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 Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Deposit Regulations")

Chamber Ref: FTS/HPC/PR/25/2233

Re: Property at 2/3 92 London Road, Glasgow, G1 5DE ("the Property")

Parties:

Mr Madhav Kharwar, 2/4 32 McPhail Street, Glasgow, G40 1AN ("the Applicant")

Mr Elliot Nouillan, Fulshaw Old Glasgow Road, Stewarton, Kilmarnock, KA3 5JR ("the Respondent")

Tribunal Members:

Fiona Stephen (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to grant an order for payment in the sum of One Thousand Four Hundred and Fifty Pounds (£1 450.00) Sterling.

Background

1. By application dated 19 May 2025 the Applicant seeks an order under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Deposit Regulations") in respect of alleged failures by the Respondent to comply with those regulations. The application is also brought under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Rules").

2. The application was accompanied by copies of a Private Residential Tenancy Agreement between Chloe West and the Applicant, as tenants, and the Respondent commencing on 23 January 2019 at a monthly rent of £725, with a deposit of £725. The Tenancy Agreement provided that the rent should be paid by bank transfer to the then letting agents and that the deposit was to be paid to the Respondent as landlord or to his agents. The Applicant also

provided a copy email from MyDeposits Scotland confirming that a deposit of £725 had been protected with them from 16 June 2020 until 15 December 2021, when it was transferred to another approved scheme, and an email from Safe Deposits Scotland confirming it was protected with them from 14 January 2022 onwards.

3. The Application was accepted by the Tribunal on 4 June 2025 and referred for determination by the Tribunal.

4. The Respondent was served with the papers in this case by letterbox by Sheriff Officers on 7 October 2025 conform to Execution of Service of the same date. The parties were aware that a Case Management Discussion ("CMD") was fixed for 12 November 2025 by teleconference call.

5. The Tribunal has previously recorded that at the CMD on 12 November 2025, attended by the Applicant and Respondent, the Respondent said that he had not seen evidence of the deposit being paid by the Applicant and did not know the exact date on which the tenancy ended. He stated that he had changed letting agents in 2020 and the new agents had advised him that their predecessors had not lodged tenancy deposits but that the new agents would honour and pay the equivalent deposits into a deposit scheme in order to retain the Respondent's business and that is what had happened. The Tribunal decided to continue the case to a further CMD and issued Directions to the Parties. The Applicant was directed to provide documentary evidence to substantiate payment of £725 to the Respondent or his agent and of the date on which the tenancy ended. The Respondent was directed to provide documentary evidence of the deposit being lodged from 23 January 2019 to 15 June 2020 and from 16 December 2021 to 13 January 2022, and of the end date of the tenancy.

6. On 6 January 2026, the Applicant provided the Tribunal with copies of redacted bank statements in the name of Chloe West, the first-named tenant in the Tenancy Agreement. They showed a payment of £725 on 18 January 2019 to a Barclays Account and a further payment of £725 on 23 January 2019 to an account in the name of the Respondent. They also provided copy Council Tax records indicating that their liability ended on 27 February 2025.

7. The Respondent did not provide any of the documentary evidence required by the Direction, but on 3 February 2026 he stated in an email to the Tribunal that he had not received the deposit paid directly by the Applicant to his bank account and no such payment had been made into his account on the date specified. On 6 February 2026, the Applicant responded that the payment had been from his now wife's account in the name of Chloe West, who was a joint tenant.

8. A second CMD was held by means of a telephone conference call on 11 February 2026. The Applicant was present. The Respondent was not present or represented. The Applicant had nothing to add to the evidence already before the Tribunal. The Tribunal proceeded to make a decision. On 26

February 2026, the decision was recalled. It transpired that the Respondent had not received appropriate notification of the continued CMD. A further CMD was fixed for 8 July 2026 but was postponed at the Respondent's request due to being on holiday. A further CMD was fixed for 20 October 2026 at 2pm.

9. On 16 February 2026, the Respondent had written to the Tribunal and stated that his bank had no record of receipt of the deposit of £725.00 and his bank would confirm that by letter. No letter was produced.

10. The Tribunal had before it:

(i) The Application Form G;
(ii) A copy of the Tenancy Agreement between the Applicant and the Respondent dated 22 and 23 January 2019, commencing on 23 January 2019;
(iii) Proof of payment of the deposit by the Applicant (on which more see below);
(iv) Confirmation that the deposit was not lodged with an approved deposit protection schemes within 30 working days of commencement of the tenancy; and
(v) Case Papers

Case Management Discussion

11. The Applicant and Respondent both appeared and represented themselves. The Tribunal explained the purpose of the CMD and the powers of the Tribunal to determine matters. The Tribunal asked various questions of both parties' representatives with regard to the application.

12. The Tribunal explained the orders which could be made in terms of the Deposit Regulations and the requirement that an award must be made if the Tribunal finds that there has been a breach of the Regulations.

13. The Respondent stated that he had sent a letter dated 17 February 2026 from his bank to the Tribunal. The clerk undertook to look at the file to see if this could be located as the hearing continued.

14. The Applicant relied on the information previously provided to the Tribunal. The letting agent had told him to send the deposit to the Respondent's bank account. He was not sure how he knew the bank details of the Respondent but assumed he was given details of it by the letting agent. There had been a few changes in the letting agency. He thought the letting agent was CPM Glasgow.

15. The Applicant stated that he had been unaware that the deposit had not been lodged at the start of the tenancy until after the tenancy ended. The deposit scheme had emailed him about the deposit and referred to the gap in the

lodging dates. The scheme suggested he contact the Tribunal and he subsequently made this application. That is confirmed by the email sent to the Applicant by SafeDeposits Scotland.

16. The Tribunal asked the Respondent some questions. The Respondent stated that he was a landlord of around 30 properties and well aware of his obligations under the Deposit Regulations. The Applicant claimed that the deposit was paid personally to him on 23 January 2019. He had contacted his bank and they confirmed that no payment had been received from Chloe West on that date. As far as he is concerned, no money was received on 23 January 2019 to pay the deposit. The letting agent was not in the habit of giving out his bank details.

17. The Tribunal asked the Respondent to clarify which letting agent was dealing with the Property as there was some confusion over this. The Tribunal noted that the tenancy agreement had been issued by Connect Property Management Glasgow Limited. The Respondent stated that it started off with this company but they then changed their name to CPM Glasgow Ltd ("CPM"). He was not sure if it had deposits for other tenants and rolled those over to the new company. It was the same staff.

18. The Tribunal asked how it was that a deposit was lodged with MyDeposits Scotland on 16 June 2020. The Respondent said he had spoken to a former employee at the letting agent and he was under the impression that no deposit had been paid. The Tribunal referred to the Applicant's bank statement. The Respondent referred again to his bank letter. The clerk confirmed this was not with the papers so the Tribunal adjourned the hearing for a short time. The Respondent confirmed he would take a picture of this and send it to the Tribunal which he did.

19. On reconvening, the Tribunal noted the terms of the bank letter and asked if the Applicant had been sent this. He had. The Tribunal noted that the letter was on Bank of Scotland headed paper (but with no address), dated 17 February 2026 and signed by A Fulton, Private Banking Relationship Manager. It stated "...I can confirm, having checked all of your accounts with us, no payment was received from Chloe West, or anyone else, for £725.00 on 23 January 2019." The Applicant was asked for his comments. He stated that the letter did not say which of the Respondent's accounts were being referred to.

20. The Applicant stated that the letting agent had asked for the deposit at the start of the tenancy. The deposit and first month's' rent had to be transferred before he got the keys for the flat. The letting agent changed a few times but rent was still going into the same account. The Applicant could not remember when Victoria Lettings started managing the Property. Every time he paid rent he got a confirmation email.

21. The Respondent said that CPM transferred its business to Victoria Lettings. He thought Victoria Lettings took over management of the flat in 2021 or

2022, years before the Applicant moved out of the flat. Victoria Lettings managed 4 other properties for the Respondent. Their bank account was totally different from CPM so the Applicant could not have been paying his rent to the same account.

22. The Tribunal asked the Respondent if he accepted that the deposit for the Property was not lodged with MyDeposits Scotland until 16 June 2020 and it was then transferred to Safe Deposits Scotland where it was protected from 14 January 2022 onwards. He confirmed this. The Respondent was adamant that he had received no payment on 23 January 2019. He could not explain how the deposit came to be lodged with MyDeposits Scotland or how it came to be transferred to the other scheme.

23. The Tribunal explained to the parties that if it found the Deposit Regulations had been breached then it had to impose a sanction which could be up to 3 times the level of the deposit. It asked both parties if they wanted to make any submissions on an appropriate sanction. The Applicant said he was content to leave that to the Tribunal. The Respondent said that if the deposit was lodged then it does not cover the works that have been required to the Property. He asked about time bar relating to a claim. The Tribunal stated it could not provide the Respondent with any advice on that and suggested he take legal advice. The Respondent said that where matters were not cut and dried then there would have to be some come and go from both sides. He did not consider that the Applicant had proved that the deposit had been paid.

24. The Tribunal thanked both parties for their submissions and advised that a written decision would be issued as soon as possible.

Findings in Fact

25. The Applicant and Chloe West, as tenants, and the Respondent entered into a Private Residential Tenancy agreement on 22 January 2019, which commenced on 23 January 2019, in respect of the Property.

26. In terms of clause 8 of the tenancy agreement, the Applicant was obliged to pay rent of £725.00, in cleared funds, before Wednesday 23 January 2019. Thereafter, rent payments were to be paid by Bankers' Standing Order to a named Barclays bank account.

27. Clause 11 of the tenancy agreement, stated *inter alia* "…At the start date of the tenancy or before, a deposit of £725.00 will be paid by the Tenant to the Landlord or his or her Agent in cleared funds. The Landlord will issue a receipt for the deposit to the Tenant."

28. The Applicant has produced a redacted copy of a bank statement relating to Ms West for the period 29 December 2018 to 28 January 2019. That statement shows that Ms West paid the rent of £725.00 by way of bank transfer from her bank account to a Barclays bank account on 18 January 2019. The narrative for the payment reads "Bill payment via Faster Payment

to Barclays SC REFRENCE 92 London Drive, Mandate no 28.". That statement shows that Ms West paid the deposit of £725.00 on 23 January 2019 by means of bank transfer from her account to an account in the name of the Respondent. The narrative for the payment reads "Bill Payment via Faster Payment to E Nouillan REFERENCE 2/3 92 London Road, Mandate No 30." The entry details relate to the Property. The payments made comply with the terms of Clauses 8 and 11 of the tenancy agreement.

29. The Applicant received the keys to the flat from the letting agent once the initial rent and the deposit had been paid.

30. The Applicant's deposit was not lodged in the approved tenancy deposit scheme, MyDepositsScotland, until 16 June 2020. It was protected there until 15 December 2021. The deposit was then transferred to Safe Deposits Scotland where it was held from 14 January 2022 onwards.

31. The tenancy ended on 28 February 2025.

Reasons for Decision

32. 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 procedure rules.

33. This 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 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy and to advise a tenant of details of the scheme into which it has been paid.

34. 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."

35. Regulation 9 of the 2011 Regulations provides:

"(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."

36. 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] —

(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 deposit into an approved scheme; or
(ii) provide the tenant with the information required under Regulation 42.

37. The Tribunal was satisfied that the deposit was paid by Ms West, the joint tenant, directly into a bank account in the name of the Respondent, in accordance with the tenancy agreement. The payment came from an account in the name of Chloe West and clearly indicated it was paid in respect of the Property. The Tribunal accepted the Applicant's evidence that they would not have received the keys to the flat without the payments for the rent and deposit being made at commencement of the tenancy. That is perfectly understandable. It would be very surprising for a letting agent to give out keys to a property without securing payment for the landlord first. In addition, the details of the account into which Ms West paid the deposit (with the description E Nouillan) must have been provided to her by the letting agent, otherwise she would not have been able to make that transfer. The Applicant said this was the case and logic suggests that this was the case.

38. The Respondent claimed that he had not received the deposit and produced a letter during the hearing from the Bank of Scotland referred to at paragraph 19 above. On the face of it, it confirms that the bank checked the Respondent's accounts but could not trace any payments into them from Ms West or anyone else for £725.00 on 23 January 2019. The accounts searched are not specified. The letting agents acting for the Respondent around June 2020 were the same people as at commencement of the tenancy even though the company had changed its name. Although the Respondent offered no explanation as to why the deposit was not lodged until this date, he had stated at a previous CMD that the "new" letting agent offered to pay the deposit to keep his business. No independent evidence has been presented regarding this and that seems curious when the letting agent business had simply changed its name and was run by the same people. The Tribunal finds that this evidence is unreliable.

39. The Tribunal had to weigh up the evidence presented by the Applicant regarding payment of the deposit and that of the Respondent. Whilst there is a contradiction in the evidence, the Tribunal prefers the evidence of the Applicant for the following reasons: (1) the payment of the deposit is confirmed by a bank statement; (2) the payment is in accordance with the terms of the tenancy agreement; (3) it is not credible to believe that a letting

agent would hand out keys to a property without having made sure payment had been received; (4) the Tribunal discounted the evidence of the Respondent regarding a conversation with a former employee of the letting agent regarding a deposit not having been received as being too vague and unreliable. In any event, the Respondent had, in an email to the Tribunal dated 3 February 2026, stated "I spoke to a previous employee of connect property and they are not willing to supply any information or make a written statement as to whether or not a deposit was actually paid as implied"; and (5) the Respondent accepted that the deposit had not been paid into the two tenancy deposit schemes until 16 June 2020 and 14 January 2022 respectively but could offer no reliable explanation for that.

40. 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 the specified information required under Regulation 42. The Respondent failed in both duties. The only matter to be determined by the Tribunal is the amount of the sanction.

41. 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].

42. 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 involve; actual losses caused to the tenant or other hypotheticals*".

43. The Tribunal took into account that the deposit was £725.00 and had been left unprotected for around 18 months. This is an unreasonable length of time. The Respondent lets out numerous properties and is well aware of his obligations under the Deposit Regulations. The Respondent was not able to offer any reliable explanation for why the deposit had not been lodged with a scheme other than to say he had not received it. For the reasons set out above, the Tribunal accepts the Applicant's evidence that the deposit was paid. At a previous CMD, the Tribunal notes that the Respondent stated that a

previous letting agent had not lodged the deposit and a new letting agent had paid it on his behalf to retain his business. The Respondent was not able to provide any independent evidence relating to this. Reference is made to paragraph 38 above. It is, in any event, a landlord's responsibility to lodge a deposit. If a letting agent accepts that responsibility on his behalf and fails to do so, then that is a matter for the landlord and letting agent to sort out between them.

44. The Tribunal took into account that the Applicant had been entitled to expect that the deposit would be placed in an appropriate scheme. The Applicant has been put to unnecessary inconvenience as a result of the Respondent's actions.

45. The Tribunal was not concerned at the apparent gap in protection between 16 December 2021 and 14 January 2022 as the Respondent and his letting agents would not have had access to the deposit at that time.

46. Having regard to all the facts and circumstances, the Tribunal considered that it would be fair and proportionate to make an order at the higher range of the sanction available. The Tribunal determined that an award of 2 times the deposit of £725.00 i.e. £1450.00 was fair and proportionate in the circumstances.

Decision

The Tribunal granted an Order for payment of £1 450.00 in terms of Regulation 10 (a) of the Deposit Regulations.

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

29 October 2026
Date