



**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/25/4900**

**Re: Property at Flat 3/2, 155 Greenhead Street, Glasgow, G40 1HU (“the Property”)**

**Parties:**

**Mr Connor Bell, FLAT 5D, 33 CLEVEDEN DRIVE, GLASGOW, G12 0SD (“the Applicant”)**

**Mr Gordon Cowan, 12 Edenkilm Place, Glasgow, Strathblane, G63 9EB (“the Respondent”)**

**Tribunal Members:**

**Elaine Paton (Legal Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had breached Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”). The Tribunal therefore determined to make an order for payment in the sum ONE THOUSAND FOUR HUNDRED AND FORTY POUNDS (£1,440) Sterling under Regulation 10.

**Background**

1. The Applicant applied to the Tribunal for a payment order 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 sanction against the Respondent as a result of their failure to lodge timeously the Applicant’s tenancy deposit with an approved tenancy deposit scheme.
2. The application was referred to a case management discussion (“CMD”) to take place by teleconference on 29 April 2026. Notification of the CMD was given to the parties in terms of Rule 17(2) of the Rules. A copy of the application and said notification was served upon the Respondent by Sheriff

Officers on 12 March 2026, together with the related civil application for payment order (CV/25/4893).

3. The parties were invited to make written representations and any documents being relied upon in advance of the CMD. The Respondent lodged correspondences dated 30 March 2026 and 21 April 2026 with the First-tier Tribunal in response to the applications.

### **The CMD**

4. The CMD took place on 29 April 2026 at 10am by teleconference. The Applicant was not present however they were represented by Mr Davies of Glasgow North West CAB. The Respondent was present and was accompanied by his wife to support him.
5. The Tribunal had the following documents before it:- (1) Form G application form dated 13 October 2025; (2) copy tenancy agreement entitled 'Lodger Agreement for Front Bedroom' regarding the Property; (3) Whatsapp messaging correspondence by the Applicant to the Respondent dated 05 August 2025, acknowledged by the Respondent on 27 August 2025 regarding the agreed end to the tenancy; (4) copy bank statement detailing payment of the Applicant's deposit paid to the Respondent; and (5) Emails dated 27 October 2025, 28 October 2025 and 03 November 2025 from the three approved tenancy deposit schemes, namely My Deposits Scotland, Lettings Protection Scotland, and Safe Deposits Scotland, stating that the Applicant's deposit was not protected with them.
6. The Tribunal explained the purpose of the CMD and asked the Applicant's representative Mr Davies, to present their submission on the application on behalf of the Applicant, before the Respondent then presented his submission in response. The related civil application for a payment order regarding the balance of the Applicant's deposit under Chamber reference CV/25/4893 was also discussed. For the avoidance of doubt the following constitutes a summary of the key elements of the discussion and is not a verbatim account of the proceedings.
7. Mr Davies confirmed the Applicant wished the Tribunal to order a sanction against the Respondent as a result of the Respondent's failure to lodge their deposit with an approved tenancy deposit scheme within 30 working days of the commencement of their tenancy on 21 August 2024. The Applicant had learned about the Respondent's failure upon obtaining advice from Mr Davies' organisation Glasgow North West CAB. Mr Davies stated that although the tenancy agreement purported to be a lodger's arrangement the Applicant's landlord did not reside in the Property and resided elsewhere as noted in the tenancy agreement. Mr Davies continued to state that as a consequence of the tenancy commencing after 01 December 2017 the agreement between the parties ought to have been, and was, a Private Residential Tenancy with the relative protections afforded to the Applicant in relation thereto, including the protection of their deposit which required to be lodged with an approved tenancy deposit scheme. Mr Davies stated the Applicant's deposit was not

protected for the duration of the tenancy arrangement therefore the maximum sanction of three times the £480 deposit, being the sum £1,440, was being sought. Mr Davies continued to explain the Applicant had provided requisite notice by Whatsapp message to the Respondent that they would be moving out of the Property; that notice was sent 05 August 2025 thus the end of the tenancy was 03 September 2025. The Applicant's message of 05 August 2025 was acknowledged by the Respondent and the Applicant had moved out of the Property as agreed. In response to the tribunal, Mr Davies stated there was one other resident in the Property during the time that the Applicant resided there, and the Applicant had received £146 on or around 04 November 2025 from the Respondent, being partial return of the Applicant's deposit under deduction of certain expenditures that had been referred to in Whatsapp messages between the Applicant and the Respondent.

8. The Respondent stated the Property had been in his family since 1975, he had grown up there and still regarded the house as his family home. The Respondent explained he had experienced a difficult period whereby various members of his family had passed away over a relatively short period of time. The Property had been lying empty and at one point, believed to be in 2016, the Respondent's daughter had moved into what had been the Respondent's mother's home at which time a solicitor had drawn up the 'Lodger Agreement' as a consequence of his daughter's friend, who had been attending university, asking to move into the Property to reside with the Respondent's daughter. In response to the tribunal, the Respondent stated the Property had three bedrooms, his son resided there currently and had been resident in the Property during the period that the Applicant resided there, and the Respondent had not resided in the Property at the same time as the Applicant. The Respondent stated that until the present circumstances had arisen, he had not considered the arrangement to be anything other than a lodging agreement therefore was unaware he may be subject to particular requirements in relation to the Applicant's deposit and having to lodge this with a statutory tenancy deposit scheme. The Respondent was apologetic and, having obtained legal advice regarding the application, stated he now understood there had been a requirement for the Applicant's deposit to be lodged in a scheme and the same arrangement that had been in place regarding his daughter's friend a number of years earlier was no longer appropriate. At the time the application was lodged with the First-tier Tribunal the Respondent was not registered as a landlord and in response to the tribunal, the Respondent explained that he had contacted the local authority, explained his situation and accepted advice and guidance from them in relation to registering as a landlord. The Respondent stated the relationship between the Applicant and him had been relatively good until after the Applicant had left the Property and the Respondent had been disappointed at the condition the Applicant's room had been left in. The Respondent explained he had been unwell during August-September 2025 and had taken some time to respond to the Applicant's Whatsapp messages however, subsequently, he corresponded with the Applicant regarding the expenditures he regarded as necessary (such as to clean carpets, paint the bedroom, dispose of a badly stained mattress, and replace the damaged bed) to restore the Property to a condition that would allow him to rent to another lodger in

due course. The Respondent further explained the Applicant had accepted certain expenditures were necessary but had taken exception to any cost relating to replacement of the bedframe and had wanted the Respondent to produce invoices before ceasing further correspondence with the Respondent after 28 October 2025. Consequently, the Respondent had paid £146 to the Applicant in respect of their £480 deposit under deduction of the least expensive costs calculation that had been proposed to the Applicant in their Whatsapp message exchanges. The Respondent stated he had been taken aback when he received service of the applications and felt the Applicant ought to have provided him with some kind of written notice to try and resolve the situation without the formality of the tribunal. In response to the tribunal, the Respondent stated the room formerly occupied by the Applicant was not currently rented out, only his son was residing in the Property, and indeed he was giving consideration to selling the Property.

9. The Tribunal asked the Applicant's representative Mr Davies for any comment he wished to make regarding the position as stated by the Respondent. Mr Davies confirmed the Applicant accepted certain monies would be due to the Respondent in relation to the condition of the Property; in light of the Respondent's comment about potentially selling the Property however, he wondered if monies retained from the Applicant had been spent albeit in any event the main issue for the Applicant was that they had not been given the opportunity to participate in evaluation of the relative costs by one of the approved tenancy deposit scheme administrators as a consequence of the Respondent's failure to lodge the deposit with any approved scheme. The Tribunal gave all participating in the hearing a final opportunity to make any additional points or comment before making closing remarks.

### **Relevant Law**

10. The relevant law is contained within the Housing (Scotland) Act 2006 and the Tenancy Deposit Scheme (Scotland) Regulations 2011. Section 120 of the 2006 Act provides as follows:-

*"120 Tenancy deposits: preliminary*

*(1) A tenancy deposit is a sum of money held as security for—*

*(a) the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or*

*(b) the discharge of any of the occupant's liabilities which so arise.*

*(2) A tenancy deposit scheme is a scheme for safeguarding tenancy deposits paid in connection with the occupation of any living accommodation.*

11. The 2011 Regulations provide as follows:-

*"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.*

*(1A) Paragraph (1) does not apply—(a) where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and (b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord, within 30 working days of the beginning of the tenancy*

*(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 ...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.”*

## **Findings in Fact**

12. The Applicant and the Respondent entered into a tenancy agreement (labelled “Lodger Agreement for Front Bedroom”) in respect of the Property, which commenced on 21 August 2024.
13. The Applicant is designed in the said tenancy agreement as the “Lodger” and the Respondent is designed as the “Landlord”. The Respondent did not reside at the Property as their only or main home during the period that the Applicant resided there: from commencement of the tenancy on 21 August 2024 until the Applicant left the Property.
14. The tenancy was a private residential tenancy under section 1 of the Private Housing (Tenancies) (Scotland) Act 2016. The tenancy is a relevant tenancy for the purpose of Regulation 3 of the 2011 Regulations.

15. On or around 16 August 2024 the Applicant paid a tenancy deposit of £480 via Faster Payment bank transfer to the Respondent. The total sum paid on that day was £640 and incorporated payment of £160 rent for the period 21 August 2024 to 31 August 2024 (both dates inclusive).
16. In terms of Regulation 3(a) and (b) of the 2011 Regulations the deposit should have been lodged with a scheme within 30 working days of 21 August 2024, and the relative information provided to the Applicant under Regulation 42.
17. The Applicant's deposit was not paid into any of the approved tenancy deposit schemes by the Respondent.
18. The Applicant's tenancy ended on or around 03 September 2025.
19. On or around 04 November 2025, the sum £146 was paid to the Applicant by the Respondent. This figure represented partial return of the £480 deposit paid by the Applicant in August 2024. A sum of £344 had been retained by the Respondent in relation to expenditure to clean carpets, paint the bedroom, dispose of a badly stained mattress and replace the said mattress.

### **Reasons for Decision**

20. Having considered the documents before it and the oral submissions from the Applicant's representative Mr Davies and the Respondent the Tribunal considered it could make relevant findings in fact in order to make a decision on the application at the CMD, and in the absence of a hearing under Rule 18 of the Rules. The Tribunal determined that there were no substantive facts in dispute that would require a hearing to be fixed, and that proceeding to a decision following the CMD would be in accordance with the Tribunal's overriding objective under Rule 2 of the Rules to avoid delay so far as compatible with proper consideration of the issues.
21. The Tribunal was satisfied that the tenancy between the parties was a relevant tenancy for the purpose of Regulation 3(3) of the 2011 Regulations. The Regulations specify clear duties, which are incumbent on landlords in relation to tenancy deposits. Regulation 3 requires a landlord to pay any deposit received in relation to a relevant tenancy to an approved tenancy deposit scheme within thirty working days of the beginning of the tenancy and provide information to the tenant regarding the deposit. The deposit must then be held by the scheme until it can be repaid in accordance with the requirements of the Regulations following the end of the tenancy.
22. In terms of Regulation 3 of the 2011 Regulations, the Respondent in this case required to pay the deposit over to a deposit scheme no later than 02 October 2024. The deposit was not lodged with any approved tenancy deposit scheme. The Tribunal therefore found the Respondent to be in breach of Regulation 3.
23. Regulation 10 states that in the event of a failure to comply, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the

amount of the tenancy deposit. Accordingly, having been satisfied that the Respondent failed to comply, the Tribunal then had 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.

24. 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 £1,440.

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.”*

25. The Tribunal considered the aggravating factors in this case. The failure to lodge the Applicant’s deposit is a failure on the part of the Respondent. The Respondent is responsible for ensuring they comply with their statutory obligations. The Respondent cannot deflect from those obligations. The Applicant was without the benefit of their deposit protected within a statutory scheme for the entire period of their occupation of the Property under the tenancy agreement. The Applicant required to correspond with the three approved tenancy deposit schemes to clarify their deposit had not been lodged with them in order to evidence their landlord’s failure. There is a strict time constraint regarding application to the First-tier Tribunal under the Tenancy Deposit Schemes (Scotland) Regulations 2011 and there was a risk of the Applicant’s application falling to be submitted outside of that time period.
26. The Tribunal went on to consider whether there were any mitigating factors in this case. The Respondent admitted the failure to lodge the Applicant’s deposit. The Respondent apologised for their failures. At the CMD the Respondent was candid in presenting the circumstances as viewed by him, in explanation that the Property had been the family home he grew up in, and the personal difficulties he had encountered whereby he then inherited the Property now owned by him jointly with his wife. The Respondent had relied upon advice he obtained approximately eight years earlier at the point of entering into the tenancy arrangement with the Applicant and did not seek updated legal advice, something he now regretted. The Applicant had received return of approximately thirty per cent of their deposit. The Applicant admitted certain expenditures would fall due to the Respondent regarding the condition of the Property when they left at the end of the tenancy. Whilst the frank explanation and apology from the Respondent was welcome these do not detract from the fact that the Respondent failed in their statutory

obligations as landlord to protect their tenant's deposit for the entirety of their tenant's tenure in the Property.

27. Accordingly, having weighed the aggravating and mitigating factors in this case, the Tribunal considered that the level of culpability was substantial, when measured against the nature and extent of the breach. The Tribunal determined that the maximum sanction would be appropriate in this case, being three times the deposit sum, therefore a sanction of £1,440.

### **Decision**

28. The Tribunal therefore made an order for payment in the sum of £1,440.

### **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.**

**Elaine Paton, Legal Member**

**29 April 2026**