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 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/26/3337

Re: Property at 89 Bonaly Rise, Edinburgh, EH13 0QY ("the Property")

Parties:

Ms Sarah Pawley, Mr Michael Hughes, Flat 7, 2 Meggetland View, Edinburgh, EH14 1XS ("the Applicant")

Ms Eileen Johnstone, formerly at 59 Bonaly Wester, Edinburgh, EH13 0RQ and now at Slyvan Lea, Flat 3, 49a Spylaw Street, Colinton, Edinburgh, EH13 0JT ("the Respondent")

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011, and it would make an order for payment of £25.00 in favour of the Applicant

Background Discussion

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 Rules") seeking an order against the landlord failure to lodge a tenancy deposit.

2. The application contained:-

    a. Tenancy agreement;
    b. Evidence from an approved deposit scheme that they held the deposit for the property, but that it was lodged outwith the 30 working day period.
    c. Correspondence between the letting agent and the applicant about the tenancy deposit and other issues arising with the tenancy

3. The case called for a case management discussion (CMD) on 13 November 2026. The applicant, Ms Pawley appeared. The respondent's letting agent, Mr Thomas from DRM Residential Property Letting and Management Limited, appeared. The letting agent had submitted written representations for the CMD on 4 and 6 November 2026. The applicant had seen these representations. The tribunal allowed these representations to be received. Mr Manon and Mr Henderson from the letting agent were there as observers.

Discussion

4. Both parties agreed that the tenancy deposit had been lodged with an approved scheme, 13 working days outwith the 30 working day rule. It was agreed it had been lodged 7 working days late.

5. The applicant advised that they were seeking 1/3 of the maximum amount which could be awarded. They thought this was fair as it was at the lower end of any award. They accepted that the period in which the deposit was lodged outwith the 30 working day period was seven days. They considered that seven days outwith the 30 day working period was still a long period, as the landlord had had 30 working days to lodge it and had not done so. Landlords should not be waiting until the 30th day before they put the deposit into a scheme. The deposit had not been protected and if anything had happened to the letting agent- for example, if they had gone into administration they would have lost their money. There was a failure to uphold the statutory requirements and a penalty had to be imposed for this failure. In relation to the detriment that the applicant had suffered, they advised they had suffered a fundamental breach

of trust. They were expected to pay their rent on time and they advised that they should be able to expect their deposit would be deposited into a tenancy deposit scheme timeously. They advised that they had not been out of pocket in relation to this matter; however it was a serious breach of the statutory regulations. They considered that it was important that these cases were determined and a suitable fine was imposed, as it should send out a message to other landlords that they had to ensure that they adhered to the rules.

6. The respondent's agent accepted that they had made a mistake and the deposit was lodged late. It had been an honest mistake, and they had rectified it as soon as they were able to do so. They had offered £200 by way of a goodwill gesture; however, the applicant had not been happy with that offer and had refused it. They had also apologised and accepted liability for their fault. They advised this is the first time they had ever had to attend tribunal in relation to this matter. They advised that their business had been operating for 30 years and they managed 220 properties; deposits were taken for each property. They had subsequently taken steps to make sure that this did not happen again; they were tracking their deposits to make sure they were lodged on time. They do not lodge deposits before a tenancy starts in case the tenancy does not go ahead for any reason.

7. In the respondent's agent's written representations, they accepted that there had been a breach. He advised that the tenancy started on the 25th of February 2026 and ended on the 21st of May 2026; the deposit amount stated was £1575. It had been paid by the tenants on 31 January 2026 prior to the tenancy starting. The deposit was received by Safe Deposits Scotland on 20 April 2026, seven working days after the 30-day working deadline for a deposit to be protected. The agent advised this failure was due to the deposit being missed during a payment run of deposits being transferred to Safe Deposits Scotland around that time. As soon as the issue was identified, the deposit was transferred to the scheme without delay. They did not consider that the tenants had incurred costs or suffered loss as a result of what was a mistake. The deposit had been returned in full after the tenancy had ended. The agent advised that they were a small business and had recently, unexpectedly lost a

senior employee, which had left them short-staffed. Mr Thomas was the only person authorised within the organisation to make payments to Safe Deposits Scotland. In addition, there had been a number of employee absences around the time that deposit was due to be lodged in March or April of 2026, and that had increased the difficulty of managing the workload and had contributed to the late payment of the deposit.

Findings in Fact

8. The Tribunal made the following findings in fact:-

9. The Respondent, Eileen Johnstone, was the landlord,

10. The Applicants, Sarah Pawley and Michael Hughes, were the tenants.

11. The Applicants had paid the Respondent a tenancy deposit before the tenancy commenced on 25 February 2026.

12. The deposit was for £1575.

13. The deposit was placed in an approved scheme on 20 April 2026. The parties agreed this was 7 working days outside the 30 working day requirement.

14. The tenancy ended on 21 May 2026. The deposit had been returned to the applicants in full.

15. The tenancy deposit paid by the applicant had not been lodged with an approved tenancy deposit scheme within 30 working days of the tenancy commencing.

16. The letting agent had been responsible for lodging the deposit with an approved scheme. They had experienced the loss of a senior member of staff and staff

absences at the time when the deposit should have been lodged, and this had led to an error on their part; once the error was realised, the deposit was paid into the scheme.

Discussion

17. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations:-

> *Duties in relation to tenancy deposits*
> *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.*
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> *Sanctions*
> *9.— (1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal] 1 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 […]2 no later than 3 months after the tenancy has ended.*
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> *10. If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal] 1 — (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] 1 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.*

18. The tenancy deposit regulations apply in this case. The landlord received a deposit in connection with a relevant tenancy. They had a duty to therefore

place it into an approved scheme. They did not do so in accordance with the regulations. Given this breach, the tribunal is required to order the landlord to pay the tenant an amount not exceeding three times the tenancy deposit.

19. The deposit was lodged in an approved scheme, but this was done 7 working days outwith the statutory time limits. The landlord's agent had admitted the breach and apologised for it. They advised that this was an error caused by staff shortages. They are a small organisation, and the impact of staff shortages had affected their operation to a degree, leading to the lodging of the deposit being missed for 7 working days. There appeared to be no intention not to protect the deposit. They had also taken full responsibility for this error. They had taken legal advice about how to deal with the matter when the applicant contacted them to seek compensation. They had offered £200 to settle the matter, but this was refused by the applicants. The tribunal does not consider that this breach was a serious breach of the regulations in any way. The tribunal also does not consider that there was any intention on the part of the letting agents to delay lodging the deposit into a deposit scheme.

20. When deciding on the amount of the award, the tribunal has to take into account that the sanction is to mark the gravity of the offence; it is not paid as compensation; the assessment should be fair and proportionate; and there should be an assessment of mitigating and aggravating factors.

21. I consider that this breach is at the lowest end of the scale. In assessing the relevant factors:

22. Mitigating factors are: that the breach was for a short period of 7 working days. The landlord's agent admitted the breach. The agent apologised for the breach and tried to resolve the matter, and offered compensation. They have been in business for 30 years; they manage over 200 properties with deposits, and they have never been to tribunal before for a failure to lodge a deposit. There was no obvious loss suffered by the applicant. It did not appear that there had been

any prejudice to the tenant in terms of the relatively short failure to lodge his deposit in an approved scheme.

23. In terms of aggravating matters in this case. I do not find any aggravating factors.

24. While the applicants said that they could have lost money if the business had gone into administration, that did not happen, and there was no loss. The tribunal also does not accept that the 7 day failure to lodge the deposit amounts to a fundamental breach of trust between the letting agent and applicants. There was no intent to breach the regulations; it was a failure in procedures for a short time caused by staff shortage. The tribunal also does not accept that the letting agent should have put the deposit in a scheme well before the 30 working days expired; the regulations only require that it is lodged within 30 working days. In this case the deposit was lodged just outside the 30 working day period.

25. The regulations require me to make an order in the event of breach; for all of the reasons I have set out above, I consider that the failure to lodge the deposit was unintentional and caused by staff shortages. The landlord's agent knew that they had an obligation to put the deposit into the scheme; they had suffered staff shortages, and this had led to the lodging of this deposit being missed for 7 working days only. Once it had been noticed, the failure was rectified. It has caused none or minimal detriment to the applicants. In all the circumstances, I consider that this was at the lowest end of the scale of seriousness. I do not consider that one full month's rent would be a low penalty in this case. As I am required to make an award, I consider that a nominal sum only should be awarded and therefore make an award of £25.

Decision

26. The Tribunal determined that there had been a breach of the Tenancy Deposit Scheme (Scotland) Regulations 2011, and it would make an order for payment of £25.00 in favour of the Applicant.

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.

M Barbour

17 November 2026

Legal Member/Chair **Date**