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/25/4501

Re: Property at 2/1, 17 Industry Street, Kirkintilloch, G66 3AB ("the Property")

Parties:

Miss Jessica Caterer, 2/2, 6 Ingholm Street, Glasgow, G11 6HA ("the Applicant")

Ms Marisa Zecchino, Auchengree Farm, Lenzie Road, Stepps, G33 6BZ ("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 ONE THOUSAND THREE HUNDRED AND TWELVE POUNDS AND FIFTY PENCE (£1,312.50) 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 06 May 2026. 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 and the application papers were served upon the Respondent by Sheriff Officers on 24 March 2026.

3. The Respondent was invited to make written representations by 11 April 2026 however no representation was made by or on behalf of the Respondent by that date. On 03 May 2026 the Applicant had emailed the Tribunal stating she was no longer available to attend the CMD. Given the proximity to the CMD the request was not copied to the Respondent before 06 May 2026. Neither party attended the scheduled CMD on 06 May 2026 and the Tribunal determined to adjourn the application to a further CMD under notice to the parties that if the Applicant did not attend the new CMD without good reason the application would be dismissed for want of insistence. The relative Note of the CMD was sent to parties on 19 May 2026.

4. On or around 17 August 2026 parties were notified that the adjourned CMD had now been scheduled to take place by teleconference on 06 October 2026 at 2.00pm and they were advised they were required to participate. No further representations or documents were received from the parties in advance of the CMD on 06 October 2026.

The CMD

5. The CMD took place on 06 October 2026 by teleconference call. Both parties attended and represented themselves.

6. The Tribunal had the following documents before it:- (1) Form G application form dated 17 October 2025; (2) copy tenancy agreement; (3) evidence of the end date of the tenancy arrangement in email correspondence to the Respondent's letting agent Mitchells Sales and Lettings, Glasgow ("Mitchells"); (4) bank statement information detailing a deposit sum was paid by the Applicant to Mitchells before commencement of the tenancy arrangement; and (5) details from the three statutory approved tenancy deposit scheme providers, namely My Deposits Scotland, the Letting Protection Scotland, and Safe Deposit Scotland stating the Applicant's deposit was not lodged with them.

7. The Tribunal explained the purpose of the CMD and how it intended to proceed. Responding to the Tribunal, the Applicant stated she had not been able to attend the previous CMD as she had been unable to change a work shift. The Respondent stated she had received the application paperwork served by Sheriff Officers under explanation that the Property is fully managed by her letting agent Mitchells. The Respondent stated she had passed over the paperwork to Mitchells and they had indicated they would deal with matters. So far as she was aware Mitchells had attended the CMD on 06 May 2026 and she believed it had been resolved as she had not heard anything further until she received the Tribunal's notification to participate at the present CMD. The Tribunal asked the Applicant to confirm, present and clarify, as necessary, the application submission. 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.

8. The Applicant stated that she wanted the Tribunal to order a sanction against the Respondent, as her landlord, as a result of the failure to lodge her deposit with any of the statutory approved tenancy deposit schemes within 30 working days of the commencement of her tenancy on 17 January 2023. The Tribunal noted the tenancy agreement lodged with the application did not include the landlord's name. In response to the Tribunal the Applicant stated, the Applicant stated she had obtained the Respondent's details from the Landlord Register. The Applicant stated she had paid a deposit of £525 to Mitchells on or before 17 January 2023, explaining this sum was transferred to Mitchells' business account together with the first month's rent of £525, thus a sum of £1,050. The Applicant stated the tenancy end date was 01 September 2025 and she had produced a copy of her email dated 04 August 2025 to Mitchells giving four weeks' notice that she would be leaving on 01 September 2025, asking how much rent she would need to pay for the period 18 August 2025 to 01 September 2025, and what tenancy deposit scheme held her deposit. The Applicant stated Mitchells did not reply to her after that email, she had not received any response from Mitchells regarding her deposit therefore she contacted the three statutory approved tenancy deposit schemes and that was how she learned her deposit had not been protected. Responding to the Tribunal the Applicant could not confirm the date(s) of the scheme administrators' statements of the status, except that this was shorty before she lodged her application for sanction to the Tribunal on 17 October 2025. Further responding to the Tribunal, the Applicant stated she had not received return of her deposit either in full or in part from Mitchells and had not lodged any related Form F to obtain this sum as she felt this would be too much for her as she was already stressed with the present application. Responding to the Tribunal, the Applicant stated she had never had any dealings directly with the Respondent, she had only ever dealt with Mitchells.

9. The Tribunal asked the Respondent for her position in relation to the application and what she had heard from the Applicant. The Respondent stated that she was dismayed at the situation: as she had already mentioned, the Property was fully managed - the reason for this, and she has a fully managed portfolio of rental properties with Mitchells managing about three and other agents managing the others as the properties are scattered over different areas - is she has elderly parents residing in Italy and the family take turns to care for them in Italy on a rota basis each spending approximately 4-5 weeks at a time, indeed she had only returned from Italy about three weeks earlier. The Respondent stated she had tried to contact Mitchells in relation to the present application and had also found them difficult to reach and had emailed them regarding the CMD. The Respondent stated she had managed to reach Mitchells that morning and had received a response. The Respondent stated Mitchells' response to her was to highlight the document lodged by the Applicant is not the signed tenancy agreement, it is an unsigned draft, and it was being stated the finalised tenancy agreement signed by the tenant and the agent states no deposit was to be paid, Mitchells would have no reason to have withheld a deposit; stating they would send a copy of the signed residential tenancy agreement to her. Responding to the Tribunal the Respondent stated, she still had not received the copy tenancy agreement. The Tribunal adjourned proceedings for approximately 15 minutes to allow the Respondent to make

efforts to contact her agent Mitchells to press for the completed tenancy agreement and to allow the Applicant to re-submit the bank statement confirming a deposit sum had been paid to Mitchells at the start of the tenancy.

10. The Tribunal re-convened. The Applicant had emailed a further copy of her bank statement evidencing: a sum of £1,050 was paid on 12 January 2023 to '[an individual] t/a Mitchells', reference 'Industry Street' representing her deposit and first month's advance rent had been paid to the Respondent's agent Mitchells. The Respondent stated she had been able to reach Mitchells, they confirmed they were sending the completed tenancy agreement to her and indicated the £1,050 paid by the Applicant upon commencement of the tenancy was advance rent, which meant that the tenant had not had to pay her last month's rent, this essentially being 'free'. The Tribunal noted the Respondent confirmed the additional £525 sum held by Mitchells was said by the agent to be held 'for performance of the tenant of an obligation arising from their occupancy or tenancy arrangement', regarded by Mitchells as payment of rent at a future unknown date. In response to the Tribunal, the Applicant stated she did attend Mitchells' office and sign a tenancy agreement however the only tenancy agreement she had been given was the one she had lodged. The Tribunal noted the tenancy agreement submitted referenced a Guarantor. The Applicant stated that her partner's dad had been doing work at or near Mitchells' office and there had been communication that the Property was coming up for let – there was never any Guarantor involvement. In response to the Tribunal, the Applicant stated she had paid a final sum of £237.16 at the end of her tenancy, which Mitchells told her was due. Responding further to the Tribunal, the Applicant stated she could email the detail of that payment to the Tribunal there and then, and she proceeded to do so. The relative copy bank statement evidenced: a sum of £237.16 was paid on 01 September 2025 to 'Mitchells', reference 'Industry Street'. The clerk forwarded both bank statement documents to the Respondent. The Respondent stated she still had not received any email with the tenancy agreement from Mitchells; she had sent a quick message to Mitchells about the Applicant's final payment and received a response stating this sum was arrears of rent due by the Applicant. Responding to the Tribunal, the Respondent felt it did not make sense that the tenant should have paid a final sum at the end of the tenancy if the last month was 'free' due to advance rent paid, and stated these were matters that she needed to take up with Mitchells.

11. The Tribunal canvassed with the parties potential areas of dispute between them with a view to any potential evidential hearing, such as whether or not the tenant was obliged to pay any deposit monies in terms of a document that had not been produced – that, despite the application papers having been served on 24 March 2026 and the Respondent having been told by Mitchells that matters were in hand in advance of the CMD scheduled for 06 May 2026 but not lodging any response or documents in response to the application or attending on behalf of the Respondent at the CMD (notwithstanding there being no dispute about an 'additional' sum of £525 having been paid upon commencement of the tenancy). The Tribunal stated that there was still no tenancy agreement produced to the Respondent by her agent despite assurances this was being sent to her in the morning. The Tribunal reminded

parties that any documents lodged within seven days of the CMD were allowed to be received at the discretion of the Tribunal and the opportunity had been afforded to the Respondent for her agents to produce paperwork that they had apparently been dealing with since she had passed the papers to them in advance of the initial CMD scheduled for 06 May 2026. No tenancy document was produced and the Tribunal invited parties to make submissions regarding the sanction sought.

11. The Applicant stated she was seeking the full sanction as her deposit had not been protected, Mitchells did not respond to her about the deposit, and through the Respondent during today's call they have claimed she has stated mistruths when she has not. The Applicant continued, stating she had been left feeling anxious and stressed due to her experience at the end of the tenancy and subsequently. The Respondent apologised that the Applicant had been left feeling anxious by her experience with her letting agent and stated she needs to sit down with Mitchells as she feels let down by them also; expressing that she feels 'thrown to the wolves' by them in having to attend and speak about their actions and having been left without an understanding of how matters had gotten to where they have and no communication about this matter until she tried to reach them after several attempts, and by not replying as they stated in the morning they would, she was left unprepared. The Respondent stated she always likes to do the best and if something is not right, then it is not right, and that is how it seems in this case, making mention of the Applicant paying a sum of money at the start and then at the end of the tenancy.

12. Having allowed the participant(s) a final opportunity to make any additional points or comment, the Tribunal made closing remarks.

Relevant Law

13. 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.

14. 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

15. The parties entered into a tenancy arrangement in respect of the Property, which commenced on 17 January 2023.

16. 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.

17. In terms of the tenancy arrangement the Applicant is the tenant and the Respondent is the landlord. The Property has now been sold by the Respondent.

18. On or around 12 January 2023 the Applicant paid a sum of £1,050 to the Respondent's letting agent, Mitchells – to an account named "[and individual] t/a Mitchells". The sum of £1,050 represented one month's rent in advance for the period 17 January 2023 to 16 February 2023, and an additional sum £525 held by the Respondent's letting agent Mitchells.

19. 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”. The ‘additional’ sum of £525 paid to the Respondent’s letting agent Mitchells in January 2023 and held by them is a “tenancy deposit”.

20. 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 17 January 2023, and the relative information provided to the Applicant under Regulation 42.

21. The Applicant’s tenancy deposit was not paid into any of the approved tenancy deposit schemes.

22. The Applicant’s tenancy ended on 01 September 2025.

Reasons for Decision

23. The Tribunal had canvassed with parties any potential areas of dispute between them. The Tribunal allowed an adjournment and additional time for the Respondent to clarify matters with her letting agent Mitchells and to obtain supporting evidence of assertions being put forward to her by them on the day of the second scheduled CMD in proceedings, despite the application papers having been served on 24 March 2026, passed to Mitchells by the Respondent thereafter, and the Respondent having been told by Mitchells that matters were in hand yet ,there being no attendance on behalf of the Respondent at the CMD on 06 May 2026, and the Respondent being provided with no documentation prior to and indeed throughout the duration of the CMD. In any event, it was not disputed between the parties that the Applicant had paid an ‘additional’ sum of £525 before the start of the tenancy and this sum had been held by Mitchells (said by Mitchells to relate to payment of future rent).

24. Having considered the documents before it (there being no written response to the application by or on behalf of the Respondent prior to today’s CMD) and 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.

25. Notwithstanding Clause 11 of the (unsigned) tenancy agreement lodged with the application states that the Respondent: “must lodge any deposit they receive with a tenancy deposit scheme within 30 working days of the start date of the tenancy….At the start date of the tenancy or before, a deposit of £525.00 will be paid by the Tenant to the Landlord…The scheme administrator is My Deposits Scotland ...”, 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 £525 to Mitchells before the start of the tenancy arrangement. By oral submission, the Respondent stated Mitchells held the sum regarding the fulfilment of the payment of rent by her tenant at the last month of the tenancy, thus an obligation to pay rent arising in connection with the tenancy arrangement for the Property. The Tribunal found the 'additional' £525 paid by the Applicant to Mitchells on 12 January 2023 to be a tenancy deposit.

26. 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.

27. 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 28 February 2023. 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.

28. 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.

29. 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 £1,575.

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."*

30. The Tribunal considered the aggravating factors in this case. 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 actions or omissions of an agent when acting for their principal may impact upon that principal. That situation has arisen in relation to this application. The business interaction(s) between her landlord and her landlord's letting agents is of no concern to the Applicant. The Applicant was without the benefit of her deposit being protected within a statutory scheme for the entirety of her occupation of the Property under the tenancy agreement, over two and a half years; and without the benefit of the scheme's relative dispute resolution mechanism available to parties. No explanation was offered to the Applicant by the Respondent's agent regarding the failure to pay her deposit into the statutory scheme. No contradictory position in response to the application was produced by the Respondent or their agent since the application was served on 24 March 2026 to the date of a second scheduled CMD on 06 October 2026 and no contradictory evidence produced on the day despite further opportunity allowed by the Tribunal. The Applicant did not receive return of their deposit or part thereof. The Applicant had to correspond with all three statutory schemes to clarify their landlord's failure. The Applicant was unable to locate a name and address for her landlord directly from the tenancy paperwork provided to them by the letting agent and obtained the details from the landlord register. 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 risk of the Applicant's application falling to be submitted outside of that time period.

31. The Tribunal went on to consider whether there were any mitigating factors in this case. The Respondent was candid in her oral submissions. The Respondent explained the reasons why her rental property portfolio was fully managed by different letting agents - she is an experienced landlord. The Respondent admitted having difficulty reaching her letting agents Mitchells in order to obtain information about the tenancy arrangement with the Applicant regarding the present application; and when she did so, paperwork promised to her was not produced and explanations given did not 'make sense' to her. The Respondent apologised for the Applicant being left anxious regarding her experience with Mitchells at the end of her tenancy. Notwithstanding the reasons for the employment of her letting agent, the actions and/or omissions of the Respondent's letting agent can impact upon the Respondent as their principal. Arrangements between the Respondent and letting agent Mitchells is a matter for the Respondent and landlord, as the principal. The Respondent failed in their obligation to protect their tenant's deposit for the full period of the Applicant's tenure in the Property which endured for more than two and a half years, notwithstanding the Applicant had to be put to the inconvenience of their own inquiry from the three approved statutory schemes, also in obtaining her landlord details in the landlord register. A letting agent accustomed to handling private residential tenancies and/or an experienced landlord (where appropriate) will be aware of the statutory timescale constraint for application regarding sanction.

32. 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 £1,312.50.

Decision

33. The Tribunal therefore made an order for payment in the sum of £1,312.50.

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 **06 October 2026**