



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 “Deposit Regulations”)

Chamber Ref: FTS/HPC/PR/26/1779

Re: Property at 44/2 Montgomery Street, Edinburgh, EH7 5JY (“the Property”)

Parties:

Mr Connor McLean, Miss Isabella Oliver, 4/205 Brunswick Road, Brunswick, Melbourne, Victoria, 3056, Australia (“the Applicant”)

Ms Sophie Duncan, Auchenlays, Kirkmahoe, Dumfries, DG1 1RE (“the Respondent”)

Tribunal Members:

Fiona Stephen (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of Five Thousand Four Hundred Pounds (£5 400.00) Sterling together with interest at the rate of four per cent per annum from the date of the decision, until payment

Background

1. By Application dated 22 April 2026 the Applicant sought an order for payment under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 and Rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). This application was conjoined with application number FTS/HPC/CV/26/1780 in which the Applicant sought repayment of the deposit from the Respondent.
2. The Applicant sought a payment on the basis that the Respondent had not lodged the deposit with any of the three approved deposit schemes as required by Regulation 3 of the Deposit Regulations.

3. The Application was accepted on 28 April 2026 and referred to a case management discussion ("CMD") to take place by teleconference on 15 September 2026 at 2pm. Sheriff Officers served the papers and gave intimation of the CMD to the Respondent on 12 August 2026 by letterbox service conform to Execution of Service of the same date. The Respondent had until 26 August 2026 to lodge written representations with the Tribunal. No written representations have been lodged.
4. The Tribunal had before it:
 - (i) The Application Form G;
 - (ii) Confirmation from the Scottish Landlord Register that the Respondent is a registered Landlord for the Property;
 - (iii) Private Residential Tenancy agreement signed by the Applicant and Respondent dated 10 and 11 July 2025;
 - (iv) Proof of payment of deposit;
 - (v) Correspondence from the three approved deposit schemes confirming that the deposit had not been lodged with any of them; and
 - (vi) Case Papers.

Case Management Discussion

5. The Case Management discussion took place by teleconference call on 15 September 2026 at 2pm. The Applicant (both Mr McLean and Miss Oliver) appeared by joining the call from Australia, where it was 11pm. The Tribunal delayed the start of the CMD by a few minutes, but the Respondent did not appear.
6. The Tribunal explained the purpose of the CMD and the powers of the Tribunal to determine matters. The Tribunal asked various questions of the parties with regard to the application.
7. The Tribunal explained to the Applicant that it had noted the terms of the tenancy agreement and the deposit amount (£1800.00). Mr McLean explained that he and Miss Oliver had not been told by the Respondent's letting agent that the tenancy deposit was to be lodged in one of the tenancy deposit schemes by the Respondent herself. They had assumed it was going to be lodged as set out in the tenancy agreement (Clause 12).
8. The Tribunal asked what contact there had been with the Respondent about the tenancy deposit. Miss Oliver said that she made contact with the Respondent towards the end of the tenancy at the point when they gave notice to leave. An email was sent to the Respondent but there was no response, which was not unusual. The parties communicated mostly via WhatsApp. The Respondent did not respond to your messages. On 24 February 2026, the Respondent confirmed that she was happy for the Applicant to leave the keys in the Property at the end of the tenancy. The last message you sent to her by WhatsApp was on 6 April 2026 when you told the Respondent that if she did not respond you would have no option but to lodge

an application with the Tribunal. She did not respond. The Respondent “left” the WhatsApp group on 22 April 2026.

9. The Tribunal asked the Applicant what impact the delay in getting the deposit back has caused. The Tribunal noted that the situation has been stressful for you. You were both leaving the tenancy to return to live in Australia, so as well as packing up to leave the Property, you were packing up to leave the country. The money would have been useful to have as it would have been used to off-set your financial commitments in Australia.
10. The Tribunal explained the range of sanctions it could apply where it finds a landlord has been in breach of the Deposit Regulations i.e. it could be from £1 to three times the level of deposit. The Applicant stated that, as a minimum, they considered a sanction of at least the deposit amount was appropriate.
11. The Tribunal told the Applicant it considered it had sufficient information to make a decision today and would issue a written decision shortly.

Findings in Fact

12. The Applicant entered into a Private Residential Tenancy with the Respondent on 10 and 11 July 2025 in respect of the Property.
13. The tenancy commenced on 25 July 2025.
14. Clause 12 of the tenancy agreement provided that a deposit of £1800.00 was payable by the Applicant and would be placed with SafeDeposits Scotland.
15. The tenancy deposit of £1800.00 was paid by the Applicant to the Respondent’s letting agent, Belvoir Edinburgh, 84 Commercial Street, Leith, Edinburgh EH6 6LX on 7 July 2025.
16. On 26 January 2026, the Applicant gave notice to the Landlord by email that they intended to leave the Property on 25 February 2026, in terms of the tenancy agreement.
17. The Applicant returned to Australia after the tenancy ended.
18. On 25 February 2026, the Applicant contacted the Landlord’s letting agent, Belvoir Edinburgh to find out where the deposit had been lodged.
19. On 25 February 2026, Belvoir Edinburgh told the Applicant that the deposit had been paid by them to the Landlord and she should have lodged it in a deposit scheme and sent the prescribed information to the Applicant.
20. The Respondent did not reply to the Applicant’s email request to provide them with information regarding the deposit nor did she respond to the Applicant’s WhatsApp messages concerning this.

21. The Applicant last messaged the Respondent by WhatsApp on 6 April 2026 and she did not reply.
22. The Respondent exited the parties WhatsApp group on 22 April 2026 and the Applicant has not heard from her since.
23. The three approved tenancy deposit schemes have confirmed to the Applicant that the deposit was not lodged with any of them during the tenancy.
24. The Respondent was served with the papers in this case by Sheriff Officers on 12 August 2026 conform to Execution of Service of the same date.
25. The Applicant has been put to significant inconvenience as a result of the Respondent's failure to comply with her obligations under the Deposit Regulations.
26. The Applicant could have used the deposit monies to off-set their financial obligations on their return to Australia.
27. The Applicant required to raise an application in the Tribunal under reference FTS/HPC/CV/26/1780 to secure return of the deposit.
28. The deposit remains unpaid as at the date of the Case Management Discussion.

Reasons for Decision

29. The Tribunal was satisfied that it was able to make a determination and that it was not contrary to parties' interest to do so at the CMD without the need for a hearing all in terms of Rules 17 and 18 of the Rules.
30. The application relates to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the Deposit Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy.
31. Regulation 3 of the 2011 Regulations provides inter alia:
 - (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.*

32. Regulation 9 of the 2011 Regulations provides:

- (i) 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.*
- (ii) An application under paragraph (1) must be made [...] no later than 3 months after the tenancy has ended.*

33. Regulation 10 of the 2011 Regulations provides inter alia:

- If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal]⁴ —*
- (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;*

34. It is clear that in this case the Respondent failed to place the deposit in an appropriate scheme and has breached Regulation 3 of the 2011 Regulations. The duties are two-fold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties.

35. The present application has been made timeously in terms of Regulation 9. The Tribunal is required to make an order for payment in terms of Regulation 10. The only matter to be determined by the Tribunal is the amount of the payment.

36. The legal test to be applied in determining an appropriate level of sanction is set out in *Jenson v Fappiano* 2015 GWD 04-89 and subsequent case law. Those authorities are reviewed by Sheriff Cruickshank in *Ahmed v Russell* 2023 SLT (Tr 33). He indicates at para [38] that “*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.*” At para [39] he states that “*The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose is not to compensate the tenant.*” The amount awarded should represent a “fair and proportionate sanction when all relevant factors have been appropriately balanced.” para [44].

37. The Tribunal also had regard to the decision of the Upper Tribunal in *Rollett v Mackie* [2019] UT 45 (also cited as UTS/AP/19/0020) in which Sheriff Ross states at para [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*” At paragraph [14], he goes on “*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”.

38. In reaching a determination, the Tribunal took into account that the Respondent is in clear breach of the Deposit Regulations.
39. The Tribunal took into account that the deposit was a significant sum (£1800.00) and that it had been left unprotected for the duration of the tenancy (7 months). The deposit has not been returned to the Applicant despite requests to do so. The Respondent has failed to engage with the Applicant at all. The Respondent deliberately exited the parties WhatsApp group on 22 April 2026 which demonstrates a failure to recognise her responsibilities as a landlord. As at the date of the CMD, the deposit has been unprotected for around 14 months and remains so. The Applicant required to raise a separate application against the Respondent to seek repayment of the deposit. These are aggravating factors. The Applicant has been put to inconvenience contacting the various deposit schemes to find out what had happened to the deposit money. The Applicant is having to deal with matters from Australia which adds to the inconvenience. The Applicant was deprived of the deposit money at a time when they were moving back to Australia. The Respondent has not engaged with the Tribunal process. The Deposit Regulations were brought in force to protect tenants' deposit monies and to provide a mechanism for dealing with the repayment of a deposit at the end of a tenancy. The fact that the Respondent failed to lodge the deposit deprived the Applicant of this mechanism. In light of the Respondent's failure to engage with this process, and her decision to deliberately cut off contact with the Applicant, the Tribunal is of the view that there are no mitigating factors in favour of the Respondent. In light of all the facts and circumstances, the Tribunal considered that it would be fair and proportionate to make an order at the highest level of the available scale.
40. The Tribunal determined that the sanction should be £5 400.00, being three times the amount of the deposit, in the particular facts and circumstances of this case. The Tribunal also considered it appropriate to apply interest at four per cent per annum on this amount from the date of the decision until payment, in terms of Rule 41A (2)(b) of the Rules.

Decision

The Tribunal granted an Order for payment of £5 400.00 in terms of Regulation 10 (a) of the Deposit Regulations together with interest at five per cent per annum from the date of the decision until payment, in terms of Rule 41A (2)(b) of the Rules.

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.

Fiona Stephen

Legal Member/Chair

Date 15 September 2026