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 2011/176

Chamber Ref: FTS/HPC/PR/25/0190

Re: Property at 8/2, 23 Oswald Street, Glasgow, G1 4PE ("the Property")

The Parties:

Laura Ebeler, 1/2, 18 Partickhill Road, Glasgow G11 5BL ("the Applicant")

Vanessa Castro Perez, c/o Principal Apartments Letting Ltd, 46 Trongate, Glasgow, G1 5ES ("the Respondent")

Tribunal Members:

Joel Conn (Legal Member)

Decision (without a hearing)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

Background

1. This is an application by the Applicant for an order for payment where a landlord has not complied with the obligations regarding payment of a deposit into an approved scheme or provision of prescribed information under regulation 9 (court orders) of the *Tenancy Deposit Schemes (Scotland) Regulations 2011/176* in terms of rule 103 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended ("the Rules").

2. The tenancy in question started as a flat-share agreement (and thus was not a Private Residential Tenancy ("PRT") and was not subject to the Regulations) of the Property by the Respondent to the Applicant. At some point the Respondent vacated the Property and rented out her own room, and the Applicant submitted that this converted the tenancy into a PRT. Though the date when the occupancy became a PRT was not agreed, the Respondent did lodge the deposit with a tenancy deposit scheme provider, and the Applicant argued that it was lodged late and sought an order of three times the deposit.

Procedural history

3. On 5 April 2025, the Respondent provided a response on only very limited matters, providing evidence that the deposit had been lodged and questioning "the reason for this appointment" (which I took to mean the case management discussion ("CMD")).

4. Given the lack of agreement or clarity on a number of factual matters, I issued a Notice of Directions prior to the CMD on 11 April 2025, providing parties until 27 June 2025 to provide further information. On 27 June 2025, the Applicant provided a detailed response. The Respondent did not lodge anything further.

5. On 11 July 2025 at 14:00, at a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote conference call, there was appearance by both parties. Reference is made to the Note of that CMD for full details of the discussion, the following paragraphs being an updated summary.

Issue arising from Respondent currently residing in Spain

6. Prior to my connecting to the CMD call, the clerk was alerted that the Respondent was calling in from Spain. Due to a lack of advance notice, I was unaware whether any discussion of evidence was legally permissible as no guidance had been obtained by the Tribunal as to whether it was permissible to seek evidence remotely from a witness based in Spain. As it was entirely possible that the Respondent's submissions would include the provision of evidence, it was clear to me that limited discussion on the merits of the application could take place at the CMD and discussion would require to be restricted to administrative matters.

Notices of Direction issued subsequent to CMD of 11 July 2025

7. Notwithstanding no submissions on matters of evidence could be heard on 11 July 2025, there was lengthy discussion during the CMD in regard to administrative matters:
    a. The Respondent had lodged material written submissions and documents by email thirty minutes prior to the start of the CMD and stated at the CMD that these were a re-lodging of submissions as she believed had been sent in months earlier. (On checking, the clerk could see no sign of such submissions and documents having been received. I certainly had not received them and they had not been sent to the Applicant either.)
    b. I adjourned to review the Respondent's submissions and, on reconvening, expressed that some of the language used was intemperate. I sought confirmation that the Respondent understood that the submissions would be circulated to the Applicant. The Respondent said that she did not wish the submissions in this form to be circulated to the Applicant and wished to resubmit them in an amended form. I made clear that the current version would thus not be considered as part of the application papers.

c. After around an hour of detailed discussion, it became clear that the Respondent denied having seen the application form or case papers, and that her (by-then-withdrawn) written submissions were solely in response to the Applicant's submissions following the first Notice of Direction (issued prior to the CMD). The Respondent then located the email sending her the original application papers and confirmed that she had not read the attachments and that she would need time to consider them fully. Further, the Respondent said that she wished to consider obtaining legal advice.

8. In all the circumstances, I continued the CMD and issued a second Notice of Direction to give a timetable for the Respondent to lodge her written submissions and documents. The Respondent was provided until 18 August 2025 to lodge "Written submissions, and any supporting documents, in a format that she consents to be circulated to the Applicant, detailing her response to the application." Unsuitable dates for the continued CMD were also requested from parties (with a deadline of 25 July 2025 for those dates). The Respondent failed to lodge any response on either of the matters in the Notice of Direction. She did not make further contact with the Tribunal on any subject.

9. Subsequent to the CMD, the guidance received by the Tribunal was that it could not be confirmed whether it was permissible to seek evidence remotely from a witness in Spain, and therefore the only safe course of action was to assign an in-person continued CMD. Parties were asked (by email from the Tribunal) on 5 September 2025 to provide unsuitable dates for such a CMD. The Respondent did not reply (but the Applicant did). An in-person CMD was assigned for 10:00 on 26 January 2026 in Glasgow Tribunals Centre.

10. I was thus increasingly conscious of the lack of engagement by the Respondent, in particular the failure to lodge any response to the application in a form which was suitable for consideration. Rule 2 ("the overriding objective") requires the Tribunal "to deal with the proceedings justly" which "includes… dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties; … seeking … flexibility in proceedings …[and] avoiding delay, so far as compatible with the proper consideration of the issues".

11. Thus, on 20 October 2025, I issued a further Notice of Direction providing (amongst other matters):
    a. The Respondent with a deadline of 31 October 2025 to provide:
        i. Written confirmation that she intends both: to proceed with a defence to the application; and to appear personally, or be represented, at the continued case management discussion at Glasgow Tribunals Centre on 26 January 2026 at 10:00;
        ii. If so, an explanation for her failure to lodge, by the previous deadline provided (of 18 August 2025), her written submissions and any supporting documents detailing her response to the application; and
        iii. Should she wish, a motion for late lodging of any written submissions and supporting documents, for consideration by the Tribunal (to

include the reason for late lodging, and the full written submissions and supporting documents in a form that she is satisfied to be circulated to the Applicant); and

b. In the event that the Respondent made no response to the Notice of Direction, a deadline of 14 November 2025 for the Application to provide:
   i. whether she was satisfied for the application to be considered on the basis of written submissions alone (without a further case management discussion) under Rule 18, and:
   ii. If so, any final written submissions that she wished considered.

Issuing a decision without a hearing

12. The Respondent made no response to this Notice of Direction and, as of 4 December 2025, has provided no further communication since the conclusion of the CMD of 11 July 2025. The Applicant responded on 3 November 2025 to confirm she was satisfied for a decision to be made under Rule 18 and that she had nothing further to add at that time.

13. Rule 18 provides the following procedure and test for whether it is appropriate to determine matters without a hearing in this situation:

> *(1) Subject to paragraph (2), the First-tier Tribunal—*
> *(a) may make a decision without a hearing if the First-tier Tribunal considers that—*
> *(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and*
> *(ii) to do so will not be contrary to the interests of the parties;*
> *…*
> *(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.*

14. I was satisfied that there were sufficient facts that were not disputed, first because no submissions had been tendered at all by the Respondent, and second because there were substantial matters which were clearly supported by documentary evidence. Further, I was satisfied that it would not be contrary to the interests of the parties, in that the Respondent had ceased to engage with the Tribunal despite opportunity to do so. Finally, an opportunity for written submissions had been provided and the Applicant had sought a decision under Rule 18. In all the circumstances, I discharged the continued CMD of 26 January 2026 and decided to issue this Decision without a hearing.

Documentary evidence, publicly available information, and written submissions considered

Tenancy

15. The tenancy in question commenced as a "Rent Room Agreement" dated 1 June 2022 to last until 30 November 2022 and then month to month thereafter. Clause 15 referred to a deposit of £600 being due.

16. There was a point thereafter, however, when the Respondent moved out of the Property and her room was occupied by someone else (whom I shall call C). Text correspondence was lodged by the Applicant dated 29 September 2022 where the Applicant asked the Respondent "How long is [C] staying in your room?" The Respondent replied that C was only staying for August but that she was "in Spain for sure till mid November… and it looks like I will not be returning till mid January or so" (all *sic*). The Applicant submitted, however, that the Respondent did not return, and that there were further occupants of the Respondent's former room once C had left.

17. The Applicant's submissions were clearly based on an analysis that, once the Respondent left the Property and did not intend to continue to occupy it as her main residence, the Applicant's tenancy would by definition become a PRT of the Property, or at least of a room at the Property. Absent the Respondent providing her submissions or express agreement of facts, the potential range of start dates for the PRT in the papers would be:
    a. August 2022: The date when C moved into the Respondent's room, and the last time the Respondent ever occupied the Property, notwithstanding her claimed intention to return. This was the date that the Applicant submitted was the relevant date (in the written submissions of 27 June 2025).
    b. January 2023: The date when the Respondent claimed to intend to return, per her text exchange of 29 September 2022. Having not returned at that point, and absent any other evidence of a continuing intention to return to occupy the Property, a PRT might be said to have started by then.
    c. 1 February 2024: This is the start date of the tenancy listed by mydeposits Scotland in the deposit certificate. This date was presumably supplied by the Respondent but the rationale was not clear to me unless it is related to the next potential date.
    d. 8 February 2024: This is the date that the Applicant paid a further £625 which she says was an increased deposit "when I took over the sole tenancy" (all other room renters in the Property having moved out). By that date, if the Applicant was proceeding as the sole tenant, then the Respondent could have had no expectation of returning to take up occupation of a room at the Property.

The deposit and conclusion of the Tenancy

18. The application papers contained a certificate showing that a deposit of £1,300 was protected and registered against the Applicant's name with mydeposit Scotland from 25 January 2025.

19. The Applicant submitted that the Tenancy ended on 4 March 2025. Emails, which appear to show discussions leading to that as an agreed end date, were lodged by the Applicant.

20. Further, the Applicant lodged correspondence showing that she was making enquiries with the approved tenancy deposit scheme providers around 15 January 2025.

21. Reading these three points together, in the absence of express submission by the Applicant and no material submissions by the Respondent, it appears that in the run up to the termination of the Tenancy, the Respondent came to appreciate that she could no longer claim to be resident at the Property and that the deposit was unprotected, so lodged the Applicant's deposit (and, indeed, lodged more than the Applicant claimed to have paid as deposit). It is not clear if this was prompted by express correspondence between the parties regarding the whereabouts of the deposit. The deposit was, however, protected by the conclusion of the Tenancy.

The gravity of the breach, the Respondent's letting experience and evidence of any other non-compliance

22. In written submissions, the Applicant stated that no required information about the protection of the deposit was provided to her by the Respondent, and the only deposit information received was from mydeposit Scotland when the deposit was eventually lodged. This was the extent of her material submissions regarding this non-compliance issue.

23. In regard to protection of the deposit, the Applicant's deposit was protected by the conclusion of the Tenancy. The Applicant was thus afforded the protection, and access to resolution procedures, that tenants are entitled to expect. There is, however, a question as to how late she received this:
    a. Taking the Applicant's submissions at their highest, she was entitled to expect:
        i. £600 to be lodged within 30 working days of August 2022, when the Applicant says the Tenancy first became a PRT; and
        ii. £625 to be lodged within 30 working days of 8 February 2024, when the further deposit was lodged (and the Tenancy was already a PRT).

        On this basis, the deposit was lodged, at least in part, around 2.25 years late.
    b. Taking the Respondent's submissions at their highest, the Applicant was entitled to expect:

i. £600 to be lodged within 30 working days of 1 February 2024, when the Respondent says, per the deposit lodging certificate, the Tenancy first commenced (if we read that as being when it first became a PRT); and
ii. £625 to be lodged within 30 working days of 8 February 2024, when the further deposit was lodged (and the Tenancy was already a PRT).

On this basis, the deposit was lodged around 1 year late.

24. On this analysis, either way it was a significant delay and the Respondent provided no submissions to explain any part of it or how it came to be uncovered. As I say above, the inference is that the omission came to her attention during the discussions on the conclusion of the Applicant's Tenancy and not due to any routine diligence or proper system for handling deposits.

25. As for the culpability of the Respondent, and her previous letting experience, I was not addressed on any previous non-compliance. I can locate no decisions issued against the Respondent for similar breaches. In regard to other relevant information, between the Applicant's submissions and public records, it does appear that the Respondent is registered as a landlord for at least three properties. As of the date of issuing this Decision, I noted on Registers of Scotland that she owned the Property and two other properties:
    a. Title number GLA194249, being the Property, with a date of registration of 5 April 2018;
    b. Title number GLA29847, being 3/3, 74 London Road, Glasgow, G1 5NP, with a date of registration of 16 December 2015; and
    c. Title number GLA42791, being Flat 1F1, 125 Bell Street, Glasgow, G4 0TE (aka 1/1, 125 Bell Street, Glasgow, G4 0TE), with a date of registration of 19 December 2013.

    I noted that all three properties were registered under her name on the Scottish Landlords Register. It seems likely that the Applicant has been a residential landlord for some years.

26. For completeness, the Applicant's submissions contained multiple criticisms of the Respondent's behaviour as a landlord. This included lodging correspondence from the Respondent criticising the Applicant's behaviour as a tenant. I do not regard such matters as relevant in assessing an application of this nature and I have not considered this material further.

Disposal sought

27. In respect of disposal, the application sought "the maximum amount of compensation, which is up to three times the deposit value for each unprotected deposit." As I state above, the deposit lodged with mydeposits Scotland on 25 January 2025 was £1,300. The Applicant's submissions of 27 June 2025 said only £1,225 was paid (being £600 on 18 May 2022, and a further £625 on 8 February 2024 "when I took over the sole tenancy"). Bank transfer documentation was provided in the original application papers to

evidence these payments. Therefore I took the Applicant's application to seek an order for £3,675.

28. No motion was made by the Applicant for expenses or interest (and none was referred to in the application).

Findings in Fact

29. The Respondent, as landlord, let a room in the Property to the Applicant under a "Rent Room Agreement" dated 1 June 2022 to last until 30 November 2022 and then month to month thereafter.

30. Clause 15 of the Rent Room Agreement referred to a deposit of £600 being due.

31. The Respondent made payment of the £600 deposit on 18 May 2022.

32. The Respondent ceased to occupy the Property in or around August 2022 and never returned to the Property.

33. During the remaining period of the Applicant's occupancy of the Property, the Respondent's former room was let out to other individuals. In or around the beginning of February 2024, the parties agreed that the Applicant would have sole occupancy of the Property in return for an increase in rent and payment of additional deposit.

34. The Respondent made payment of £625 of further deposit on 8 February 2024.

35. A Private Residential Tenancy existed between the parties by at least 8 February 2024 ("the Tenancy").

36. The Respondent placed £1,300 into an approved Tenancy Deposit Scheme, mydeposits Scotland, on 25 January 2025, to be treated as the Applicant's deposit.

37. At the time of taking the Applicant's deposit, the Property was one of at least three properties that the Respondent owned in Scotland.

38. At the date of this Decision, the Applicant is registered as landlord for at least three properties that she owns in Scotland.

39. The Applicant was afforded access to the adjudication scheme under Tenancy Deposit Scheme at the conclusion of the Tenancy.

Reasons for Decision

40. It was not denied that the Respondent held a deposit for around a year before it was lodged, during which time a PRT was in place. The documentation

supports that conclusion. It may be that a PRT was in place for longer than that but whether it was one year late or over two years late, the deposit was lodged substantially late but was protected before the termination of the Tenancy.

41. There has thus been a clear breach of the lodging requirements of the 2011 Regulations (and, though less stress was placed on it within the Applicant's submissions, a clear breach of the information requirements as well). An award must be made. The money was not protected for a substantial time after the latest possible deadline for lodging but it was still protected over a month prior to the conclusion of the Tenancy. The Applicant was mildly inconvenienced, in that there is evidence of her seeking to locate her deposit, but it remains a technical breach.

42. There are however unsatisfying issues regarding the lack of information as to why the breach occurred, whether it could have been avoided, and how it was uncovered. Further, given the size of the Respondent's portfolio, there are causes for concern about the Respondent's processes, none of which were addressed due to her failure to provide submissions.

43. In coming to a decision, I reviewed the following decisions from the Upper Tribunal for Scotland:
    a. *Rollett v Mackie, [2019] UT 45*, *2019 Hous LR 75*
    b. *Wood v Johnston, [2019] UT 39*
    c. *Ahmed v Russell, 2023 UT 7, 2023 SLT (Tr) 33*
    d. *Hinrichs v Tcheir, [2023] UT 13, 2023 Hous LR 54*
    e. *Bavaird v Simpson, 2023 UT 19*

    No authorities were referred to me by the parties.

44. In *Rollett v Mackie,* Sheriff Ross notes that "the decision under regulation 10 is highly fact-specific to each case" and that "[e]ach 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" (paragraph 9). In regard to that "factual matrix", Sheriff Ross reviews with approval the reasoning of the Tribunal at first instance in that case (at paragraph 10). Generalised for my purposes, the Tribunal made consideration of:
    a. the purpose of the 2011 Regulations;
    b. the fact that the tenant had been deprived of the protection of the 2011 Regulations;
    c. whether the landlord admitted the failure and the landlord's awareness of the requirements of the Regulations;
    d. the reasons given for the failure to comply with the 2011 Regulations;
    e. whether or not those reasons affected the landlord's personal responsibility and ability to ensure compliance;
    f. whether the failure was intentional or not; and
    g. whether the breach was serious.

45. Applying that reasoning, the Tribunal held – and the Upper Tribunal upheld – an award of two times the deposit. In analysing the "factual matrix" in that case, Sheriff Ross noted:

> *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* [of the letting agent in *Rollett*] *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.*
>
> *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. None of these aggravating factors is present.* (paragraphs 13 and 14)

46. In *Wood v Johnston*, the Upper Tribunal considered a case where the Tribunal regarded a low level of culpability. The Tribunal at first instance had awarded £50 (though it is not possible from the UT's opinion to determine what this was as a multiplier of the original deposit). Sheriff Bickett noted that parties to the appeal were agreed that "the award is a penalty for breach of Regulations, not compensation for a damage inflicted" (paragraph 6) and, like Sheriff Ross in *Rollett*, analysed the nature of the breach, though in briefer terms. In *Wood*, it was noted that the Tribunal at first instance had made the award in consideration that "the respondent owned the property rented, and had no other property, and was an amateur landlord, unaware of the Regulations. The deposit had been repaid in full on the date of the end of the tenancy." Sheriff Bickett refused permission to appeal and thus left the Tribunal's decision standing.

47. The approach in these two cases is accepted in other UT cases: by Sheriff Fleming in *Hinrichs v Tcheir* (which considered *Rollett*), and by Sheriff Cruickshank in *Ahmed v Russell* (considering both *Rollett* and *Wood*). *Ahmed* itself was considered by the UT in *Bavaird v Simpson*. In *Ahmed*, Sheriff Cruikshank made the additional observation (at paragraphs 32 to 33) that there is no difference in law between how the "amateur" and "professional" landlord is to be treated but:

> *It will be a matter of fact in each case what the letting experience, or level of involvement, of a landlord is and it might, or might not, be a factor which aggravates or mitigates a sanction to be imposed under the 2011 Regulations. Indeed, by way of a general observation, with the increasing passage of time since the 2011 Regulations became operative, the letting*

> *experience of a landlord, and his working knowledge of the regulatory requirements, may hold less weight in mitigating a penalty than it previously did.* (paragraph 33)

Sheriff Cruikshank's comments on the "gravity" of the breach are further of assistance:

> *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.* (paragraph 39)

Finally, I note the comments on weighting two particular issues by Sheriff Jamieson in *Bavaird*:

> *In my opinion, significant weight ought to be attached to the appellant's ignorance of the scheme over the prolonged period of five years as a landlord. On the other hand, significant weight falls to be attached to the mitigating factors that the respondents' deposit was repaid in full immediately after the termination of the tenancy and that the respondents suffered no loss or inconvenience as a consequence of the appellant's failure to comply with the Regulations.* (paragraph 28).

In that case, the deposit was never protected but, in consideration of all issues, Sheriff Jamieson reduced the original award of £4,000 to £2,500 (where the maximum competent award in that application would have been £6,000).

48. 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. In the case before me, both were achieved before the end of the Tenancy (though not by much). There was no suggestion of intentionally breaching the Regulations, but nothing to suggest that the recklessness of the failure had good cause. Due to the Respondent's occupancy of the Property at the beginning of the Applicant's occupancy, there was no clear start to the PRT. Indeed, I decline to make a firm decision when it commenced, though it was certainly in place at least by the time the Applicant started to pay more for sole occupancy. It is tempting to forgive the Respondent's oversight on the basis that the date that the obligation to lodge the deposit came into force was unclear, but she herself did not provide submissions encouraging me to give such forgiveness. We are therefore ignorant as to the true reason for the breach but it was clearly the Respondent's fault (as there was no letting agent acting for her at that time).

49. In considering points arising from the other decisions, the landlord's circumstances are dissimilar to those in *Wood* as the Respondent owns other properties, but the outcome is similar (there the deposit was returned at the conclusion of the tenancy, here it was protected by the conclusion). Regarding

Ahmed, I accept that the gravity of the breach, as it turned out, was low. I would however caution that it is difficult to assess how much comfort should be taken from this without knowing how the late lodging was uncovered. Finally, in applying *Bavaird*, I would apply weight (in mitigation for the Respondent) from the Respondent ensuring that the deposit was lodged before the end of the Tenancy.

50. Reading across the decisions, I would draw one further conclusion. Generally the return of the deposit at the end of the Tenancy weighs in favour of a lower award. It is thus logical to regard belated protection of the deposit (and so the adjudication scheme being available to the tenant) as weighing yet further in the landlord's favour.

51. In the circumstances, I am satisfied that the gravity of the breach is low. In regard to culpability, the Respondent's lack of submissions means it is difficult to consider whether there are points in mitigation, though points in aggravation are clear. The principal aggravating factor is that the Respondent appears to be a landlord of more than one property. Further, the lack of detail as to what went wrong and what has been done to improve matters, mean that little credit can be provided to the Respondent for the lack of evidence of previous non-compliance. Even if this was an isolated event, this may be due to good luck rather than good compliance.

52. I am of the view that the gravity of the breach is low but the culpability is not. Read together, this falls in the middle of the range of possible awards and I am awarding £2,000 under regulation 10 of the 2011 Regulations, being just over 160% of the deposit amount. I hold this as an appropriate award in consideration of the law and all the facts.

Decision

53. I am satisfied to grant an order against the Respondent for payment of the sum of £2,000 to 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.

Joel Conn

4 December 2025

Legal Member/Chair **Date**