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/25/3749

Re: Property at Flat 3, 14 Kane Wynd, Edinburgh, EH16 4XE ("the Property")

Parties:

Aju Kannankara Raj, 38/8 (2F2) Buchanan Street, Edinburgh, EH6 8RF ("the Applicant")

Sanjay Singh, 47 New Adams Row, Danderhall, EH22 1GS ("the Respondent")

Tribunal Members:

Joel Conn (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

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 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 was a Private Residential Tenancy ("PRT") of the Property by the Respondent to the Applicant and three other tenants, dated 27 May 2024 and commencing on that date. The Applicant stated that the Tenancy ended on 26 July 2025. (No issue arose in the application as to the end date of the Tenancy.)

3. The application was dated 31 August 2025 and lodged with the Tribunal on that date. The application relied upon evidence that a deposit of £1,285 was due in

terms of the Tenancy by the four tenants, of which the Applicant paid half (£642.50). The Applicant's portion of the deposit was then never lodged with an approved scheme provider. Instead, the Respondent returned to the Applicant an amount of £147.50 himself, having retained the balance of £495 over alleged wants of repair and cleaning. The Applicant sought an order of three times the deposit paid, being £1,927.50.

4. In advance of the case management discussion ("CMD") the Respondent lodged submissions indicating that he had taken steps to lodge the deposit with SafeDeposits Scotland.

The CMD and procedure prior to the Hearing

5. The application called for a CMD on 13 March 2026, conducted by remote conference call, at which there was appearance by both parties. At the CMD the Applicant confirmed that his wife was one of the other three tenants (Jinu Johnson) and the reason he sought an order based on 50% of the contractual deposit was that he had paid both his share and his wife's share of the deposit which totalled £642.50. This was consistent with a bank statement lodged by the Applicant showing £642.50 paid to the Respondent from an account in the Applicant's sole name. The Respondent confirmed that no issue was taken with the Applicant pursuing a claim based on his sole payment of £642.50.

6. At the CMD, the matters in dispute were quickly identified. The Respondent explained that he believed he had lodged the deposit with SafeDeposits Scotland, having received a confirmation email from them. When the Applicant came to leave, and the Respondent went to take steps regarding return of the deposit, the Respondent discovered that there was no sign of the money being held by SafeDeposits Scotland. The Respondent then himself returned the balance of the deposit, less deductions the Respondent believed appropriate, to the Applicant.

7. The Respondent accepted that, having now reconciled his bank account, he saw that no money was debited by SafeDeposits Scotland when he initially sought to lodge the deposit. At the time, however, he had not fully checked his bank statements and did not notice that the money had not been debited. The Applicant challenged him on a text message of 23 December 2024 when he asked questions about the tenancy deposit scheme and the Respondent replied: "don't worry your deposit is safe :)". The Applicant said he thought this was a false statement by the Respondent. The Respondent replied that at the time of the text he believed the money was lodged with SafeDeposits Scotland.

8. At the CMD, the Respondent conceded that - even if SafeDeposits Scotland admitted that they were in error by failing to debit the Respondent's account for the deposit money and lodge it – as the Respondent had not lodged the deposit (and could have timeously known of the problem by checking his own bank account) an award had to be made against him.

9. The application was continued to a Hearing. The Respondent referred to correspondence with SafeDeposits Scotland (both the original emailed reference and the emails about an ongoing investigation into the failure to have the funds lodged) and said these were available to be lodged after the CMD. A Notice of Directions was issued allowing time for such documentation to be lodged, as well as any submissions by the parties especially on the level of any award. The note on the CMD provided the parties with the following case citations which they were encouraged to consider when providing submissions:
   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*

   Further, the note suggested that it would be helpful for parties to address the Tribunal at the Hearing on the following:
   f. Information on the level of previous experience that Respondent had as a landlord.
   g. Steps taken by the Respondent to ensure any failure to lodge a deposit was not repeated.
   h. Any third party and external issues (such as the problems with SafeDeposits Scotland, but any health issues and other external matters which affected the Respondent).

10. In advance of the Hearing, the Respondent provided a bundle of documents, comprising correspondence with SafeDeposits Scotland up to 29 March 2026 and submissions materially restating his position from the CMD (that he believed he had acted in "good faith" and had taken the steps he believed he had needed to comply with the regulations). The Respondent submitted that an award "at the lower end of the statutory range" was appropriate. The Applicant lodged no further papers or submissions. Neither party provided submissions referring to case law.

The Hearing

11. The Hearing took place on 5 August 2026, conducted by video conference. There was appearance by each of the parties, being the only witnesses. The Respondent provided all submissions and evidence with the aid of a Malayalam interpreter (having expressed his wish for an interpreter during the CMD). As the material evidential issues related to the Respondent's dealings with SafeDeposits Scotland it was agreed that he would provide his evidence first.

Evidence of the Respondent

12. We did not seek for the Respondent to repeat those parts of his evidence provided at the CMD, so proceeded on the basis of the following matters having already been accepted into evidence from the CMD:
   a. The Respondent bought the Property in 2022 and originally lived in it himself.
   b. Around 2024 he started to rent it out (and no longer lived there at that time).

c. By the time the Applicant paid over his deposit, the Respondent had lodged a deposit one previous time for an earlier tenant.

d. When attempting to lodge the Applicant's deposit, he followed the same procedure as he had when he had successful lodged a deposit previously being:
    i. Within the time permitted by the Regulations for lodging a deposit, he logged on, provided bank card details and authorised a payment equivalent to the Applicant's deposit, and completed the online form with SafeDeposits Scotland.
    ii. A couple of hours later he received a confirmation email with a reference number.

e. He was certain that, when he previously lodged a deposit, he had received no other emails or confirmation except an email in the same terms as he received when he tried to lodge the Applicant's deposit. He thus genuinely believed that the Applicant's deposit was successfully lodged.

f. When the Applicant came to leave the Property, he logged onto SafeDeposits Scotland and could not see the deposit listed.

g. He then paid out to the Applicant the balance of the deposit that he thought was due from his own funds, as he thought that was the appropriate thing to do. (The Applicant thus did not have use of an adjudication service provided by SafeDeposits Scotland.)

13. At the Hearing, we asked the Respondent about the bundle of documents lodged since the CMD. He said that the bundle provided two material pieces of evidence:
    a. That when the Tenancy started he had received a confirmation that deposit was lodged. On this we noted the copy of an email dated 11 June 2024 apparently from SafeDeposits Scotland saying that the deposit for the Property "has now been protected with SafeDeposits Scotland" and that "[y]ou can access the deposit certificate within your account". A reference DAN770369 was provided but the email did not provide details of the amount of the deposit or the tenant it was being lodged regarding.
    b. That, after the application was raised against him, he had asked SafeDeposits Scotland to investigate and they have conceded that there may have been a technical error. On this we noted an email from a named customer service advisor of the SafeDeposits Scotland, dated 25 February 2026, where they said: that they could not find an email on their system that confirmed DAN770369 was protected and that reference should have been closed at that point as it related to a tenancy that had ended; that they were raising with their "tech team to see if they can find the email and why it was sen in error" (*sic*); and that "[t]here is a possibility of a system or technical issue that I have raised for investigation".

14. The bundle further showed the Respondent chasing for a further response. In his evidence, the Respondent confirmed that he had not chased further since 29 March 2026 and had not received any further response from SafeDeposits Scotland. He said that he intended to return to them once he knew the outcome of the application.

15. We sought evidence from the Respondent on the points highlighted in the CMD note:
    a. In regard to his experience as a landlord, he said that he considered himself a landlord with "low experience", having only previously lodged a deposit once and having not lodged another. He said that he was no longer renting out the Property and was living in it as his main residence. He said he had no other properties and, having not found the application a good experience, had decided not to move forward as a landlord at this time. (He did not thus give evidence on any steps he had taken to ensure future deposits were protected as he did not currently have plans to be a landlord in the future.)
    b. In regard to external issues that affected his compliance, he stood by his evidence on SafeDeposits Scotland and their concession of a potential "system or technical issue". He also said that at the time of the commencement of the Tenancy, his aunt was dying and "my head was somewhere else". (Later he also gave evidence of having "personal issues" around the time of the Applicant leaving, which also distracted him, but he said he did not wish to provide details of those issues so as to rely upon them further.)

16. We further asked the Respondent about the dealings with the Applicant when he came to return the deposit. The Respondent confirmed that he was aware that there was an adjudication process available for protected deposits but he said that he thought it would be "easier to do it between us" and did not consider lodging funds at that time. He said he made a single call to SafeDeposits Scotland at that time to enquire about the money but did not hear back from them, so proceeded to deal with the Applicant direct on the deposit.

17. He further gave evidence that, when he first saw that no deposit was listed as protected, he still thought that the money may be in the hands of SafeDeposits Scotland somewhere. He conceded, however, that he did not make further enquiries on trying to recover these funds until after the application was raised. He explained this delay in making enquiries on the basis of the "personal issues" he was focused on, and that he was able to make do without the money due to his other savings. (He also now accepted that no funds had ever been lodged because no money had left his bank account.)

18. In regard to his correspondence with the Applicant, the Respondent said that he gave a breakdown of the proposed retention of £495 in an email to the Applicant. He accepted that the Applicant "debated" the amount he proposed to retain but, after the Respondent returned the balance of £147.50, he said he heard nothing further from the Applicant until the application was raised.

19. In regard to his personal administration, the Respondent confirmed that at the time he operated the same current account for his personal affairs and for matters related to being a landlord, and that he did not check his account or bank statements very often. He conceded he only looked further into the bank statements once the application was raised, at the time he contacted SafeDeposits Scotland to enquire.

20. In answer to cross-examination, the Respondent insisted that he had told the Applicant by telephone that the deposit was protected with SafeDeposits Scotland and that the word “safe” in the text message of 23 December 2024 (“don’t worry your deposit is safe :)”) was a further reference to that. The Respondent further said that he had offered to provide invoices to the Applicant for the figure of £495 but these were not requested. (We note that we did not see any documentation lodged by either side that appeared to include such an offer. The Applicant lodged several papers of a document, which appears to be an email from the Respondent containing a breakdown of the £495, but the header and date are excluded. It does not offer invoices but did end with the sentence: “All images and videos will be supported.”) When pressed as to why he had not checked his bank statement at the time of lodging the deposit, the Respondent said that he had relied on the confirmation email from SafeDeposits Scotland and that his “head was somewhere else”.

Evidence of the Applicant

21. The Applicant’s evidence was brief. He first disputed receiving a breakdown of the £495 but then accepted he was sent “a list” but “refused it”. The next day, he was sent £147.50 by the Respondent though he had not agreed this figure.

22. The Applicant stated that he had taken videos when he first moved in and the Property was not fully refurbished at that time. He believed he had left the Property in a better condition than when he moved in, and that any issues were normal wear and tear. He did not accept that it was appropriate for there to have been any deduction from the deposit. (It was noted that video evidence had not been made available to us, though the application papers contained screenshots from a video. The Applicant submitted these showed that some of the repairs issues complained about by the Respondent at vacation were present when the Applicant first moved in. As this was not relevant to the application we did not consider the photographs in detail.)

23. Cross-examination focused on matters that were only tangential to the application: the communication between the parties when the Respondent intimated that he intended to deduct £495. The Respondent pressed the Applicant on why – if he held video evidence – this was not provided to the Respondent prior to the application. In response to cross-examination the Applicant further disputed that he was told by the Respondent by telephone that the deposit was protected with SafeDeposits Scotland.

Submissions

24. The Applicant’s submissions were brief. Referring to a disability affecting one of his hands, he said that the Respondent did not care that he was disabled or that, notwithstanding his disability, he had given the Property back in a clean condition. He submitted that a maximum award of three times the deposit should be awarded, but he would accept the decision of the Tribunal.

25. The Respondent reviewed his evidence and that he believed the deposit was secured with SafeDeposits Scotland and that, further to the investigations, there was a “system or technical error” by SafeDeposits Scotland that had resulted in it not being protected. He said that he acted in good faith and a “most minimum” award should be granted.

26. Neither party sought to refer to case law nor provide their submissions on the cases referred to in the CMD Note.

27. No motion was made for expenses. The Applicant sought interest at 8% per annum, relying on continued financial pressure as well as a need to borrow from friends for his deposit after he left the Property. The Respondent submitted no interest should be awarded given that he believed he had followed the appropriate process.

Findings in Fact

28. The Respondent, as landlord, let the Property to the Applicant and three others under a Private Residential Tenancy dated 27 May 2024 and commencing on that date (“the Tenancy”).

29. In terms of clause 10 of the Tenancy, the Applicant and the other tenants were obligated to pay a deposit of £1,285 by the date of signing of the Tenancy.

30. The Applicant paid a deposit of £642.50 to the Respondent prior to the commencement of the tenancy, being an agreed share of the deposit due by him.

31. The Respondent communicated with an approved tenancy deposit scheme, SafeDeposits Scotland, on or about 11 June 2024 regarding lodging of the deposit. The nature of the communication led the Respondent to believe that the Applicant’s deposit had been successfully lodged with a reference DAN770369.

32. The Applicant’s deposit was not lodged with SafeDeposits Scotland and no deduction from the Respondent’s bank account was made by SafeDeposits Scotland in regard to a deposit on or about 11 June 2024.

33. The Property is the only property that the Respondent rents out for residential tenancies.

34. The Applicant was not afforded access to the adjudication scheme under Tenancy Deposit Scheme at the conclusion of the Tenancy.

35. The Tenancy ended in or around late July 2025.

36. The Respondent retained £495 from the deposit and returned the balance to the Applicant on or about 26 August 2025.

Reasons for Decision

37. It was a matter of concession that no money ever transferred from the Respondent to SafeDeposits Scotland, and that it was the Respondent himself who returned a disputed balance of funds of £147.50 to the Applicant around a month after the end of the Tenancy. No matter the circumstances for the failure to lodge the funds, and even if they were entirely the fault of SafeDeposits Scotland (which we cannot determine), there has been a clear breach of the requirements of the 2011 Regulations and so an award must be made.

38. In coming to a decision, we reviewed decisions from the Upper Tribunal for Scotland. In *Rollett v Mackie, [2019] UT 45*, 2019 Hous LR 75, 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)

39. 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 our 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.

    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)

40. The Upper Tribunal considered a case where the Tribunal regarded a low level of culpability in *Wood v Johnston, [2019] UT 39*. 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.

41. The approach in these two cases is accepted in other UT cases: by Sheriff Fleming in *Hinrichs v Tcheir, [2023] UT 13, 2023 Hous LR 54* (which considered *Rollett*), and by Sheriff Cruickshank in *Ahmed v Russell, 2023 UT 7, 2023 SLT (Tr) 33* (considering both *Rollett* and *Wood*). In the latter case, 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)

42. 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 us, neither were achieved (though there is no suggestion that the Respondent was insolvent). The Respondent does, however, gain some support from other parts of the reasoning. He clearly knew the Regulations existed and we accepted his evidence that he believed he had complied. The reasons for failure are unclear but it is possible it was a "system or technical" issue of the tenancy deposit scheme provider. The Respondent could have uncovered the issue through reconciling his bank account but did not. We do not believe the failure was intentional and we accept he has low personal responsibility for the failure to comply with the lodging requirement. We hold, however, that he has significantly higher responsibility when he decided to press on with handling discussions on the release of the deposit direct with the Applicant, rather than seek a way to obtain access to the adjudication service.

43. In considering Sheriff Bickett's reasoning in *Wood*, the Respondent owns no other property for rent and we accept he made attempts to have the deposit protected. Considering the comments of Sheriff Cruickshank in *Ahmed*, we see them overall as neutral for the Respondent.

44. In the circumstances, we are satisfied that this falls in the lower range of breaches. We think there was very low culpability for the failure to lodge but significantly higher culpability for the failure to provide the Applicant with access to an adjudication scheme. The Respondent's general inexperience and lack of other properties does weigh in his favour, and overall we hold this balances out at an award of £642.50, being the amount of the deposit. We regard this an appropriate award in consideration of the law and all the facts.

45. In regard to interest, the issues of poor administration and lowness of action are live in this application and we think interest is appropriate though not at the maximum judicial rate of 8% in consideration of the circumstances. We award 4% per annum from the date of the decision.

46. We would note that the Applicant's evidence and submissions suggests that he misunderstood the separate nature of a claim for repayment of the £495. The Applicant had no explanation as to why he was seeking only a payment under the Regulations and not a separate claim for recompense for the £495 that he disputed as a deduction. This decision is restricted to consideration of a claim under the Regulations.

Decision

47. We are satisfied to grant an order against the Respondent for payment of the sum of £642.50 to the Applicant with interest at 4% per annum from today's date.

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

5 August 2026

Legal Member/Chair **Date**