



**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**

Chamber Ref: FTS/HPC/PR/25/2301

Re: Property at Craighall, Millheugh, Larkhall, ML9 1QU (“the Property”)

Parties:

**Mrs Yvonne Agnew, Mr Richard Agnew, 7 Millburn Place, Larkhall, ML9 1NZ
 (“the Applicant”)**

**Mrs Pamela McAllister, Craighall, Millheugh, Larkhall, ML9 1QU (“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 has failed to comply with the duties under regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 in respect of the Applicants’ tenancy deposit.

The Tribunal therefore determined to make an order for payment in the sum of **Seven hundred and fifty pounds (£750) Sterling** against the Respondent under Regulation 10(a) of the 2011 Regulations.

Background

- 1 This is an application under rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and regulation 9 of the 2011 Regulations. The Applicant sought a determination that the Respondent is in breach of the duties under regulation 3 of the 2011 Regulations and requested the Tribunal make an order for payment.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 21 October 2025. The Tribunal gave notice of the

CMD to the parties in accordance with rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers on 8 September 2025.

- 3 The Tribunal invited both parties to make written representations on the application by 26 September 2025. On 24 September 2025 the Tribunal received written representations from the Respondent's representative, LoveLets Property. No written representations were received from the Applicant.

The CMD

- 4 The CMD took place on 21 October 2025 at 11.30am by teleconference. The Applicants were represented by Mrs Agnew who was accompanied by her son as a supporter. The Respondent joined the call and was represented by Mr Brian Cowan of Love Lets Property. She was accompanied by Mr Colin Hamilton as a supporter.

- 5 The Tribunal had the following documents before it:-

- (i) Form G application form dated 29 May 2025;
- (ii) The Applicants' bank statements;
- (iii) Notice to terminate from the Applicants to the Respondent dated 10 April 2025;
- (iv) Deposit protection certificate dated 6 March 2025;
- (v) Private residential tenancy agreement between the parties;
- (vi) The Respondent's written representations, including response to the application, invoices, email from SafeDeposits Scotland, and photographs.

- 6 The Tribunal heard submissions on the application from the parties. The following is a summary of the key elements of the submissions and is not a verbatim account.

- 7 Mrs Agnew confirmed that the Applicants had paid a deposit of £750 to the Respondent in February 2020. The tenancy had commenced in March 2020 and had terminated on 7 May 2025. The Applicants had since received the sum of £350 from the deposit scheme following the adjudication process. The Applicants had found the property after the Respondent had replied to a Facebook post by Mrs Agnew's mother. The Respondent admitted she was not a registered landlord but was trying to get her registration in place. The Respondent had broken the law. The Applicants did not know if it was the first time the Respondent had let the property. The Applicants had always rented through letting agencies. They did not know the deposit had not been paid into a scheme until 7 March 2025. They had not queried this with the Respondent. Mrs Agnew explained that she could not identify any specific harm caused to the Applicants, but if the Respondent had gone bankrupt the deposit would have been unprotected. The Respondent had a duty to comply with the rules.

- 8 Mr Cowan explained that the Respondent was an accidental landlord. The property was an annex that had been built on to her home for use by visiting

friends and family. It had been broken into twice. The Respondent had seen the post by Mrs Agnew's mother on Facebook and had decided to rent out the property. It was seen as a short term arrangement. The Respondent acknowledged that she should have been registered as a landlord. She had since transferred the management of the property to Love Lets. It came to light that the deposit was not held in a scheme when she first sought advice from Mr Cowan. The deposit was paid over to SafeDeposits Scotland on 7 March 2025. Mr Cowan stressed that this was the first time the Applicant had rented out the property.

- 9 The Respondent explained that she had tried to arrange her landlord registration but had faced difficulties as the property was annexed to her house. She had tried and failed to make the application for registration, and was then hit by the coronavirus pandemic. The issue with the deposit had cropped up when she sought Mr Cowan's advice.
- 10 The Tribunal noted that it was not in dispute that the Respondent had breached regulation 3 of the 2011 Regulations. The issue for the Tribunal was therefore what level of sanction would be appropriate in the particular circumstances of this case.
- 11 Mrs Agnew advised that she believed an award at the highest end of the scale was merited. This was not the first time the Respondent had broken the law. Mrs Agnew pointed to her lack of landlord registration.
- 12 Mr Cowan advised that the Respondent conceded the mistake, which was a result of her being an accidental landlord. Mr Cowan explained that there had been issues with the condition of the property at the end of the tenancy and various unpaid bills. There were a lot of issues with the Applicants. The Respondent would prefer to make a charity donation instead of a payment to the Applicants. It had been a genuine mistake.
- 13 The Tribunal advised that it could not order payment to charity, and that the order would be made in the Applicants' favour. It would be for the Applicants to decide what to do with any award. The Tribunal asked the parties if they wished the opportunity to produce further evidence and attend an oral hearing, or if they were content for the Tribunal to proceed to a decision on the basis of the information before it. Both parties confirmed their agreement with the latter.
- 14 The Tribunal therefore concluded the CMD and advised parties that it would issue its decision in writing.

Findings in fact

- 15 The Respondent is the owner and landlord, and the Applicants were the tenants of the property, in terms of a private residential tenancy agreement.
- 16 The property is an annexe of the Respondent's home. The property was initially built to house visiting friends and family.

- 17 The property was let to the Applicants after the Respondent replied to a post by the first Applicant's mother on Facebook.
- 18 The tenancy between the parties commenced on 10 March 2020.
- 19 On 28 February 2020 the Applicants paid the Respondent a tenancy deposit in the sum of £750.
- 20 The Respondent paid the tenancy deposit to SafeDeposits Scotland on 7 March 2025.
- 21 The tenancy between the parties terminated on 7 May 2025.
- 22 Following adjudication by SafeDeposits Scotland, the Applicants received a partial refund of the tenancy deposit in the sum of £350.
- 23 The Applicants' tenancy was the first time the Respondent had let the property. The Respondent had no previous experience of acting as a landlord.
- 24 The Respondent has no other rental properties.
- 25 The Respondent did not register as a landlord.
- 26 The Respondent's failure to lodge the tenancy deposit within the statutory timescale under regulation 3 of the 2011 Regulations was due to her inexperience.

Reasons for decision

- 27 The Tribunal was satisfied that it had sufficient evidence before it to make relevant findings in fact in order to reach a decision on the application in the absence of a hearing under Rule 18 of the Rules. There were no issues to be resolved that would require a hearing to be fixed as there was little dispute on the material points and both parties had confirmed their agreement with the Tribunal proceeding to a decision on the information before it.
- 28 Regulation 3 of the 2011 Regulations states that "*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*".
- 29 The Tribunal was satisfied that the tenancy between the parties was a relevant tenancy for the purpose of Regulation 3. The Tribunal also accepted based on the evidence before it that the Applicant had paid a tenancy deposit of £750 to the Respondent, and the Respondent had failed to pay the deposit into a tenancy deposit scheme. These facts were not in dispute. The Tribunal therefore found the Respondent to be in breach of regulation 3.

- 30 Regulation 10 of the 2011 Regulations states “*if satisfied that the landlord die 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*”.
- 31 Having been satisfied that the Respondent had failed to comply with the duties in regulation 3, the Tribunal went on to consider what sanction to impose having regard to the particular facts and circumstances of the case. The application of the sanction must seek to act as a penalty to landlords and ensure compliance with their statutory duties in relation to tenancy deposits.
- 32 The Tribunal had regard to the decision of Sheriff Cruickshank in *Ahmed v Russell (UTS/AP/22/0021)* which 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 £3000. As per Sheriff Cruickshank at paragraph 40 of his decision in *Ahmed*:
- “The sanction which is imposed is to make 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.”*
- 33 In terms of aggravating factors, the Tribunal took into account the fact that the deposit has been unprotected from the start of the tenancy in March 2020 up until 7 March 2025, a period of approximately 5 years. The Tribunal also considered that the Respondent, having decided to become a private landlord, should have been mindful of her responsibilities with regard to tenancy deposits and taken care to ensure the deposit was protected in line with the duties under the 2011 Regulations. Her ignorance of her duties in this regard was further evidenced by her failure to ensure landlord registration was in place. The Tribunal agreed with the Applicants that there was a potential risk to the deposit given that it had remained unprotected for the majority of the tenancy.
- 34 The Tribunal did however identify a number of mitigating factors in this case to which great weight could be given. The Tribunal accepted that the Respondent’s failure to pay the deposit into the scheme until 7 March 2025 was a genuine oversight and due to her lack of experience. She was credible and consistent in her submissions at the CMD on this point. She accepted responsibility for the error. The Tribunal accepted that this was her first time letting a property, noting that the Applicants did not have any evidence to the contrary. The Tribunal agreed that she appeared to have become an accidental landlord after an opportunity presented itself via the post on Facebook.

- 35 The Tribunal could identify no malicious intent on the Respondent's part to avoid her responsibilities. She had paid the deposit into a scheme once she realised her error. She had not been prompted to do so by the Applicants. The Tribunal considered this displayed a willingness on her part to comply with the duties in relation to tenancy deposits once these became apparent.
- 36 Furthermore, the Applicants do not appear to have suffered any real harm as a result of the Respondent's breach of regulation 3. The deposit had been adjudicated independently by the deposit scheme, which is one of the primary purposes of such schemes, and the Applicants have received a partial refund. There is no evidence that the Applicants have suffered any financial loss. This was a significant mitigating factor.
- 37 Accordingly, in the circumstances, the Tribunal was satisfied that the gravity of the breach is at the low to medium end of the scale, and in relation to culpability, greater weight can be given to the mitigating factors in this case. The Tribunal therefore concluded that an award of £750 would be proportionate, fair and just in this case.
- 38 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.

R.O'Hare

29 October 2025

Legal Member/Chair

Date