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/26/1218

Re: Property at 100 Castle Mains Road, Milngavie, G62 7QB ("the Property")

Parties:

Mr Kyle Thomson, Amelia Christie, Flat 7 43 Caledonia Terrace, Edinburgh, EH30 9FH ("the Applicant")

Mr Allan Wallace (otherwise Alan Wallis), Ground 1, 6 Barrington Drive, Glasgow, G4 9DT ("the Respondent")

Tribunal Members:

Elaine Paton (Legal Member)

Decision (in absence of 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 TWO THOUSAND NINE HUNDRED AND EIGHTY-FIVE POUNDS (£2,985) 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 03 September 2026 at 2pm. 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. Following upon inquiries, said notification was served upon the Respondent by Sheriff Officers on 31 July 2026.

3. The Respondent was invited to make written representations by 18 August 2026 however no representation was made by or on behalf of the Respondent by that date. No further representations or documents were received from the parties in advance of the CMD.

The CMD

4, The CMD took place on 03 September 2026. The start time was delayed in order to allow additional time in the event that the Respondent may have been making efforts to attend. The CMD commenced by teleconference. The first named applicant Mr Thomson was present and represented both named applicants. The Respondent was not present and was not represented.

5. The Tribunal had the following documents before it:- (1) Form G application form dated 15 March 2026; (2) copy tenancy agreement; (3) evidence of the agreed end date of the tenancy arrangement in email correspondence with the Respondent's letting agent Mitchells Sales and Lettings, Glasgow ("Mitchells"); (4) information detailing a deposit sum was paid by the Applicant to Mitchells on or around 16 June 2025; 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.

6. The Tribunal explained the purpose of the CMD and asked Mr Thomson, for 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.

7. Mr Thomson confirmed the Applicant wished the Tribunal to order a sanction against the Respondent, as their landlord, as a result of the failure to lodge their deposit with any of the statutory approved tenancy deposit schemes within 30 working days of the commencement of their tenancy on 04 July 2025. Mr Thomson stated that he had paid the Applicant's deposit of £995 to Mitchells on 16 June 2025, explaining this sum was transferred to Mitchells' Bank of Scotland business account (the relative sort code and account details stated to the Tribunal) marked with the reference "100 CMR", all as requested by Mitchells. Mr Thomson stated that he had received an email from Mitchells on 16 June 2025 (13:28) confirming the deposit sum was £995 and stating the next payment of £995 (for rent) was due on or before a specified date. Mr Thomson continued to explain he had emailed Mitchells in response a couple of hours later (15:23) confirming the arrangement comprised in Mitchells' earlier email were understood; and both parties were happy with the arrangements.

8. In response to the tribunal, Mr Thomson stated he gave notice by email to Mitchells on 27 November 2025 that the Applicant would be leaving the

Property however as the expiry of the notice period fell on Christmas Day the Applicant had indicated to Mitchells that they could move out earlier if agreeable, suggesting 22 December 2025. Mr Thomson explained that after pressing Mitchells via emails for a response, the tenancy end date was agreed as 22 December 2025; the Applicant made payment on 04 December 2025 of *pro rata* rent for the period 04 December 2025 to the end of the tenancy on 22 December 2025. Mr Thomson stated the Applicant moved out on 22 December 2025 and delivered the keys for the Property, as arranged, to Mitchells at their address stated in the tenancy agreement: 604 Alexandra Parade, Dennistoun, Glasgow, G31 3BS. Mr Thomson alluded to having taken video evidence of the keys being delivered by him to that address.

9. The Tribunal asked Mr Thomson whether or not the Applicant's deposit had been returned. Mr Thomson stated £995 had been returned to his bank account on 12 January 2026 with the reference "Mitchells". In response to the Tribunal, Mr Thomson stated the Applicant has never had any dealings with the landlord directly, he believed there may have been mention at one point from Mitchells' staff that the landlord resided in Australia however the Applicant's communications were always with Mitchells. Mr Thomson stated that regarding repairs and such like the communications from Mitchells had generally been prompt however when he had emailed in connection with the tenancy deposit, there was no response and then eventually once a response was received, it never dealt with their deposit query; by way of example Mr Thomson stated he had emailed 5, 6 possibly 7 times before he received an email from Mitchells then there was no mention regarding the deposit instead it was stated there had been of a change of email address being utilised by Mitchells, tenants were said to have been informed about this in October 2025 yet the Applicant had not (notwithstanding the apparently now redundant email address via which the Applicant had communicated with Mitchells previously was the same email address detailed in the Mitchells' employee's electronic signature and was still evident on the company's website). Subsequently, there was an admission by Mitchells that the Applicant had somehow not been notified of the change of email address therefore as this was not at all their fault, a suggestion was made regarding a waiver of the December 2025 rent which the Applicant did not accept (having paid the pro rata sum). Mr Thomson stated the communications latterly read a bit odd and somehow disjointed and rather than provide a note of his bank details to Mitchells as requested regarding return of the deposit he stated to Mitchells by email that the deposit should be returned to the same bank detail that the Applicant had provided at the outset.

10. In relation to the level of sanction sought by the Applicant, Mr Thomson stated that in absence of any response from Mitchells they had made inquiries with a view to making an approach to their landlord direct. The tenancy agreement had the landlord's address noted as the same as the letting agent Mitchells' address. On checking the landlord register, the Applicant found that the Property was not listed. On checking with the three statutory approved schemes direct the Applicant learned their deposit had not been lodged and was not protected. Mr Thomson stated that had Mitchells returned their deposit and dealt with matters differently, then the Applicant may have felt a sanction claim of two times the deposit would be reasonable. The Applicant was seeking the

maximum sanction of three times their deposit paid due to the additional stress they encountered at finding out their deposit was unprotected, thus realising the monies they had paid over was now out there somewhere, meanwhile Mitchells were not responding to their emails and when finally, they did receive an email back, their inquiry about the tenancy deposit was not dealt with.

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

Relevant Law

12. 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.

13. 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

14. The parties entered into a tenancy arrangement in respect of the Property, which commenced on or around 04 July 2025.

15. 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.

16. In terms of the tenancy arrangement the Applicant is the tenant and the Respondent is the landlord. The Respondent is now the registered landlord for the Property with his name noted as 'Alan Wallis'.

17. On or around 16 June 2025 the Applicant paid a sum of £995 to the Respondent's letting agent, Mitchells.

18. In terms of Clause 11 of the aforementioned tenancy agreement it is stated 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….The scheme administrator is My Deposits Scotland or similar Government Scheme…".

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 04 July 2025, and the relative information provided to the Applicant under Regulation 42.

20. The Applicant's deposit was not paid into any of the approved tenancy deposit schemes.

21. The Applicant's tenancy ended on 22 December 2025.

22. The Applicant's deposit of £995 was returned to them in full via payment from the Respondent's letting agent Mitchells on or around 12 January 2026 to the first named applicant.

Reasons for Decision

23. Having considered the documents before it, noting there being no written response to the application by or on behalf of the Respondent; and the oral submission from Mr Thomson for the Applicant, 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 15 August 2025. 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.

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 £2,985.

    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 employed a letting agent apparently experienced in handling private residential tenancies. 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 appears to have arisen in relation to this application. The business operations of their landlord's letting agents is of no concern to the Applicant. The Applicant was without the benefit of their deposit being protected within a statutory scheme for the entirety of the period of their occupation of the Property under the tenancy agreement, 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 their deposit into a statutory scheme. The Applicant did receive return of their deposit however the deposit balance was paid to the Applicant directly by the Respondent's letting agent after the tenancy had ended. The Applicant was required to obtain evidence of the status of their deposit from all three statutory schemes to clarify their landlord's failure regarding payment of the tenancy deposit into an approved tenancy deposit 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.

29. The Tribunal went on to consider whether there were any mitigating factors in this case. The actions and/or omissions of the Respondent's letting agent can impact upon the Respondent as their principal. Arrangements between the Respondent and their 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 almost six month tenure in the Property notwithstanding the Applicant had to be put to the inconvenience of their own inquiry from the three approved statutory schemes and was unable to locate an address directly for their landlord in their tenancy paperwork and in absence of an entry for the Property in the Landlord Register at the time, and at 18 March 2026; notwithstanding the Respondent's letting agent had to be pressed for a response to email correspondence sent to them, all of which potentially could have caused delay regarding the time limit for application regarding sanction. A letting agent accustomed to handling private residential tenancies and/or an experienced landlord (where appropriate) will be aware of the statutory timescale constraint.

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 the maximum sanction was appropriate in this case, being three times the deposit sum, therefore a sanction of £2,985.

Decision

31. The Tribunal therefore made an order for payment in the sum of £2,985.

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 **03 September 2026**