



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 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/26/0530

Re: Property at The Tack Room, Woodside Apartments, High Road, Fife, KY16 9SL (“the Property”)

Parties:

Miss Melissa Main, 7 Back O Dykes Road, Kirkintilloch, G66 3LR (“the Applicant”)

Mrs Linda Wood, Woodside Apartments, High Road, Strathkinness, Fife, KY16 9SL (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £850.00 be made in favour of the Applicant.

1. Background

- 1.1 This is an application under rule 103 of the Chamber rules whereby the Applicant sought an order for payment in respect of an alleged failure by the Respondent to comply with their obligations under the 2011 Regulations. The application was accompanied by, amongst other things, copies of the tenancy agreement between the parties, correspondence from the deposit schemes, bank statements and text messages and correspondence between the parties and the Applicant and the Respondent’s letting agents.
- 1.2 The Respondent’s representative lodged written representations as well as a hand written statement from the Respondent in advance of the Case Management Discussion. The Applicant lodged a further written

submission as well as notifying the Tribunal that she would not be in attendance at the Case Management Discussion. She indicated that she understood she may not have the opportunity to be heard beyond the representations already made.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 6 August 2026 by teleconference. The Respondent was represented by Mr Gray, solicitor. The Applicant was absent and was not represented.

2.2 The Tribunal heard from the Respondent's representative. He adopted the written submissions lodged. He confirmed that the Respondent accepted that there had been a breach of the 2011 Regulations. The Property was ordinarily made available as a holiday let and the Respondent resided on the same estate as Property and erroneously believed that the deposit did not require to be lodged with a third party scheme as she was, in effect, a resident landlord. She accepts that this was incorrect. The Respondent has two other properties made available to let by way of private residential tenancy agreements. The Respondent notified the Applicant that the deposit had not been lodged when the Applicant enquired as to its whereabouts. The full deposit was repaid to the Applicant on 12 January 2026 notwithstanding sums outstanding on the part of the Applicant. The Respondent denied any suggestion of harassment of the Applicant.

2.3 The Respondent's representative then addressed the level of sanction that the Tribunal ought to select, with reference to past decisions. With reference to the decisions cited by the Applicant, he submitted that *Bell v Cowan* FTS/HPC/PR/25/4900 involved a breach where the deposit remained unprotected for some 15 months, far longer than the present application. *Hinrichs & Jeyaraj* FTS/HPC/PR/22/0953 involved concerns about the landlord's conduct not applicable to the present application. The case of *Brimson v Meldrum* FTS/HPC/PR/25/5012 related to a deposit unprotected for in excess of nine years. The case of *Li v Haque* FTS/HPC/PR/23/4695 and the Sheriff Court authorities discussed within demonstrate that the return of the deposit is a significant mitigating factor and each case turns on its own circumstances. The short duration of the tenancy agreement in the present case ought to see a much reduced sanction applied.

2.4 The parties had little dispute to take with each other's position as it related to payment of the deposit. The written submissions lodged by each of them referred to a number of extraneous matters which were in dispute. The Tribunal did not consider them materially relevant to the present application. Given the admission by the Respondent as to the nature of the breach, the Tribunal did not believe a hearing was necessary. The Tribunal indicated that a decision would be issued based on the papers and what was said at the Case Management Discussion.

3. Findings In Fact

- 3.1 The private residential tenancy between the parties commenced on 23 October 2025. The Respondent was the landlord and the Applicant was the sole tenant.
- 3.2 The Property is ordinarily used as a holiday let. The Respondent is the proprietor of two other rental properties let by virtue of private residential tenancy agreements.
- 3.3 A deposit of £850.00 was paid by the Respondent. The first instalment of £250.00 was paid on 30 September 2025 and the second instalment of £600.00 was paid on 23 October 2026.
- 3.4 The Respondent attempted to lodge the deposit with Mydeposits Scotland however, due to an issue with the address of the Property was unable to do so.
- 3.5 The Respondent received advice from her letting agents that she was considered a resident landlord and the deposit did not require to be lodged with an approved third party scheme.
- 3.6 The deposit was held by the Respondent throughout the duration of the tenancy. On 6 January 2026, in response to a query regarding the deposit, the Respondent notified the Applicant by text message of her belief that it did not require to be lodged with an approved third party scheme.
- 3.7 No information regarding the lodging of the deposit was given by the Respondent to the Applicant.
- 3.8 The tenancy between the parties ended by their agreement on 12 January 2026.
- 3.9 The Respondent repaid the deposit in its entirety to the Applicant on 12 January 2026.

4. Finding In Fact & Law

- 4.1 The Respondent is in breach of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 by virtue of her failure to lodge the deposit within an approved tenancy deposit scheme and provide the Applicants with the prescribed information within thirty working days of the commencement of the tenancy.

5. Reasons For Decision

- 5.1 In terms of Regulation 3 of the 2011 Regulations, the Respondent was obliged to lodge the deposit with an approved third party scheme within 30

working days of receipt of the instalments of the deposit and provide the Applicant with the information contained within Regulation 42. Therefore, the Respondent ought to have lodged the deposit with a scheme no later than 3 December 2025. The Respondent had failed to lodge the deposit within the prescribed time frame or provide the prescribed information to the Applicant.

- 5.2 Regulation 10(a) of the 2011 Regulations requires the Tribunal to make an order for payment in favour of the Applicant where the Respondent has breached the aforementioned duties. In that, the Tribunal has no discretion. The discretion of the Tribunal is limited to the amount the Respondent must pay which must not exceed three times the deposit taken. The Tribunal could therefore make an order for an amount up to £2550.00.
- 5.3 The Applicant cited a number of past decisions of the First-tier Tribunal in support of her contention that the maximum sanction ought to apply. The Tribunal considered those of limited assistance in determining the amount appropriate in the present case. The Tribunal agrees with the Respondent's submission that each case turns on its own circumstances. Rather, the Tribunal approached the matter of the amount by following the Upper Tribunal's reasoning in *Ahmed v Russell* 2023 S.L.T. (Tr) 33. The order for payment was a sanction upon the Respondent, not compensation for the Applicant, and ought to reflect the level of overall culpability measured against the nature and extent of the breach.
- 5.4 In the present case, the deposit had not been lodged at any point during the tenancy. The tenancy was of short duration and the Respondent was only in breach of her obligations in respect of the 2011 Regulations for the period 3 December 2025 until 12 January 2026, being the date upon which the tenancy ended. The deposit was returned in full to the Applicant on 12 January. The Respondent had taken steps to lodge the deposit with one scheme but had not done so due to confusion over the status of the Property and whether the 2011 Regulations applied. Whilst the Tribunal, and, indeed, the Applicant in her written statement, took no issue with the explanation offered by the Respondent, the Tribunal considered that she appeared to have significant experience in the lettings business, be they holiday lets or residential tenancies. It was incumbent upon the Respondent to ensure that she had taken proper advice rather relying only on that of an agent who it was not suggested was legally qualified. Mydeposits Scotland, or either of the other two schemes in operation, could have been contacted to discuss the position in more detail. The Tribunal therefore selected the sum of £850.00, being the equivalent of the deposit, as appropriate in the circumstances.
- 5.5 The parties had lodged representations relating to the performance of other obligations under the tenancy agreement, including the condition of the property, alleged harassment on the part of the Respondent and sums allegedly due by the Applicant following the end of the private residential tenancy agreement. Although these may have been the subject of

dispute, the Tribunal placed no weight on these matters, given that they were not relevant to extent of the breach or culpability of the Respondent. A hearing was not necessary to consider evidence relating to these issues. Should either party wish to pursue the issue of other losses said to be suffered, the present application is not the appropriate forum for those to be considered.

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.

Alastair Houston

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Legal Member/Chair

10 August 2026
Date