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 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (the "Deposit Regulations")

Chamber Ref: FTS/HPC/PR/25/4935

Re: Property at 140 Craigmount, Kirkcaldy, KY2 6PA ("the Property")

Parties:

Miss Hilary Smart, 20 Randolph Crescent, Kirkcaldy, KY1 2YN ("the Applicant")

Mr Paul Bilan, Unknown, Unknown ("the Respondent")

Tribunal Members:

Fiona Stephen (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to grant an order for payment in the sum of Two Thousand One Hundred Pounds (£2,100.00) Sterling together with interest at the rate of five per cent per annum from the date of the decision, until payment

Background

1. By Application dated 14 November 2025 the Applicant sought an order for payment under Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 and Rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules") arising from the Respondent's failure to lodge her tenancy deposit with any of the three approved deposit schemes in Scotland. This application was conjoined with application number FTS/HPC/CV/25/5351 in which the Applicant sought repayment of her deposit from the Respondent. That application has now been withdrawn as the Respondent repaid the Applicant her deposit on 10 July 2026.

2. The Applicant sought a payment on the basis that the Respondent had not lodged her deposit as required by Regulation 3 of the Deposit Regulations.

3. The Application was accepted on 5 December 2025 and referred to a case management discussion ("CMD") to take place by teleconference on 16 June at 10am. Sheriff Officers attempted to serve the papers and give intimation of the CMD to the Respondent on 19 May 2026 but on calling to the given address for the Respondent found the property to be empty and unoccupied. A forwarding address for the Respondent could not be obtained. The Tribunal intended to arrange service upon the Respondent by way of advertisement in terms of Rule 6A of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the procedure rules"). Due to an administrative error, service by advertisement was not made for "not less than 14 days" as required by Rule 6A(1), the advertisement appearing on the Tribunal website on 4 June 2026. The Respondent was sent an email by the Tribunal on 4 June 2026 informing him that a public notice would be available on the Tribunal website.

4. The CMD took place on 16 June 2026 at 10am via telephone conference call. The Tribunal was informed by the tribunal administration before the start of the CMD that the Respondent had contacted the administration staff by email. Due to an administrative delay, copies of the case papers were only forwarded to the Respondent by email on the morning of 16 June. The Tribunal delayed the start of the CMD by a few minutes in case the Respondent joined the call. He did not do so.

5. The Tribunal explained the position regarding the ineffective service of the Respondent to the Applicant. The Tribunal explained that, in the circumstances, the CMD would need to be postponed to another date so that the Respondent could be notified appropriately. The Applicant understood the position.

6. The Tribunal had noted from the papers that the Applicant had supplied confirmation of payment of a sum of £700 to the Respondent but it was not clear if this was for the deposit or the rent (which was also £700). The Applicant explained that this was for the deposit. She confirmed she would be able to send confirmation of payment of the rent to the Tribunal.

7. Following the CMD, the Tribunal issued a Direction dated 16 June 2026 requiring the Applicant to provide proof of payment of the deposit and the Respondent to provide details of his current address.

8. The Applicant provided proof of payment of the deposit on 26 June 2026. The Respondent has not complied with the Direction.

9. The parties were informed of the new date for the CMD by the Tribunal's administration on 6 July 2026.

10. On 27 July 2026 the Applicant confirmed she did not wish to proceed with application FTS/HPC/CV/25/5351 as the Respondent repaid her deposit of £700.00 on 10 July 2026. That application was withdrawn administratively.

11. The Tribunal had before it:

(i) Form G application;
(ii) The Respondent's landlord registration from the online landlord register;
(iii) Private Residential Tenancy agreement signed by the Applicant and Respondent dated 5 January 2022;
(iv) Proof of payment of deposit; and
(v) Correspondence from the three approved deposit schemes confirming that the deposit had not been lodged with any of them.

Case Management Discussion

12. The continued Case Management discussion took place by teleconference call on 4 August 2026 at 2pm.The Applicant appeared. The Tribunal delayed the start of the CMD by a few minutes, but the Respondent did not appear.

13. The Tribunal thanked the Applicant for providing the information requested in the Direction. It noted that the Respondent had not provided the Tribunal with his up-to-date address. The Tribunal asked the Applicant if she had had any contact with the Respondent other than the payment of her deposit on 10 July. The Applicant stated that the Respondent had apologised for the late return of the deposit but other than that there had been no contact. The Respondent's letting agent, who was a friend of the Respondent, had tried to make contact with you around 17 June but you had not responded given the inconvenience you had been put to.

14. The Tribunal asked the Applicant to say what impact the delay in getting the deposit back had. The Applicant said she had been renting the Property for almost 4 years and had been lucky enough to be gifted some money from a relative for a deposit. That meant she had been able to buy a flat for her and her daughter to live in. She had intended to use the deposit money to buy a garden shed to store garden furniture, bikes and other items in but that had not been possible. The Applicant had to store her bikes at her mother's house which was inconvenient. Plans were now in place to purchase the shed. The Applicant had been put to a lot of inconvenience in calling and emailing the various deposit schemes to find out what had happened to her money. Her position was that the Respondent should not have put her in this position.

15. The Tribunal explained the range of sanctions it could apply where it finds a landlord has been in breach of the Deposit Regulations i.e. it could be from £1 to three times the level of deposit. The Applicant said she wanted to make sure the Respondent did not act in a similar way again.

16. The Tribunal told the Applicant it had sufficient information to make a decision today and would issue a written decision shortly.

Findings in Fact

17. The Applicant entered into a Private Residential Tenancy with the Respondent on 5 January 2022 in respect of the Property.

18. Clause 12 of the tenancy agreement provided that a security deposit of £700.00 was payable by the Applicant.

19. A tenancy deposit of £700.00 was paid by the Applicant to the Respondent in December 2022.

20. The deposit was not lodged with an approved tenancy deposit scheme throughout the duration of the tenancy.

21. The Applicant left the Property on 2 November 2025.

22. The Respondent did not reply to the Applicant's request to provide her with information regarding her deposit.

23. The Applicant was put to significant inconvenience as a result of the Respondent's failure to comply with his obligations under the Deposit Regulations.

24. The Applicant was unable to buy a garden shed to store items in for her new property.

25. The Applicant required to raise an application in the Tribunal under reference FTS/HPC/CV/25/5351 to secure return of her deposit.

26. The Respondent repaid the Applicant her deposit on 10 July 2026.

Reasons for Decision

27. The Tribunal was satisfied that it was able to make a determination and that it was not contrary to parties' interest to do so at the CMD without the need for a hearing all in terms of Rules 17 and 18 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the procedure rules").

28. This application relates to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the Deposit Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy.

29. Regulation 3 of the 2011 Regulations provides inter alia:

(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.

30. Regulation 9 of the 2011 Regulations provides:

(i) 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.
(ii) An application under paragraph (1) must be made [...] no later than 3 months after the tenancy has ended.

31. Regulation 10 of the 2011 Regulations provides inter alia:

If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal][1] —
(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;

32. It is clear that in this case the Respondent failed to place the deposit in an appropriate scheme and has breached Regulation 3 of the 2011 Regulations. The duties are two-fold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties.

33. The present application has been made timeously in terms of Regulation 9. The Tribunal is required to make an order for payment in terms of Regulation 10. The only matter to be determined by the Tribunal is the amount of the payment.

34. The legal test to be applied in determining an appropriate level of sanction is set out in *Jenson v Fappiano 2015 GWD 04-89* and subsequent case law. Those authorities are reviewed by Sheriff Cruickshank in *Ahmed v Russell 2023 SLT (Tr 33).* He indicates at para [38] that *"Previous cases have referenced various mitigating or aggravating factors which may be considered relevant. It would be impossible to ascribe an exhaustive list. Cases are fact specific and must be determined on such factors as may be present."* At para [39] he states that *"The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose is not to compensate the tenant"*.

The amount awarded should represent a “fair and proportionate sanction when all relevant factors have been appropriately balanced.” para [44].

35. The Tribunal also had regard to the decision of the Upper Tribunal in *Rollett v Mackie [2019] UT 45* (also cited as UTS/AP/19/0020) in which Sheriff Ross states at para [13] *“In assessing the level of a penalty charge, the question is one of culpability and the level of culpability requires to reflect that culpability… The finding that a breach was not intentional is...rational on the facts and tends to lessen culpability”* At paragraph [14], he goes on “*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*”.

36. In reaching a determination, the Tribunal took into account that the Respondent is in clear breach of the Deposit Regulations.

37. The Tribunal took into account that the deposit was a reasonably significant sum (£700.00) and that it had been left unprotected for the entire duration of the tenancy (3 years, 10 months). The Applicant was repaid her deposit on 10 July 2026, which is eight months after the tenancy ended. The deposit was therefore unprotected for a period of 4 years and 6 months. The Applicant required to raise a separate application against the Respondent to secure repayment of her deposit. These are aggravating factors. The Applicant explained the effects that the non-payment had on her. It meant she could not buy a garden shed to store important items at her new property. This was inconvenient. The Applicant had been put to a lot of inconvenience in calling and emailing the various deposit schemes to find out what had happened to her money. The Respondent has not engaged with the Tribunal process, nor did he comply with the Tribunal’s Direction and provide the Tribunal with his up-to-date address. That is disrespectful to the Tribunal and to the Applicant. The Deposit Regulations were brought in force to protect tenants’ deposit monies and to provide a mechanism for dealing with the repayment of a deposit at the end of a tenancy, particularly where there was a dispute between the parties. The fact that the Respondent had not lodged the deposit deprived the Applicant of this mechanism. In light of the Respondent’s failure to engage with this process, the Tribunal is of the view that there are no mitigating factors in favour of the Respondent. In light of all the facts and circumstances, the Tribunal considered that it would be fair and proportionate to make an order at the maximum level of the available scale.

38. The Tribunal determined that the sanction should be £2 100.00, being three times the amount of the deposit, in the particular facts and circumstances of this case. The Tribunal also considered it appropriate to apply interest at five per cent per annum on this amount from the date of the decision until payment, in terms of Rule 41A (2)(b) of the Rules.

Decision

The Tribunal granted an Order for payment of £2 100.00 in terms of Regulation 10 (a) of the Deposit Regulations together with interest at five per cent per annum from the date of the decision until payment, in terms of Rule 41A (2)(b) of the Rules.

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.

F. Stephen

Legal Member/Chair **Date: 4 August 2026**