



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/25/5012

Re: Property at 33 Kenilworth, Calderwood, East Kilbride, G74 3PG (“the Property”)

Parties:

Mr Anthony Brimson, 22 Lorne Street, Hamilton, ML3 9AB (“the Applicant”)

Ms Nicola Meldrum, 33 Kenilworth, Calderwood, East Kilbride, G74 3PG (“the Respondent”)

Tribunal Members:

Elaine Paton (Legal Member)

Decision (in absence of the Respondent)

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 ONE HUNDRED AND TEN POUNDS (£1,110) Sterling under Regulation 10.

Background

1. The Applicant consulted Hamilton Citizens Advice Bureau (“Hamilton CAB”) in relation to return of their deposit. On behalf of the Applicant, Hamilton CAB lodged an application 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. In terms of the application 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 26 May 2026 at 10.00am. Notification of the

CMD was given to the parties in terms of Rule 17(2) of the Rules. Said notification was served upon the Respondent personally by Sheriff Officers on 24 April 2026.

3. Both parties were invited to make written representations in advance of the CMD. The Applicant lodged a submission on or around 14 May 2026 which indicated that their representative at Hamilton CAB was unable to represent them on an erroneously stated date due to other engagements but assisted them with a note. The Respondent submitted a late response to the application on 21 May 2026. No further written representations were received from the parties in advance of the CMD.
4. The CMD took place on 26 May 2026. The start time was delayed briefly in order to allow time for the Respondent to attend. The CMD commenced by teleconference. The Applicant was present and represented themselves. The Respondent did not participate and there was no representation on their behalf.
5. The Tribunal had the following documents before it:- (1) Form G application form dated 20 November 2025; (2) copy short assured tenancy agreement papers regarding the Property and excerpts of communication exchanges between the parties; (3) evidence regarding the end date of the tenancy; (4) emails from The Letting Protection Service Scotland, My Deposit Scotland, and Safe Deposits Scotland to Hamilton Citizens Advice Bureau in response to correspondences on behalf of the Applicant; (5) submission on or around 14 May 2026 by the Applicant; and (6) email dated 21 May 2026 from the Respondent incorporating images purporting to be in/outside the property and excerpts of social media messages and mobile phone text exchanges.
6. The Tribunal explained the purpose of the CMD. In response to the Tribunal, the Applicant stated they had received a copy of the Respondent's email dated 21 May 2026 however they questioned if this could be accepted as it was submitted within 7 days of the hearing. The Tribunal explained whether or not a late submission was allowed was at the Tribunal's discretion. The Tribunal continued to explain that once the Tribunal had heard the Applicant it would take into consideration the Respondent's position in terms of the response dated 21 May 2026. 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.
9. In response to the Tribunal, the Applicant stated they wished the Tribunal to order a sanction against the Respondent, as their landlord, as a result of the failure to lodge their deposit with one of three approved tenancy deposit protection schemes within 30 working days of the commencement of their tenancy on 22 January 2016. The Applicant stated they had been unaware of this process until they sought advice from Hamilton Citizens Advice Bureau ("Hamilton CAB"). The Applicant stated they paid £740 in cash to the Respondent when they entered into the tenancy arrangement in January 2016, that sum being for one month's rent of £370 and the deposit of £370. The Applicant stated they had resided in the property for nine and a half years, formerly they had

been friends with the Respondent, and they had not received one penny of their deposit returned to them. The deposit payment was evidenced in the tenancy paperwork (signed by both parties) produced with the application and was referred to in other papers lodged whereby the Respondent is stated to have made reference to the deposit sum and what steps required to be carried out before any deposit monies would be returned. The existence of the deposit, and the fact that no deposit was returned, is admitted in the Respondent's submission email dated 21 May 2026 where they state: "Documents lodged ... and reason why no deposit was returned." In response to the Tribunal, the Applicant stated they left the property on 21 August 2025 and they had taken video footage of the property to document its condition at that time. The Tribunal explained it had not seen the video footage but had noted the still image of the internal hallway which was lodged with the application to evidence the date the Applicant had left the property insofar as the video still report the media had been created on 21 August 2025. In response to the Tribunal, the Applicant stated that Hamilton CAB had contacted the statutory approved tenancy deposit protection schemes on their behalf to establish if any deposit had been lodged with them regarding the Applicant's tenancy arrangement. Lodged with the application were emails from The Letting Protection Service Scotland, My Deposits Scotland, and Safe Deposits Scotland each stating there was no record of any deposit held by them on behalf of the Applicant in relation to the property.

10. The Tribunal referred the Applicant to the Respondent's email dated 21 May 2026 incorporating various images which the Respondent alluded to being the reason why no deposit was returned to the Applicant, also that a cupboard key had not been returned and the Applicant had not provided a date for them to collect that key and view the property. The Tribunal referred the Applicant to each image in turn, noting their comments in relation thereto. The Applicant stated the first image showed a cupboard within the property comprising items belonging to them, which looked the same as it was at the time they left, albeit they would not describe the cupboard as being full. Regarding images of a (a) tiled wall and soiled carpet and (b) the side of a toilet adjacent to a pedestal sink, the Applicant stated the bathroom floor covering had been fitted poorly, there had been issues with the (sink) taps which endured during their tenancy and, responding to the Tribunal on the Respondent's comment that the bathroom was a mess, the Applicant stated he had been told the bathroom was being replaced anyway. The Applicant stated they could see the middle handle of the (bedroom) drawer unit looked loose which was a theme throughout the house, and responding to the Tribunal on the cleanliness of the unit, the Applicant stated the units had been fine when they left the property. The Applicant stated the image of a corner area of a window had been taken after removal of fitted blinds, the fitted blinds had been in situ the whole time they resided in the property therefore the condition of the window was never visible to them. The Applicant stated they had put their video of the house on their facebook page and had never made any comment, they had never "slated" the Respondent, and the image provided by the Respondent clearly shows their comment using that expression which another individual commented on (also another individual comment made directly to the Applicant's post). The Applicant stated that two chairs and other items

believed to have been in the cupboard the Applicant had not emptied before leaving had belonged to them however the Respondent had also ripped out the bathroom and a fridge freezer and was disposing these and carpets (many of the bin bags containing cut up pieces of carpet). The Applicant explained they knew this as they had visited the area and saw a fridge freezer and bath from the property had been removed and saw carpet pieces in the bin bags also. The Applicant stated they believed the pieces of carpet were put into black bin bags and placed on the grass area to give an impression to others that the Applicant had left a lot of rubbish behind in the property which they had not. The Applicant further explained the bathroom tub and sink removed from the property can be seen in the final image showing the pick-up truck with items in a cage. The Applicant stated the message exchange regarding the electricity cupboard keys and confirmation of them having left the property were accurate, albeit they questioned the date stamp as their phone recorded a different time; the text regarding the deposit states an unknown date, that was not a threat but was a statement of their intent that they would be taking matters to court. In relation to the email quotation from 'Joe Junk' regarding uplift and disposal of items (£300+VAT), the Applicant stated that had a copy of that quotation been provided to them they would have contacted the company directly to clarify the cost(s) as the items shown in the pick-up truck demonstrate the Respondent had instructed a full house clearance having ripped out the bathroom, stripped the carpets, disposed of the fridge freezer and more – the majority of items that did not belong to the Applicant.

11. The Tribunal gave an opportunity for any additional points or comment to be made before making closing remarks.

Relevant Law

12. 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.

13. 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

14. The parties entered into a tenancy agreement in respect of the Property, which commenced on 22 January 2016.
15. The tenancy was a short assured tenancy under Section 32 of the Housing (Scotland) Act 1988. The tenancy is a relevant tenancy for the purpose of Regulation 3 of the 2011 Regulations.
16. On or around 22 January 2016 the Applicant paid a tenancy deposit of £370 to the Respondent.
17. 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 16 January 2016, and the relative information provided to the Applicant under Regulation 42.

18. The Applicant's deposit was not paid into any of the approved tenancy deposit schemes.
19. The Applicant's tenancy ended on 21 August 2025.
20. The Applicant was not returned to them by the Respondent.

Reasons for Decision

21. Having considered the documents before it, the submissions from the Applicant, and the written representation by the Respondent dated 21 May 2026 in response to the application, 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 26 February 2016. The deposit had not been lodged with an 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 £1,110.

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 Respondent was not registered with the local authority as a private landlord. The failure to lodge the Applicant's deposit with any of the approved tenant deposit schemes 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 being protected within a statutory scheme for the entirety of the period of their nine and a half years occupation of the Property under the tenancy agreement, and without the benefit of the scheme's relative dispute resolution mechanism available to parties. No explanation was offered by the Respondent regarding the failure to pay the deposit into the statutory scheme. The Applicant did not receive return of their deposit or any part thereof from the Respondent. The Applicant sought advice from Hamilton Citizens Advice Bureau and was required to obtain correspondence from all three statutory schemes to clarify 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 Applicant was not inclined to acknowledge parts of the Property had been left uncleaned (shown in the images produced by the Respondent). The Applicant admitted they had left items in the Property and the Respondent was put to an expense of the removal and disposal of same, however the Respondent did so whilst also removing the bathroom suite and other fixtures and fittings (shown in the said images). The Respondent failed in their obligation to protect their tenant's deposit for the full period of the Applicant's nine and a half years tenure in the Property notwithstanding the Applicant had to be put to the inconvenience of their own inquiry regarding the return of their deposit when the time limit for their application regarding sanction was close to expiry.
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. Accordingly, the Tribunal determined the maximum sanction would be appropriate in this case, being three times the deposit sum, therefore a sanction of £1,110.

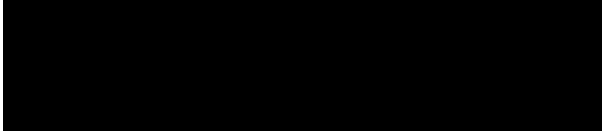
Decision

28. The Tribunal therefore made an order for payment in the sum of £1,110.

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



26 May 2026