



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/CV/25/4503

Re: Property at 36 Broomgate, Lanark, ML11 9EE (“the Property”)

Parties:

Miss Kimberley Tervit, 54 Hospitland Drive, Lanark, ML11 7EH (“the Applicant”)

Ms Wendy McCulloch, 10 Delves Park, Lanark, ML11 9DY (“the Respondent”)

Tribunal Members:

Elaine Paton (Legal Member)

Decision (in absence of the Applicant and the Respondent)

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 FOUR HUNDRED AND TEN POUNDS (£1,410) 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 on 11 May 2026 at 10am. 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 was served upon the Respondent by Sheriff Officers on 27 March 2026. The Respondent was invited to lodge written representations by 15 April 2026. On 14 April 2026, the Respondent's solicitor lodged a separate but connected application on behalf of the Respondent seeking a civil payment order against the Applicant regarding compensation arising from a breach(es) of obligations associated with the tenancy arrangement between the parties; more particularly for losses incurred by the Respondent as a consequence of the Applicant's conduct, which application is Chamber Reference FTS/HPC/CV/26/1622 with a request that this application be expedited and heard alongside the CMD already scheduled for 11 May 2026 in the present application. The Respondent's solicitor was informed that it would not be possible for the separate case to be scheduled for 11 May 2026. There were no written representations received from the parties in advance of the CMD.

3. The CMD took place on 11 May 2026 at 10am by teleconference call. The Applicant was not present and was not represented. The Respondent was not present but was represented by her solicitor Mr Gildea of John Jackson Dick, solicitors. Mr Gildea confirmed that the tenancy commenced 15 March 2019, a deposit of £475 had been paid by the Applicant to the Respondent, and the Applicant left the Property on 14 November 2025. Mr Gildea stated the Respondent did not dispute that she had not complied with her obligations in terms of the 2011 Regulations. In response to the tribunal, Mr Gildea stated he was not seeking dismissal of the application in absence of the Applicant rather it would be the level of sanction sought by the Applicant that remained in dispute. The tribunal adjourned the proceedings to a continued CMD to be heard alongside the separate application lodged on behalf of the Respondent by Mr Gildea (CV/26/1622).
4. A CMD was scheduled to take place by teleconference on 03 September 2026 at 10am to hear the parties in relation to the present application and the separate payment application (CV/26/1622). Notification of the CMD was given to the parties and updated case papers sent to the Applicant and to Mr Gildea on behalf of the Respondent on 28 July 2026, with parties informed they were required to participate.

The continued CMD

5. The CMD took place on 03 September 2026 at 10am by teleconference. The Applicant was not present however her sister Ms Jessica Douglas attended on her behalf. The Respondent was not present but was represented by her solicitor, Mr Gildea.
6. Ms Douglas stated her understanding was that the Applicant had emailed the Housing and Property Chamber ("HPC") to advise that Ms Douglas would attend the CMD on her behalf. On checking, the clerk was unable to locate any email and Ms Douglas stated she did not have the email, which she stated would be in the Applicant's account to which she had no access, in

order to forward same to the HPC. Responding to the tribunal, Mr Gildea stated he was not opposed to matters proceeding with input from the Applicant's sister in absence of the Applicant. Ms Douglas stated the Applicant was on placement at Wishaw General Hospital and had been unable to change that commitment in order to attend the CMD. Ms Douglas stated that the Applicant's placement related to her college course. Ms Douglas was unable to explain why the Applicant had not attended the previous CMD on 11 May 2026.

7. The Tribunal had the following documents before it: - (1) Form G application form; (2) evidence of the tenancy arrangement regarding the Property which commenced 15 March 2019 and the deposit sum due; (3) evidence of the Applicant's deposit having been lodged with Safe Deposits Scotland on 16 October 2025; a statement that the tenancy ended on 14 November 2025; copy Application acceptance by the HPC dated 27 November 2025; and copy CMD Note dated 11 May 2026.
8. The Tribunal explained the purpose of the CMD in relation to the separate case CV/26/1622 and explained it would clarify with Ms Douglas and Mr Gildea, on behalf of the respective parties, some points with a view to confirming the Applicant's current address and noting mitigating and aggravating factors in relation to the present application. 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.
9. The Tribunal noted that Sheriff Officers had served papers on the Applicant in the separate payment application by her former landlord (CV/26/1622) at an alternative address to the one recorded in terms of the present application. Ms Douglas confirmed the Applicant's current address is the same as the one identified by Sheriff Officers. Ms Douglas also confirmed that the Applicant had received the updated case papers on 28 July 2026 by email. The Tribunal confirmed the parties were not in dispute regarding the tenancy arrangement and dates: the tenancy commenced on 15 March 2019, the tenancy ended on 14 November 2025, nor that a deposit of £475 had been paid by the Applicant to the Respondent but remained without having been lodged with an approved tenancy deposit scheme until 16 October 2025. The deposit was lodged with Safe Deposits Scotland on 16 October 2025. The Tribunal asked about the status of the tenancy deposit currently. Ms Douglas stated she was unaware of the status but was aware the Applicant had not received return of any part of her deposit. Mr Gildea stated there had been a calculation arrived at in respect of the tenancy deposit held by Safe Deposits Scotland whereby the Applicant's deposit had been exhausted by cleaning and gardening costs totalling £475 notwithstanding the Respondent had indicated to Safe Deposits Scotland that additional costs of £625 had been incurred regarding replacement of missing wooden wardrobes doors (£425) and replacement of interlinked smoke alarms allegedly damaged at the instance of the Applicant (£200) with a screenshot image having been produced to that effect by the Applicant in her written submission for the respondent in the separate application CV/26/1622. Responding to the Tribunal, Mr Gildea did not know for certain

the status of the tenancy deposit and whether or not the £475 sum had been returned to the Respondent.

10. In response to the Tribunal, Ms Douglas stated the Applicant was seeking the maximum sanction of three times her £475 deposit against her former landlord as she only learned about the deposit not having been protected about a month before she moved out of the Property when the deposit was lodged with Safe Deposits Scotland. Ms Douglas stated the Applicant had been given a notice that her landlord was selling the Property. The Tribunal noted the Applicant's position on the generality of the circumstances around her leaving the Property from the papers relative to the separate application CV/26/1622 whereby the Applicant stated that she: *"did not leave the property because I decided to move out...I left after notice was served because the landlord intended to sell the property."* and the Tribunal had sight of a covering letter dated 16 June 2026 from Dales, solicitors enclosing (a) a second letter of even date from their firm stating it was the Respondent's intention to sell the Property; and (b) enclosing Notice to Leave addressed to the Applicant at the Property on the basis of Ground 1 (landlord intends to sell the let property) albeit only the first two pages of the Notice had been submitted. Mr Gildea helpfully confirmed the date before which no proceedings for eviction could be lodged was 12 September 2025. Ms Douglas stated that the Applicant had stayed on a bit longer. Mr Gildea confirmed that there had been no arrears of rent when the Applicant left the Property on 14 November 2025.
11. The Tribunal noted the Respondent had been invited to respond to the present application by 15 April 2026 but did not do so directly. In response to the Tribunal, Mr Gildea stated that he had been consulted about the present application on 14 April 2026 and had lodged the separate application by way of a response, clarifying he had been involved in relation to other matters concerning the tenancy since October 2025. Responding to the Tribunal in relation to any mitigating circumstances around why the Respondent had not lodged the tenancy deposit with an approved tenancy deposit scheme before 16 October 2025, Mr Gildea stated the Respondent is an amateur landlord and the Property her only let property; she has her own property she resides in. The Respondent had consulted Mr Gildea in October 2025 and had indicated she was not aware of her requirement to protect the tenancy deposit, which Mr Gildea stated did not absolve her of the statutory obligation; and once she was advised of the position, she lodged the full £475 deposit sum immediately. Further responding to the Tribunal, Mr Gildea stated there had been no need to proceed with eviction as the Applicant had left the Property however he was unaware whether or not the Respondent had taken steps to market the Property for sale after serving notice to that effect upon the Applicant. Mr Gildea was unaware of the current status of the Property: whether or not it had been sold or had been re-let.
12. Having noted the Respondent accepted she was in breach of her statutory obligation to protect her tenant's deposit, the Tribunal stated it had sufficient information in terms of the application documentation and the oral

submissions at the CMD to reach its determination in the present application and would consider the level of sanction before issuing its decision in writing. The Tribunal allowed the Applicant's sister Ms Douglas and Mr Gildea, for the Respondent, a final opportunity to make any additional points or comment before it made closing remarks. Mr Gildea made a motion requesting enforcement of the Tribunal's order regarding sanction to be paused until at least after the next stage in the related payment application CV/26/1622 (hearing of parties' evidence) on the basis of it being in the interests of justice for any determination or monies granted against the Applicant as respondent in that case to be offset. The Tribunal stated it had noted Mr Gildea's motion, then proceeded with 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 or around 15 March 2019.
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.
18. On or around 15 March 2019 the Applicant paid a sum of £475 to the Respondent.
19. 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 15 March 2019, and the relevant information provided to the Applicant under Regulation 42.
20. The Applicant's deposit was not paid into any of the approved tenancy deposit schemes until 16 October 2025.
21. The Applicant's tenancy ended on 14 November 2025.
22. The Applicant did not receive return of her deposit of £475, or any part thereof.

Reasons for Decision

23. Having considered the documents before it, noting there being no opposition by or on behalf of the Respondent regarding the application documents lodged nor in respect of the Respondent's breach of her statutory obligation,

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.

24. 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.
25. 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 26 April 2019. The deposit had not been lodged with an approved tenancy deposit scheme until 16 October 2025, approximately one month before the tenancy ended. The Tribunal therefore found the Respondent to be in breach of Regulation 3.
26. 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.
27. 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 £1,425.

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."

28. The Tribunal considered the aggravating factors in this case. The Respondent failed to lodge the Applicant's deposit with any of the approved tenant deposit schemes until approximately one month before the tenancy ended. The Respondent is responsible for ensuring they comply with their statutory obligations. The Respondent cannot deflect from those obligations. The Applicant was without the benefit of their deposit being protected within a statutory scheme for almost the entirety of the period of her occupation of the Property under the tenancy agreement. No explanation was offered to the Applicant by the Respondent's agent regarding the failure to pay their deposit into a statutory scheme. 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 potential risk of the Applicant's application falling to be submitted outside of that time period. The Applicant did not receive return of her deposit. The Respondent achieved the benefit of the scheme's relative dispute resolution mechanism available to parties despite lodging her deposit six and a half years late, meanwhile she denied the same benefit and protection to her tenant for six and a half years.
29. The Tribunal went on to consider whether there were any mitigating factors in this case. The Applicant was notified about the status of her tenancy deposit (albeit shortly before she left the Property) therefore was not put to the inconvenience of her own inquiry from the three approved statutory schemes. The Respondent accepted that the Respondent may incur some cleaning and gardening costs after her tenant's occupation of the Property for over six and a half years and conceded her tenancy deposit sum would settle same. The Respondent failed in their obligation to protect their tenant's deposit for approaching 99% of the full period of the Applicant's almost six years and eight months' occupation of the Property.
30. Accordingly, having weighed the aggravating and mitigating factors in this case the Tribunal considered that the level of culpability was substantial, when measured against the nature and extent of the breach. Accordingly, the Tribunal determined that 99% the maximum sanction of three times the deposit sum was appropriate in this case, therefore a sanction of £1,410.
31. The Tribunal then considered the Respondent's solicitor's motion requesting that enforcement of the Tribunal's order for sanction be paused until an unspecified date, falling after evidence is heard in the related application (CV/26/1622) between the same two parties - akin to a counterclaim whereby the Respondent is the Applicant and the Applicant is the Respondent – it stated to be in the interests of justice to do so insofar as the level of sanction awarded in the present tenancy deposit scheme application be offset against any payment order that may, or may not (as the case may be), be awarded against the Applicant in that other application. Although connected in that the same individuals are parties to an application arising from the tenancy of the Property, the two applications follow different processes. The separate application is a claim for a payment sum said to compensate the landlord for expenditures arising from a contractual tenancy agreement, as a consequence of the tenant's alleged conduct relative to their tenancy obligations – it is for the applicant seeking payment to persuade the Tribunal

on the applicable tenancy obligation(s), the causal link of the other party being responsible for the losses that have necessitated the actual costs incurred and evidenced to have been incurred. The present application relates to the statutory requirements of the Respondent as a landlord. Where the landlord has failed to comply with the 2011 Regulations the Tribunal has no discretion: it **must** order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. To re-state Sheriff Cruickshank, at paragraph 27 above: *“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.”* Consequently, and notwithstanding there is no date scheduled for the next step in the proceedings of the separate application CV/26/1622, the Tribunal determined that enforcement regarding the sum of sanction ordered in the present application cannot be paused for any potential offset in a different application process; therefore, the motion on behalf of the Respondent is refused.

Decision

32. The Tribunal therefore made an order for payment in the sum of £1,410.

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

11 September 2026