



**Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)
Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of
Procedure 2017 ‘the Rules’.**

In respect of application by Mr Arun Smith in terms of rule 103 of the Rules.

Case reference FTS/HPC/PR/26/3310

At Glasgow on the 27 August 2026, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1) (a) of the Rules

1. This is an application by Mr Arun Smith, for a penalty regarding a tenancy deposit in terms of rule 103 of the Rules.
2. The application was dated 16 July 2026 and was entered in the case management system of the Tribunal Chamber on 17 July 2026.
3. The in-house convenor reviewed the application and the Tribunal wrote to the applicant on 21 July 2026 as follows:

A legal member of the First-tier Tribunal with delegated powers of the Chamber President considers that in order for the Tribunal to be able to process your application further the undernoted information /documentation is required:

(1) Please note that the application under rule 103 can only be made against a landlord. Please provide a separate application form for this if you wish to take the application forward showing the Respondents for this application and their addresses and use form G.

- (2) Please set out when you paid the deposit and how the landlord allegedly did not comply with the obligation under The Tenancy Deposit Schemes (Scotland) Regulations 2011. It is not clear from the current information which breach of the Regulations you are alleging as the deposit appears to have been protected from the start of the tenancy (in fact prior to the start of the tenancy) and you appear to have been provided with a DAN certificate.
- (3) Please confirm if the tenancy continues at present or provide evidence of the end date.
- (4) Please provide a copy of the tenancy agreement.

- 4. In response the applicant provided an amended application dated 28 July 2026 and a copy of the tenancy agreement.
- 5. The in-house convenor reviewed the application in the light of this further information, and the Tribunal wrote to the applicant on 6 August 2026 as follows:

Thank you for providing the further information requested. You have lodged an amended form G under rule 103 which relates to applications for compensation where a landlord has failed to comply with the obligations under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations").

The Landlord per your tenancy agreement is _____ and _____. Title to the Property is held by those individuals as partners and trustees of the _____. The tenancy commenced on 23 December 2024. The deposit was protected from 4 December 2024. The landlord named on the deposit protection certificate is _____. Your recent submission indicates that it is your position that the Respondent breached the 2011 Regulations as the deposit was paid to _____ and not to _____ and _____. Please specify which particular element of regulation 3 you contend the Respondent has failed to comply with. On the basis of the information provided to date, there would appear to have been no breach of regulation 3.

- 6. The applicant responded on 20 August 2026 as follows:

My submission on this point would be that the language of reg 3 of the 2011 Regulations is clear that 'a landlord who has received a tenancy deposit must' pay it into an approved scheme within the 30 day period. The onus is on the landlord to do so, except where there is a letting agent involved who acts on behalf of the landlord. In this case, the landlords, being _____ requested that the deposit be paid to a separate entity, which is not the landlord, and it was that entity that appear to have registered the deposit and not the the landlords. Taking the logic of *Ukwu v Tait* 2025 UT 24 that the 'regulation 3(1) can be given its ordinary and natural meaning as imposing an obligation on a landlord, within 30 working days from the beginning of the tenancy, to pay the deposit to the scheme administrator [...]' (at [41]), the onus remains on the landlord. It is not open to the landlord to substitute an

unregistered alternate entity as recipient of the deposit nor to have a deposit registered in the name of an unregistered alternative who is not the landlord.

7. I have reviewed this application today and I have decided to reject it under rule 8 (1) (a) of the lanlode .

Reasons

8. Rule 103 of the Rules provides:

Where a tenant or former tenant makes an application under regulation 9 (First-tier Tribunal orders) of the 2011 Regulations, the application must—

(a)state—

- (i)the name and address of the tenant or former tenant;
 - (ii)the name, address and profession of any representative of the tenant or former tenant; and
 - (iii)the name, address and registration number (if any) of the landlord;
- (b)be accompanied by a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the tenant or former tenant can give;
- (c)evidence of the date of the end of the tenancy (if available); and
- (d)be signed and dated by the tenant or former tenant or a representative of the tenant or former tenant.

9. Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 provides:

Requirements for making an application Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (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 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 provides:

Duties in relation to tenancy deposits

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.

(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—

(a) the references to deposit were to each instalment of the deposit, and

(b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.】

(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.

11. This tenancy commenced on 23 December 2024. The landlords in the tenancy agreement are Mark Hutton and Susan Hutton. They live at 18 Fergus Road Kirkcudbright. They are also the registered landlords for the let property at 10 Moat Road Dumfries. According to the land register Mark Hutton and Susan Hutton are the owners of the property as partners and trustees for the firms MH Property. According to information from the Companies House provided by the applicant, Mark Hutton and Susan Hutton have a business called MH Farming Limited. The applicant has provided a copy of the deposit protection certificate from Safe Deposit Scotland which state that the deposit of £905 was registered on 4 December 2024. The landlord on the deposit certificate is noted as MH Farming and the address of the landlord on the certificate is 18 Fergus Road Kirkcudbright. The applicant’s position is that because the deposit was registered by MH Farming rather than the landlords on the tenancy agreement there has been a breach of regulation 3 of the regulations.

12. I do not consider that there has been a breach of the regulations. The deposit was lodged timeously before the tenancy started. It is common for letting agents to lodge deposits on behalf of landlords. This situation is no different. The landlords appear to operate a company called MH Farming and this company appears to be registered at their home address. The purpose of the regulations is to ensure that tenancy deposits have been lodged with a deposit company within 30 working days of the start date of the tenancy and protected throughout the tenancy. The obligation is on the landlord to do so and if there was a breach of this, the responsibility lies with the landlord. The landlord in this instance has complied with the regulations. The deposit has been lodged timeously and there has been no breach.

13. The applicant refers to the case of *Ukwu v Tait* 2025 UT 24 in his submission. That case was in relation of the transfer of a deposit from one scheme to another. The sheriff in the Upper Tribunal upheld the decision of the First- tier Tribunal that this did not constitute a breach of the regulations. The sheriff noted:

Rather, regulation 3(1) can be given its ordinary and natural meaning as imposing an obligation upon a landlord, within 30 working days from the beginning of the tenancy, to pay the deposit to the scheme administrator and to tell the tenant who 14 that is, and to provide the necessary other information in terms of regulation 42.

14. In my view this is exactly what has happened here. The landlord has ensured the deposit was lodged timeously. There has been no breach and no penalty is therefore applicable.

15. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if ***“they consider that an application is vexatious or frivolous”***.

16. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in *R-v-North West Suffolk (Mildenhall) Magistrates Court* (1998) Env.L.R.9. At page 16 he states:- “What the expression means in this context is, in my view, that the court considers the application to be futile , misconceived, hopeless or academic”.

17. I consider that this application is frivolous or vexatious and has no reasonable prospect of success. There has been no breach of the regulations, and the application will therefore serve no purpose. It is not possible for the applicant to achieve the outcome he is seeking.

18. The application therefore has to be rejected.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this decision of the Chamber President or any legal member acting under delegated powers 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Lesley Anne Ward

Legal Member