



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 121 of the Housing (Scotland)
Act 2006 and Regulation 9 of the Tenancy Deposit Schemes (Scotland)
Regulations 2011**

Chamber Ref : FTS/HPC/PR/0637

Re: Property at 86/1 West Ferryfield, Edinburgh, EH5 2PU (“the Property”)

Parties:

**Miss Susan Henderson, Miss Veronica Duffy, 1/2 Belvidere Gate, Glasgow, G31,
4QJ (“the Applicants”)**

**Mr Martin McAdam, 32A Abercromby Place, Edinburgh, Midlothian EH3 6QE
 (“the Respondent”)**

**Ms Phyllis Stephen, 32A Abercromby Place, Edinburgh, Midlothian EH3 6QE
 (“the Respondent’s representative”)**

Tribunal Members:

**Valerie Bremner (Chairperson and Legal Member) and Gerard Darroch (Ordinary
Member)**

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent is not in breach of his duty in terms
of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011
 (“Regulation 3”). It follows that no order is made under Regulation 10 of the
Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 10”).**

1. Background

1.1 By application dated 2 February 2024 and received on 7 February 2024 the Applicants seeks an award under Regulations 3 and 10. The Applicants lodged with the application: -

- Copy Private Residential Tenancy Agreement, commencing 17 May 2021.
- Evidence of paying a deposit of £1,275.
- Correspondence from three Protection Schemes advising deposit not lodged with them.
- Subsequent correspondence from Letting Protection Services Scotland (LPSS) from 15/1/24, advising the landlord registered the deposit details on 8 January 2024, and the deposit funds were allocated on the same date. The deposit was protected from the 8 January 2024.
- LPSS Deposit Protection Confirmation - 86/1 WEST FERRYFIELD, EH5 2PU dated 9 January 2024 confirming that the deposit of £1,250 was received on 10 June 2021.
- Email dated 1 June 2021 from the Respondent's agent, Ms Phyllis Stephen to the Applicant Ms Susan Henderson providing screenshot of accounts evidencing the deposit.
- Email from LPSS dated 3 January 2024 to Applicant Ms Susan Henderson stating *"Having checked our database using the details you have provided, it would appear that although the above deposit details were registered under the Custodial scheme with LPSS on the 31 May 2021, no funds were allocated and the deposit was cancelled on the 28 January 2023. This means that we are not currently protecting, nor have we ever protected a deposit for you at that address."*

1.2 The Respondent submitted

- Evidence of having registered the deposit with LPSS on 31 May 2021.
- Evidence of notifying the Applicants that deposit had been lodged (1/6/21).
- Evidence of lodging funds with LPSS on 31/5/21 and 1/6/21.

1.3 The application was accepted for determination on 12 February 2024. A Case Management Discussion (CMD) took place by tele-conference on 17 May 2024.

2. Case Management Discussion ("CMD")

- 2.1 At the CMD the Applicants, Susan Henderson and Veronica Duffy attended on their own behalf. The Respondent was represented by Ms Phyllis Stephen.
- 2.2 The parties agreed that the tenancy commenced on 17 May 2021 and ended on 16 November 2023.
- 2.3 The parties agreed that a deposit of £1275 had been paid by the tenants at the start of the tenancy.
- 2.4 Miss Henderson advised she had received an email from Ms Stephen with screenshot (1/6/21) indicating the deposit had been lodged with LPSS.
- 2.5 Ms Stephen advised she had lodged the deposit in two instalments with LPSS. The first instalment was for £1000, the second for £275. She was unaware that there had been any difficulty with the deposit until Miss Henderson contacted her to say that the deposit was not protected, as advised to her by LPSS.
- 2.6 Ms Stephen advised that she contacted LPSS who confirmed and was given to understand that the funds had not been allocated, as they had been lodged in two instalments. As the funds were unallocated, LPSS cancelled the deposit registration in January 2023.
- 2.7 The matters to be decided:
- (a) Was there any failure on the part of the Landlord/ Letting Agent in registering and lodging the deposit.
- (b) Was the deposit unprotected for the duration of the tenancy
- 2.8 At the CMD the Tribunal determined to fix an Evidential Hearing and considered that the following evidence would assist in determining the application: -
- Detail from the Respondent of the process of registering and lodging the deposit.
 - Any correspondence from LPSS which would assist in determining the case.

3. Hearing

- 3.1 The Hearing took place by Webex video link on 14 May 2025 at 10am. The Applicants both attended and represented themselves. The Respondent was represented by Ms Phyllis Stephen.

3.2 In advance of the Hearing and after the CMD the Respondent produced the following additional documentation, namely: -

- A synopsis of transactions with LPSS
- Evidence of lodgement of funds on 31/5/21 and 1/6/21 with LPSS amounting to £1250
- Correspondence with LPSS regarding non allocation of funds and cancellation of the deposit registration.
- Evidence of the same procedure being followed with another deposit for another tenancy (paid in two instalments) which was seamlessly allocated.
- Evidence of eventual resolution of the deposit lodgement and repayment of the deposit to the tenants.

3.3 Miss Henderson commented that it would have been good to have had someone at the hearing from LPSS to speak to the process.

3.4 Ms Stephen took the Tribunal through the process which had been followed and explained that the deposit had been lodged with LPSS at the beginning of June 2021 and the deposit lodged had remained with LPSS until it was eventually repaid to the applicants on 11/3/24 by LPSS, less £159 for post tenancy cleaning.

3.5 The Tribunal queried whether at any time, LPSS had reverted to Ms Stephen to inform her that the lodgement process was incomplete, and that there were no funds allocated to the registration.

3.6 Ms Stephen advised that the first she heard of the process being incomplete was in January 2024 when LPSS advised that because the deposit had been lodged in two separate instalments, the system had been unable to allocate the funds to any registered tenant, property or landlord. There had been nothing to indicate to her that the process was incomplete. There were no prompts on the system to indicate that the process had not been completed.

3.7 Ms Henderson referred to the correspondence to her from LPSS on 8/1/24 which indicated that no funds had been allocated to the deposit. That being the case, she felt that the deposit had remained unprotected for the duration of the tenancy. However, she now did not think that there had been any falsification of documentation on the part of the landlord and no intention to mislead her into thinking that the deposit had been lodged, when it knowingly had not been.

- 3.8 Ms Henderson indicated that if there were to be any award from the Tribunal then it would likely be at the lower end of the scale. She expressed the view that it was not about seeking a financial gain, but rather to ensure that it didn't happen to others.
- 3.9 Ms Stephen was of the view that there should be no award, as the Respondent had done all that they could reasonably be expected to do, but if there was to be an award that it should be at the lowest end of the scale.

4. Findings In Fact

- The tenancy ran from 17/5/21 to 16/11/23.
- The Applicants paid over a deposit to the Respondent in the sum of £1250.
- The Respondent lodged the sum of £1250 with LPSS on 31/5/21 and 1/6/21, in two instalments.
- The funds remained with LPSS for the duration of the tenancy.
- The deposit was returned by LPSS to the Applicants (less £159) on 11/3/24.

5 Legislation

The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended.

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.

(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.

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.

6. Reason for Decision

The Tribunal was of the view that the Respondent had done all that could be reasonably expected of a landlord in order to lodge the deposit correctly and timeously. Moreover, the Respondent had notified the Applicants timeously of the lodgement with LPSS and had provided a screenshot of the protection confirmation.

The Tribunal considered that the Applicants had been misled into thinking that the Respondent had not lodged the deposit by a communication from LPSS. A more considered choice of words from LPSS would have made it clear that the process may not have been finalised within the system, but that the deposit had not been at risk and remained with LPSS. The Applicants were left with the distinct impression that the funds had not been lodged and were not held by LPSS. That was not the case.

The Tribunal found it extraordinary that the LPSS system would not run a report which could identify that there was an incomplete registration from a landlord and that there were funds lodged by the same landlord on the same day or the day after, which lay unallocated, and that these could not be reconciled.

In the present case, the Tribunal took the approach of establishing the facts, considering the legislation which applies, and then considering any aggravating and mitigating factors to determine culpability of the Respondent and decide on whether a sanction should be applied.

Based on the evidence, the Tribunal decided that the landlord had not contravened the legislative duty which applies in relation to the protection of a tenancy deposit in terms of Regulation 3. Furthermore, there was no culpability on the part of the landlord. Accordingly, no sanction will be imposed on the landlord in terms of Regulation 10.

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.

G Darroch

3 September 2026

Ordinary Member

(in the absence of the legal chairperson Mrs Bremner)