly, having been satisfied that the Respondent failed to comply, the Tribunal then had to consider what sanction to impose having regard to the particular facts and circumstances of the case. The application of the sanction must seek to act as a penalty to landlords and ensure compliance with their statutory duties in relation to tenancy deposits.

24. 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 must identify the relevant factors, both aggravating and mitigating, and apply weight to same in reaching its decision. The Tribunal is then entitled to assess a fair and proportionate sanction to be anywhere between £1 and three times the sum of the deposit, which in this case is £2,475.

As per Sheriff Cruickshank at paragraph 39 of his decision in 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."

25. The Tribunal considered the aggravating factors in this case. The Respondent is an experienced private residential landlord. The failure to lodge the Applicant's deposit with any of the approved tenant deposit schemes is a failure on the part of the Respondent. The Respondent is responsible for ensuring they comply with their statutory obligations. The Respondent cannot deflect from those obligations. The Applicant was without the benefit of their deposit being protected within a statutory scheme for the entirety of the period of their occupation of the Property under the tenancy agreement, and without the benefit of the scheme's relative dispute resolution mechanism available to parties. The landlord usually employed the services of a letting agent regarding the Property who, she stated, had mentioned to her that she may have to lodge

monies in an approved scheme when she explained her proposal for the tenancy arrangement with the Applicant and his co-tenant, her son's friend. The landlord's preferred mode of payment was stated to be by cash. The landlord remained adamant she was not required to pay the deposit into the statutory scheme due to the tenancy arrangement being a private one involving a tenant known to her son. The Applicant did receive return of the balance of his deposit under deduction by the Respondent of the half month rent due and payable by the Applicant in relation to his obligations under the tenancy arrangement, however the deposit balance was paid to the Applicant by his co-tenant and some months after the tenancy had ended. The Applicant was required to obtain correspondence from all three statutory schemes to clarify his landlord's failure regarding payment of the tenancy deposit. There is a strict time constraint regarding application to the First-tier Tribunal under the Tenancy Deposit Schemes (Scotland) Regulations 2011 and there was a potential risk of the Applicant's application falling to be submitted outside of that time period.

26. The Tribunal went on to consider whether there were any mitigating factors in this case. The Respondent stated that she had wished to try and minimise the financial burden upon the tenants as there would have been additional costs to them if the letting agent were handling the tenancy arrangements. The Applicant had resided in the Property for a short duration of two and a half months. The Respondent received the requisite notice from the Applicant of his intention to leave the Property less than one week after the thirty working days period within which his landlord was required to have paid the deposit sum into the statutory approved tenancy deposit scheme. The Respondent failed in her obligation to protect her tenant's deposit for the full period of the Applicant's short tenure in the Property notwithstanding the Applicant had to be put to the inconvenience of their own inquiry from the three approved statutory schemes and was not provided with a copy of the tenancy agreement when he requested this, all of which potentially could have caused delay regarding the time limit for application regarding sanction. An experienced private residential landlord might be regarded as being aware of the statutory timescale constraint.

27. Accordingly, having weighed the aggravating and mitigating factors in this case the Tribunal considered that the level of culpability was significant, when measured against the nature and extent of the breach. Accordingly, the Tribunal determined that a fair and proportionate sanction in this case is two and a half times the deposit sum, therefore a sanction of £2,062.50.

Decision

28. The Tribunal therefore made an order for payment in the sum of £2,062.50.

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.

Elaine Paton, Legal Member **21 August 2026**