



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 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/26/1865

Re: Property at 1/2 93 Inglefield Street, Glasgow, G42 7PP (“the Property”)

Parties:

Mr Sam Jordan Berry, 91 Morningside Street, Glasgow, G33 2NA (“the Applicant”)

Ms Aimee Anne McKay, 2/2 19 Tollcross Park View, Glasgow, G32 8UA (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £1800.00 be made in favour of the Applicant

1. Background

- 1.1 This is an application under rule 111 of the Chamber rules whereby the Applicant seeks an order for payment in respect of an alleged failure by the Respondent to comply with their obligations under the 2011 Regulations. The application was accompanied by copies of the tenancy agreement, bank statements, a receipt for payment and messages between the parties. The application was conjoined with application reference FTS/HPC/CV/26/1863.
- 1.2 Service of the application was carried out by advertisement. A copy of the papers were also emailed to the Respondent. The Respondent contacted the Tribunal in response to query the nature of the application, however, no written representations were received from her in advance of the Case Management Discussion.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 22 September 2026 by teleconference in conjunction with that for application reference FTS/HPC/PR/26/1865. The Applicant attended personally. The Respondent was neither present nor represented.
- 2.2 The Applicant confirmed that both the application was insisted upon. Given service had taken place by advertisement which had been acknowledged by the Respondent, the Tribunal considered it appropriate to proceed in her absence as permitted by rule 29 of the Chamber rules.
- 2.3 The Applicant confirmed that the tenancy began on 27 February 2026 and continued until 9 April 2026, having been terminated at his instigation. He paid £650.00 rent per calendar month for one bedroom in the Property, sharing a kitchen and bathroom with two other tenants. He paid a deposit of £700.00 on 9 February 2026. The deposit had not been lodged with a third party scheme and the Respondent had not responded to his messages enquiring about its return. It had not been protected at all and he had been caused financial stress due to it not having been returned.
- 2.4 The Tribunal noted that the Respondent was not the proprietor of the Property as borne out by the title deeds. The Applicant did not have any information as to the relationship between the Respondent and the individual named as proprietor. His contract was with the Respondent and he had dealt with her at all times.

3. Reasons For Decision

- 3.1 The Tribunal had required to consider whether there had been a breach of the 2011 Regulations in respect of the deposit. The Respondent was not the proprietor of the Property. The duties in respect of a deposit are set out in regulation 3 of the 2011 Regulations, which are 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.

(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—

(a) the references to deposit were to each instalment of the deposit, and

(b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.

(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.

3.2 Regulation 3(3) sets out to whom the duties apply. In the present case, the Respondent is an unconnected person in that they are not a member of the Applicant's family. The Applicant's occupation is not one excluded by section 83(6) of the Antisocial Behaviour etc (Scotland) Act 2006 (“the 2006 Act”). In order to be a “relevant person” the Respondent simply must not be either a local authority, a registered social landlord or Scottish Homes, which they were not. Given that the Respondent was not the proprietor of the Property, nor were they the principal tenant, the Tribunal also considered whether he was a landlord within the meaning of the 2011 Regulations. Regulation 2 of the 2011 Regulations imparts the definition of landlord from the Housing (Scotland) Act 2006 (“the 2006 Act”). Section 196 of the 2006 Act defines landlord as “any person who lets a house under a tenancy, and includes the landlord's successors in title”. It appears to the Tribunal that, as the Respondent was the person with whom the Applicant made an agreement, they can be considered a landlord in terms of the 2011 Regulations, which apply.

3.3 In terms of Regulation 3 of the 2011 Regulations, the Respondent was obliged to lodge the deposit with an approved third party scheme within 30 working days of receipt of the instalments of the deposit and provide the Applicant with the information contained within Regulation 42. The tenancy did not last the 30 working days, which would have expired on 10 April 2026. If the deposit had been returned within that 30 working day period, no duty to lodge it with an approved scheme would have arisen. As it has not been returned, the Respondent was under such a duty. The Respondent has failed to lodge the deposit within the prescribed time frame or provide the prescribed information to the Applicant.

3.4 Regulation 10(a) of the 2011 Regulations requires the Tribunal to make an order for payment in favour of the Applicant where the Respondent has breached the aforementioned duties. In that, the Tribunal has no discretion. The discretion of the Tribunal is limited to the amount the Respondent must pay which must not exceed three times the deposit

taken. The Tribunal could therefore make an order for an amount up to £2100.00.

3.5 In determining the appropriate sum, the Tribunal approached the matter of the amount by following the Upper Tribunal's reasoning in *Ahmed v Russell* 2023 S.L.T. (Tr) 33. The order for payment was a sanction upon the Respondent, not compensation for the Applicant, and ought to reflect the level of overall culpability measured against the nature and extent of the breach.

3.6 In the present case, the deposit had not been lodged at any point during the tenancy. The deposit was unprotected at all times. The Respondent had not returned the deposit to the Applicant and his efforts to contact the Respondent have been ignored. Objectively, the agreement between the parties was of short duration and may not have resulted in a duty to lodge the deposit at all. The Tribunal considered that a sum just short of the maximum sanction would be appropriate to reflect this. The Tribunal therefore selected the sum of £1800.00 and made an order for payment in this sum.

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.

Legal Member/Chair

Alastair Houston

21 September 2026
Date