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 Regulations 9 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/25/3259

Re: Property at Flat 47, 3 Canal Walk, Edinburgh, EH3 9RA ("the Property")

Parties:

Mr Zhiqiang Yang, Group 18, No. 40, Dexin Village, Liangxu Town, Jiangyan City, Jiangsu Province, 225526, China ("the Applicant")

Maizelands Limited, Arringford Limited, 20 Churchill Place, London, E14 5HJ ("the Respondents")

Tribunal Member: H Macandrew

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment is made in favour of the Applicant due by the Respondent in the sum of £931.15 (NINE HUNDRED AND THIRTY-ONE POUNDS and FIFTEEN PENCE).

1) Background

1.1 The Applicant made an application in Form G ("application") on 30th July 2025 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The Application was accepted on 14th February 2025. A Case Management Discussion (CMD) was fixed for 12th January 2026 in relation to this Application.

2) Case Management Discussions 12th January 2026 ('CMD1"), 6th July 2026 ("CMD2")

2.1 CMD1 took place on 12 January 2026, attended only by the Applicant and the note of same was available at CMD2 on 6 July 2026. Said note from CMD1

details the background of the relevant PRT and that the deposit arising therefrom was received by Safe Deposits Scotland on 15 July 2025.

2.2 At CMD1, the Tribunal adjourned the application to a further CMD, since no notification of CMD1 had been made on The Respondents.

2.3 CMD2 was then assigned for 6 July 2026, prior to which the Tribunal had regard to information contained in the casefile, from which it appeared that on or about 29 January 2026, the deposit had been released minus an agreed sum of £350 for cleaning the Property, leaving the Applicant to receive £1512.30. Said information was provided to the Tribunal by email of that date from the Respondents. An email from Safe Deposits Scotland confirming the position accompanied said email.

2.4 Prior to CMD2, the Tribunal was able to confirm that its date had been intimated to both Respondents by recorded delivery letters dated 5 June 2026 and that, in addition, Ms Urban of the Respondents had been advised of same by email of the same date.

2.5 On the morning of CMD2, the Tribunal was made aware of an email from Ms Urban dated 3 July 2026, advising that she had that afternoon been selected for jury duty and was required to attend the High Court on 6 July for 9 30am. She advised that if selected for the jury she anticipated not being available for the rest of the week, albeit she might be released if not selected and that she had not been able to arrange alternative cover for the Respondents at CMD2

2.6 The Tribunal reverted to Ms Urban requesting sight of relevant documentation regarding her citation for jury service and advising the Applicant of this development, but no further information was received before CMD2 commenced.

2.7 CMD2 took place by teleconference and duly commenced shortly after 10am on 6th July 2026 with only the Applicant in attendance. The Tribunal confirmed the up-to-date position and that, in the circumstances, a further CMD would now require to be scheduled.

2.8 The Applicant enquired as to whether it might be possible for the Tribunal to proceed, since it had all relevant documentation available to it. The Tribunal advised that it wished to hear any explanation offered regarding the apparent late lodging of the Applicant's deposit in an approved scheme and therefore would now make an order for the Respondents to lodge more information about how his deposit was processed by them, as well as making it clear that The Respondents would require to have a contingency in place to cover the next CMD, if Ms Urban was unavailable again, for whatever reason.

2.9 The CMD was then adjourned to a date and time to be agreed with and intimated to the parties.

2.10 Based on its consideration of the casefile prior to CMD2 and not having heard or received any information from or on behalf of the Respondents as to their processing of the Applicant's deposit, it appeared to the Tribunal that the issue between the parties was whether the Respondents complied with relevant regulations for lodging same in an approved scheme.

2.11 The Tribunal identified that it would need to be addressed about how the Respondents and/or their representatives administered the Applicant's deposit, leading to Safe Deposits Scotland advising the Applicant that his deposit was lodged with them out with the statutory 30 working day period.

2.12 The Tribunal considered it would assist for the Respondents to confirm whether it is accepted the Applicant's deposit was not lodged with an approved scheme until 15 July 2025 and if so, the reasons for the late lodging, all vouched by relevant documentation.

2.13 The Tribunal, on its own initiative and for the purpose of making inquiries, issued the following Direction to the Respondents as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017: **The Respondents are required to provide: 1. Information and a timeline of their administration of the Applicant's deposit of £1862-30 paid on or about 23 April and not received by Safe Deposits Scotland till 15 July, both 2025; and 2. Specific confirmation as to whether they accept said deposit was lodged with Safe Deposits Scotland outwith the statutory 30 working period provided for them to do so. The said documentation should be lodged with the Chamber no later than 5pm on FRIDAY 7 AUGUST 2026.**

2.14 A further CMD was fixed for 20th October 2026 ("CMD3")

3) Case Management Discussion 20th October 2026 (CMD3)

3.1 CMD3 took place on 20th October 2026 at 10am. The Applicant took part on his own behalf. Ms Urban represented the Respondents.

3.2 The Applicant sought a penalty to be made against the Respondents for their failure to lodge the deposit with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy.

3.3 In advance of CMD3, on 6th August 2026 the Respondents sent a Submission to the Tribunal in response to the Direction made. The submission set out a timescale which showed the deposit of £1862.30 was received from the Applicant on 22nd April 2025 and on 1st May 2025 it was registered with Safe Deposit Scotland. On the same date it was recorded and registered in the Respondents internal system. On 11th July 2025 the deposit was transferred to Safe Deposits Scotland and acknowledged by them on 15th July 2025. Ms Urban drew the Tribunal's attention to the vouching lodged confirming this timeline. Ms Urban acknowledged the lodgement was out with the 30-day

period. She explained that this was an honest administrative error which coincided with a transitional period when internal changes were taking place within the Respondents organisation. She said the deposit was retained in a client's account of the Respondents throughout the period before it was deposited and it was safe. The deposit less an agreed sum had been returned to the Applicant at the end of the tenancy. The Respondents have several properties. They are experienced landlords and deposits are regularly lodged. She assured the Tribunal that their internal procedures had been strengthened to ensure this does not happen again.

3.4 The Applicant sought a penalty. He maintained that the Respondents were experienced landlords and should have lodged the deposit timeously. He insisted that he was seeking a penalty as his deposit had been unprotected from 22nd April 2025 until it was acknowledged by the Safe Deposit Scotland on 15th July 2025.

4) Decision

4.1 The Respondents have breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

4.2 The Tribunal makes an Order for payment by the Respondents to the Applicant of the sum of Nine Hundred and Thirty-One Pounds and Fifteen Pence (£931.15)

5) Reasons for Decision

5.1 The Respondents accept the breach of the regulations. They have provided an explanation that the failure was not intentional and arose due to an honest administrative error a time when internal changes were taking place. They demonstrated by way of vouching from their internal system that the deposit was received, placed in their client's bank account and then transferred into the Safe Deposit Scotland scheme. The Applicant did not dispute Ms Urban's submission but pointed to the fact that the Respondents had not fulfilled their legal duty to lodge the deposit timeously.

5.2 The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. The Tribunal was satisfied both that the necessary level of evidence had been provided through the application, at the CMD1, CMD2 and CMD3 inwriting and orally and that it was appropriate to make a decision at CMD3.

5.3 The Tribunal was satisfied that the evidence provided by the Applicant was credible and reliable on the material issues of the application. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding

three times the amount of the tenancy deposit. In this case the Respondent did not lodge the deposit with an approved scheme or provide the prescribed information within the 30-working day period.

5.4 The Tribunal had regard to Upper Tribunal authorities in similar cases, in particular *Rollett v Mackie [2019] UT 45* and *Ahmed v Russell [2023] UT 7*.

In Rollett, above, Sheriff Ross said [at para 9] that:

'Each case has to be examined on its own facts, upon which a discretionary decision requires to be made by the FTT. Assessment of what amounts to a "serious" breach will vary from case to case – it is the factual matrix, not the Page 5 or 6 description, which is relevant. Comparison with other cases is therefore of minimal assistance in the present case. The general principles of the law apply and these include that for a discretionary decision to be overturned it must be one which no reasonable tribunal could make.'

And further [at para 13]:

'In assessing the level of a penalty charge, the question is one of culpability and the level of penalty requires to reflect the level of culpability. Examining of the FTT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree and these two points cannot help on that question. The admission of failure tends to lessen fault; a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the fact and tends to lessen culpability.'

In *Ahmed*, above, Sheriff Cruickshank outlined the purpose and policy objectives of the Regulations [at para 19] and referred to Sheriff Ross's '*helpful summary*' *Rollett*, above [at para 29], stating:

'Furthermore, in Rollett, Sheriff Ross considered that in assessing the level of sanction the question was one of culpability. When it came to the level of sanction the question was one of degree and provided examples of the factors which could lessen or increase the level of culpability' [at para 30].

5.5 In the present case, the Tribunal took the approach of establishing the facts and then considering any aggravating and mitigating factors to determine culpability of the Respondent and decide on the appropriate level of sanction.

5.6 The Tribunal considers the fact that the Respondents have provided an explanation for their failure and supported this with a timeline and vouching. The Tribunal accepted the Respondents explanation which enabled the Tribunal to place the failure at the lower end of their culpability. Nonetheless, the failure requires to be marked.

5.7 The amount to be awarded is a matter for the discretion of the Tribunal having regard to the factual matrix of the case before it. The Tribunal considered the

comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.

[14] Cases at the most serious end of the case 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 involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present."

5.8 Applying Sheriff Ross's reasoning in *Rollett* to the current case, the purposes of the 2011 Regulations are to ensure that a tenant's deposit is insulated from the risk of insolvency of the landlord or letting agent, and to provide a clear adjudication process for disputes at the end. The Tribunal is satisfied that this case falls in the lower range of the scale of seriousness of breaches. The deposit was unprotected from 22nd April 2025 until 15th July 2025. The unprotected period was relatively short. There was no evidence or suggestion of the aggravating factors as set out in Rollett. The sum equivalent to one half of the deposit was considered by the Tribunal to be reasonable in all the circumstances.

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.

H Macandrew

20th October 2026

Legal Member/Chair **Date**