



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 121 of the Housing (Scotland) Act 2006 and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/25/4497

Re: Property at 2/1 124 Dumbarton Rd, Glasgow, G11 6NY (“the Property”)

Parties:

Miss Weixing Hu, 2053 Great Western Road, Knightswood, Glasgow, G13 2XZ, China (“the Applicant”)

Ms Xiangyi Wang, 15 Stewartville Street, Glasgow, G11 5HR (“the Respondent”)

Tribunal Members:

Hilary Macandrew (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘Regulation 3’). The Respondent shall make payment to the Applicant in the sum of Five Hundred Pounds (£500.00)

1. Background

1.1 By application dated 18 October 2025 the Applicant seeks an award under Regulation 3. The Applicant lodged with the application:-

- Copy Private Residential Tenancy Agreement
- Correspondence between the parties on WeChat with translations prepared by the Applicant
- Photographs of handwritten notes in Cantonese.

1.2 The Respondent submitted

- Written representations,
- A highlighted copy of the lease agreement
- A screenshot of a translated text message.

1.3 A Case Management Discussion (CMD) took place by tele conference on 24 April 2026.

2. Case Management Discussion

2.1 At the CMD the Applicant attended on her own behalf. The Respondent was represented by her son Tom Lei.

2.2 The parties agree that the Tenancy Agreement submitted was the relevant Agreement.

2.3 The parties were in agreement that the Tenancy Agreement stated that six months' rent would be paid in advance at the commencement date of the tenancy.

2.4 It was not disputed that the tenancy commenced on 5 September 2024 and had a duration of one year.

2.5 It was agreed that the sum of £1,280 had been paid to the Respondent in advance of the Applicant taking up occupation of the property.

2.6 The issues in dispute were:

(a) Was a Deposit Paid? The Applicant's position is that she and another tenant Yu'ang Sun paid a deposit of £1,280 to the Respondent. The Applicant stated that she received the sum of £785 refunded from the deposit at the end of the tenancy after deductions. The Respondent's agent disputed that any deposit had been paid. He stated that the Respondent had made a deliberate decision not to take deposits and that the payment was in respect of advanced rent. Any deduction made at the end of the tenancy was from rent and not from a deposit.

(b) If a deposit had been paid, what was the level of any award under Regulation 10.

2.7 At the CMD the Tribunal determined to fix an Evidential Hearing and considered that the following evidence would assist in determining the application:-

- Specification of the amount sought by the Applicant with reasons
- Oral evidence from Yu'ang Sun at the hearing, failing that a witness statement

- A rent statement for the property showing individual payments including, for example, the four weeks' payment referred to in the screenshot and the deduction of utility bills etc from rent.
- Complete translations in English of any screenshots, correspondence or other documents parties seek to rely on at the hearing.

2.8 The outcome of the CMD was that proceedings were adjourned to an Evidential Hearing and a direction issued to parties.

3. Hearing

3.1 The hearing took place by Webex video link on 14 August 2026 at 10am. The Applicant represented herself. The Respondent represented herself. An interpreter took part and interpreted for both parties.

3.2 In advance of the hearing and since the CMD the Respondent produced the following additional documentation, namely:-

- A handwritten rent calculation
- A typed rent calculation

3.3 The Applicant stated that she continued to maintain that the sum of £1,280 paid on 31 May 2024 which was equivalent to four weeks rent was in fact a deposit. Her position was that she and her joint tenant had paid rent for the full period of the lease, namely 52 weeks. Her position was that the £1,280 was a deposit and that the full rent had been paid entirely separately. She stated that at the end of the tenancy the sum of £785 was paid to her by the Respondent. This equated to deductions of £305.07 in respect of utilities and £190 in respect of cleaning being deducted from £1,280.

3.4 The Applicant confirmed that she was seeking a payment order from the Tribunal in the sum of £2,560.

3.5 In cross examination the Respondent put to the Applicant that the sum of £1,280 was rent. The Applicant disagreed. The Applicant at the start of the tenancy presumed that the sum of £1,280 was a deposit. She said it was only at the end of the tenancy that she was told that it was rent. She said that when the Respondent returned the sum of £785 at the end of the tenancy the Respondent described it as the return of her deposit.

3.6 The Respondent gave evidence. She stated that the sum of £1,280 was the equivalent of four weeks' rent and was not a deposit. She said that there had been a misunderstanding that the Applicant had assumed it was a deposit but it was not. She stated that she thought the Applicant was not aware of the terms of a Scottish Tenancy Agreement and pointed to the Agreement for the property which stated that there was to be no deposit. She stated that the Applicant did not pay bills on time. She said that the sum was rent.

- 3.7 In response to the Tribunal, when asked to confirm the duration of the tenancy the Respondent stated that the duration was one year and that tenants had stayed an additional three days for which she did not charge rent. In response to the Tribunal, the Respondent being asked why she had given money back to the Applicant at the end of the tenancy she said she did so as a goodwill gesture. The Respondent confirmed that she had one other property for which she is a landlord. She has been a landlord for ten years.
- 3.7 In summing up the Applicant stated that she entered into a tenancy with a duration of 52 weeks. She had stayed for 52 weeks. A sum of £1,280 was paid in advance on 31st May 2024 and it was a deposit. She expected it to be returned after the end of the tenancy under deduction of any expenses and cleaning. She and her fellow tenant had presumed this was a deposit. She asked the Tribunal to make a judgement and for an order to be made for £2,560.
- 3.8 In summing up the Respondent's submission stated that four weeks' rent is not a deposit. She stated that the Applicant had not understood that this was a Scottish Tenancy Agreement which had no provision for a deposit. She then said that the Applicant did not pay her bills on time. She said that she did not retain a deposit but she simply made a goodwill payment from rent.

4. Findings in Fact

- 4.1 A Private Residential Tenancy Agreement commenced on 5 September 2024 and had a duration of one year.
- 4.2 A payment of £1,280 was paid to the Respondent on 31 May 2024. The payment of £1, 280 made on 31st May 2024 is a deposit.
- 4.3 The deposit was not lodged with an approved deposit scheme within thirty days from the start of the tenancy.
- 4.4 The deposit was not lodged in an approved scheme for the entire duration of the tenancy.
- 4.5 The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

5. Reasons for Decision

- 5.1 There is no dispute that a sum of £1,280 was paid on 31 May 2024.
- 5.2 The first identified dispute is whether or not the sum of £1,280 was a deposit or rent. The Applicant's position which is borne out by the typewritten rent

statement provided by the Respondent is that the rent was paid six monthly in advance. A payment was made of £4,160 on 14 September 2024 and on 18 March 2025 a payment was made to the extent of £1,000 and on 26 March 2025 a payment was made to the extent of the balance namely £3,160. The total rent for the duration of the tenancy which was one year in the sum of £8,320 was accordingly paid in full.

- 5.3 The Respondent's position was that the payment of £1,280 made on 31 May 2024 was in respect of rent. Taking into account the rent statement provided by the Respondent this exceeds the rent actually paid. This would exceed the rent due for the entire period of the lease by £1,280. Even if it is accepted that the Applicant overstayed by a period of three days the Respondent's position was that she did not charge for this, as a goodwill gesture.
- 5.4 The Tribunal preferred the evidence of the Applicant that £1,280 was in fact a deposit. The Respondent accepted that deductions were calculated from the figure of £1280 in respect of utility bills and a cleaning fee. The Applicant did not dispute the utility bills and the cleaning fee.
- 5.5 The Tribunal accordingly found that the sum of £1,280 as a deposit.
- 5.6 It is a matter of fact that the sum was not paid into an approved deposit scheme. This is in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
- 5.7 The second issue was if a deposit was not paid then to what extent if any should a penalty order be made against the Respondent.
- 5.8 The Tribunal had regard to Upper Tribunal authorities in similar cases, in particular *Rollett v Mackie* [2019] UT 45 and *Ahmed v Russell* [2023] UT 7.

In *Rollett*, above, Sheriff Ross said [at para 9] that:

'Each 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 Page 5 or 6 description, which is relevant. Comparison with other cases is therefore of minimal assistance in the present case. The general principles of the law apply and these include that for a discretionary decision to be overturned it must be one which no reasonable tribunal could make.'

- 5.9 And further [at para 13]:

'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 of 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 also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the fact and tends to lessen culpability.'

- 5.10 In *Ahmed*, above, Sheriff Cruickshank outlined the purpose and policy objectives of the Regulations [at para 19] and referred to Sheriff Ross's '*helpful summary*' *Rollett*, above [at para 29], stating:

'Furthermore, in Rollett, Sheriff Ross considered that in assessing the level of sanction the question was one of culpability. When it came to the level of sanction the question was one of degree and provided examples of the factors which could lessen or increase the level of culpability' [at para 30].

- 5.11 In the present case, the Tribunal took the approach of establishing the facts and then considering any aggravating and mitigating factors to determine culpability of the Respondent and decide on the appropriate level of sanction.

- 5.12 The amount to be awarded is a matter for the discretion of the Tribunal having regard to the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

"[13] 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 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.

[14] Cases at the most serious end of the case 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."

- 5.13 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. The Tribunal is satisfied that this case falls in the lower range of the scale of serious breaches. The tenancy was for a relatively short period. Whilst the Respondent did not place the deposit into a tenancy deposit scheme, at the end of the tenancy the Respondent accounted to the Applicant in respect of the deduction from the sum of £1,280. Nonetheless the deposit was unprotected albeit the tenancy was relatively short. The Tribunal accordingly decided to make an order for payment by the Respondent to the Applicant of the sum of £500. That sum was considered by the Tribunal to be reasonable and proportionate in all the circumstances.

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

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Hilary Macandrew

H Macandrew

21st August 2026

Legal Member/Chair

Date