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 Scheme (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/26/2737

Re: Property at 2/1, 45 Thornwood Avenue, Glasgow, G11 7PU ("the Property")

Parties:

Ms Julia Danielsson, Ms Magdalena Kosut, Ms Enrica Casu, 1/1, 28 Thornwood Avenue, Glasgow, G11 7TW; 1/1, 28 Thornwood Avenue, Glasgow, G11 7TW; 1/1, 43 Main Street, East Kilbride, G74 4LN ("the Applicant")

Minerva Homes Limited, Strathearn, Station Road, Buchlyvie, Stirling, FK8 3NE ("the Respondent")

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent is in breach of the duties in relation to the Applicants' tenancy deposit under regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations").

The Tribunal therefore made an order for payment against the Respondent in the sum of Seven hundred and fifty pounds (£750) Sterling.

Background

1 This is an application under regulation 9 of the 2011 Regulations and rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules"). The Applicants sought a determination that the Respondent had failed to comply with their duties under regulation 3 of the 2011 Regulations along with a payment order of up to three times the amount of the deposit.

2 In terms of regulation 9 of the 2011 Regulations, an application under rule 103 must be made within three months of the end date of the tenancy. The tenancy

between the parties terminated on 28 March 2026. The application was considered made to the Tribunal on 18 June 2026. The application is therefore timeous.

3 The application was accepted as valid and referred to a tribunal for determination. A case management discussion ("CMD") was scheduled to take place by teleconference on 9 November 2026 at 11.30am. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules.

4 The notice together with a copy of the case papers was served upon the Respondent by sheriff officers on 10 September 2026 and required the Respondent to make written representations in response to the application no later than 30 September 2026.

5 On 29 September 2026 the tribunal received written representations from the Respondent in response to the application. In summary, the Respondent accepted the breach and apologised for the oversight. The Respondent explained that the error had arisen when a joint tenant had left the property and the new deposit was not flagged. The deposit was returned in full to the Applicants on 9 April 2026, prior to the Tribunal application. The Respondent now had corrective procedures in place.

The CMD

6 The CMD took place on 9 November 2026 by teleconference. Ms Danielsson and Ms Casu joined the call. They confirmed that Ms Kosut was unable to attend but was content for them to represent her. The Respondent was represented by Mr James Crockett.

7 The tribunal had before it the application form together with supporting documents including private residential tenancy agreement, emails between the parties, and correspondence from the deposit schemes. The tribunal also had the Respondent's written representations.

8 The tribunal explained the purpose of the CMD and proceeded to hear submissions on the application. The following is a summary of the key elements of the submissions.

9 The tribunal confirmed that the Respondent accepted the breach of regulation 3 of the 2011 Regulations in respect of the Applicants' tenancy deposit. The issue for the tribunal to determine therefore was the appropriate penalty that should be awarded in this case.

10 Ms Danielsson explained that the Applicants sought an award of up to three times the amount of the deposit. The deposit had been unprotected for the entire duration of the tenancy, a period of around two and a half years. The Respondent has other rental properties and is an experienced landlord. The Respondent's mitigating circumstances were noted and not disputed by the Applicants. Ms Casu agreed with Ms Danielsson's submissions. Neither Miss

Danielsson nor Ms Casu was aware that the deposit wasn't protected. They assumed it would have been. It was only towards the end of the tenancy that they became aware of the situation, at which point they raised it with the Respondent.

11 Mr Crockett confirmed that the property had been rented to Ms Casu, Ms Danielsson and a third party between August 2020 and September 2023, when the third party moved out and Ms Kosut moved in. When there is a change of tenancy the entire deposit must be withdrawn from the scheme so that the outgoing tenant can receive their deposit back, and thereafter the deposit repaid into the scheme. In the Applicants' case, the system didn't pick up the latter step, and the deposit was not re-lodged. It was never raised by the Applicants during the tenancy and the error had gone unnoticed. If the Respondent had realised their error it would have been rectified. The Applicants' deposit was not at risk and it was not intentional on the Respondent's part. When the error became apparent, the Respondent arranged for the deposit to be repaid to the Applicants which they agreed to. It was simply a clerical issue. It did not cause any disturbance between the parties. The Applicants were good tenants. The Respondent was surprised to find themselves subject to these proceedings. The Respondent has sixty five rental properties. They have never been found in breach of the 2011 Regulations over the 45 years they have been involved in residential letting. The situation was unfortunate but the Applicants had not suffered any loss.

12 The tribunal asked parties whether they had any further evidence they wished to submit in support of their respective positions. Both parties confirmed they were content for the tribunal to proceed to a decision based on the information before it.

Findings in fact

13 The Respondent is the owner and landlord, and the Applicants were joint tenants of the property in terms of a private residential tenancy agreement, which commenced on 4 September 2023.

14 The tenancy arose after a joint tenant left the property and the second Applicant moved in. The first and third Applicants were previous joint tenants of the property prior to the commencement of this tenancy.

15 In terms of clause 11 of the tenancy agreement the Applicants undertook to pay a tenancy deposit of £1100 at the start date of the tenancy or before.

16 The Applicants paid the tenancy deposit to the Respondents prior to the start date of the tenancy.

17 The Respondent did not lodge the deposit with an approved tenancy deposit scheme. The Respondent did not provide the Applicant with the information required under regulation 42 of the 2011 Regulations.

18 Due to the nature of the tenancy arrangement which included previous tenants, the Applicants' tenancy was not identified on the Respondent's system as requiring the tenancy deposit protection process to be completed. This was an administrative error on the Respondent's part.

19 The tenancy between the parties terminated on 28 March 2026.

20 The Respondent repaid the deposit of £1100 to the Applicants on 9 April 2026 without deductions and with their agreement.

21 The Applicants did not suffer any financial loss. The Applicants were unaware of the breach until the end of the tenancy.

22 The Respondent has apologised for their failure to secure the Applicants' tenancy deposit.

23 The Respondent has around sixty five rental properties and has been in the private rented sector for 45 years. There is no evidence that the Respondent had previously been found in breach of the 2011 Regulations.

Reasons for decision

24 The tribunal took into account all documents and submissions from the parties in its determination of the application. The tribunal considered it had sufficient information to make relevant findings in fact and reach a decision on the application in the absence of a hearing under Rule 18 of the Rules, and that to do so would not be contrary to the interests of the parties. There were no substantive issues in dispute that would require a hearing to be fixed.

25 The tribunal considered the provisions of regulations 3, 9 and 10 of the 2011 Regulations:-

""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.

(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 by summary application and 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."

26 The tribunal determined that the tenancy between the parties was a relevant tenancy for the purpose of regulation 3(3) of the 2011 Regulations having had sight of the private residential tenancy agreement between the parties.

27 The tribunal further determined that the Respondent was in breach of regulation 3(1) of the 2011 Regulations regarding the Applicants' tenancy deposit because of their failure to timeously lodge the Applicants' deposit with a scheme and provide the Applicants with the prescribed information prior to the statutory deadline. The Respondent did not dispute this.

28 The tribunal therefore considered regulation 10 which requires the tribunal to order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. There is no discretion afforded to the tribunal under the 2011 Regulations. If the tribunal finds the landlord in breach of regulation 3, it must make an order for payment.

29 In determining an appropriate level of sanction, the tribunal considered the decisions from the Upper Tribunal for Scotland in *Rollett v Mackie ([2019] UT 45)* and *Ahmed v Russell* (*UTS/AP/22/0021*).

30 In *Rollett,* Sheriff Ross states at paragraph 9 of his decision 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 description, which is relevant". He goes on to state at paragraph 14 that "*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 involved; actual losses caused to the tenant; or other hypotheticals."*

31 In *Ahmed,* Sheriff Cruickshank also 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 £3300. 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*."

32 The tribunal considered the relevant factors in this case, both aggravating and mitigating.

33 The tribunal considered the fact that the Applicants' deposit had remained unsecured throughout the tenancy, a period of around 18 months. The Applicants would therefore have been denied access to the independent dispute resolution scheme provided by the scheme in the event of any dispute over the deposit. The Respondent has a large rental portfolio and is an experienced landlord. They should be therefore have ensured the systems they had in place could achieve compliance with their duties under the 2011 Regulations, regardless of the nature of the tenancy arrangement. The tribunal gave weight to these matters as aggravating factors.

34 The tribunal did however give significant weight to the fact that the Respondent had accepted responsibility for their error, had apologised, and had returned the deposit in full to the Applicants shortly after the termination of the tenancy. This did not indicate any malicious intent on the Respondent's part, or any deliberate attempt to mishandle the Applicants' deposit. The tribunal therefore accepted that the failure to lodge the deposit was a genuine error on the Respondent's part which did not come to light until the end of the tenancy, and that they have now updated their systems to prevent a similar situation from arising in future. There was no evidence that the Respondent has previously found themselves in breach of the 2011 Regulations, despite the extent of their rental portfolio and length of time they have spent as a landlord in the private

rented sector. The tribunal accepted that this was the first time they had been in this situation. The tribunal also gave weight to the fact that the Applicants do not appear to have suffered any undue financial loss and did not have any cause for concern regarding their deposit until the end of the tenancy. They accepted repayment of the deposit directly from the Respondent. These will all be significant mitigating factors that weigh in favour of a lower award.

35 The tribunal therefore concluded that, having balanced the aggravating and mitigating factors in this case, an award towards the lower end of the scale was appropriate. The tribunal considered that the level of culpability was low in the circumstances of this case. The maximum the tribunal can award in this case is £3300. The tribunal therefore determined that a penalty of £750 would be proportionate, fair and just.

36 The tribunal therefore made an order for payment in the sum of £750.

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.

Ruth O'Hare

Ruth O'Hare **17 November 2026**

Legal Member/Chair **Date**