

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 8 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/26/0786

Re: Property at 18/5 Caledonian Place, Edinburgh, EH11 2AP (“the Property”)

Parties:

Mr Fabian Karlinger, Johanna Godal Eidissen, 5/10 Easter Dalry Wynd, Edinburgh, EH11 2TB (“the Applicants”)

ORROLAND LTD, 81 Woodfield Avenue, Edinburgh, EH13 0QR (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with any duty in terms of regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and shall make payment to the Applicants the sum two times the deposit of £1250, namely two thousand five hundred pounds (£2500) by way of a penalty.

Background

2. This was a case management discussion in connection with an application in terms of rule 103 of the tribunal rules and regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The first named Applicant attended on behalf of both Applicants. Ms Umerova attended as the Respondent.

Case management discussion

3. It was a matter of agreement that the parties entered into a tenancy agreement on 22 August 2025 for let of the property. The agreed rent was £1250 per month. The Applicants paid a deposit of £1250. This was not lodged in an approved scheme and the deposit was returned to the Applicants in full in February 2026. The tenancy came to an end on 15 January 2026. At the conclusion of the tenancy the Respondent told the Applicants their deposit would be returned in three weeks. The respondent sent on correspondence to the Applicants relating to council tax and electricity for the Property. When the Respondent received confirmation from both the council tax and the electricity provider that no further sums were due, she returned the deposit in full.

The Applicants' position

4. The deposit was unprotected for the duration of the tenancy. The Respondent operates as a private company and the fact that her relative has become unwell is unrelated to her legal obligations in relation to the company. The deposit should have been lodged with a deposit scheme. At the conclusion of the tenancy the deposit should have been returned immediately, and they should not have been told to wait three weeks. The Applicants should not have been placed in the position of asking for the deposit back. The Applicants owed around £60 to the utility company and that was paid in full. There was an error regarding council tax as the Applicants were exempt as they are both students and no sums were due to the local authority.

The Respondent's position

5. The Respondent is the sole director of the limited company who owns the property. She owns another property which she rents out. She has acted as a registered landlord for several years and is familiar with the deposit process. She does not use a letting agent. This is the first time the company has failed to lodge a deposit. This was due to a genuine oversight and it was not a wilful failure. The circumstances were that her mother was ill around the time the tenancy started. She has lodged a medical report relating to her mother's admission to hospital. Ms Umerova had to travel abroad around the start of the tenancy to visit her mother and she was very preoccupied with her mother's health at that time. The deposit was paid into her personal account. She became aware of her error when the Applicants gave notice. She waited to ensure that the accounts with the utility company and the council tax were clear before she returned the deposit in February 2026 but she does not accept that she would not have returned it in full.

6. Findings in fact

- **The Respondent is a limited company and owner and registered landlord of the property.**
- **Ms Mukhayyo Umerova is the sole director.**

- The parties entered into a private residential tenancy agreement for let of the property on 22 August 2026.
- The Applicants paid a deposit of £1250.
- The Respondent failed to lodge the deposit in an approved scheme.
- The Respondent is an experienced landlord.
- Ms Umerova's mother was ill at the start of the tenancy.
- The failure was due to an oversight and was not wilful.
- Ms Umerova became aware of her failure when the Applicants gave notice in December 2025 that they wanted to end the tenancy.
- The tenancy came to an end on 15 January 2026.
- Ms Umerova did not return the deposit until she was satisfied the outstanding electricity bill had been paid and the council tax account cleared.
- The deposit was returned in full in February 2026.

Reasons

7. The Respondent admitted the breach of the regulations. The tribunal was satisfied that there had been a clear breach of the regulations. The tribunal went on to consider the gravity of the breach. The tribunal reviewed the case law regarding penalties for failure to lodge tenancy deposits. The tribunal was mindful of the reasoning in *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015) in considering the exercise of its discretion in this matter and ensuring that the penalty is fair and just, proportionate and just. The tribunal also took into account the reasoning of the Upper Tribunal in UTS/AP/19/0020 which states: '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. The tribunal took into account the mitigating factors in this case that the breach was not wilful, the tenancy was short and the deposit was repaid in full. Ms Umerova was also preoccupied with her sick mother at the time. She said it was first time her company had failed to lodge a deposit. On the other hand, there are also factors which make the breach more serious. The Respondent is an experienced registered landlord and when the Applicants gave notice in December 2025 and the failure came to light, she could have secured the deposit at that time. The deposit is a large sum of money, especially to the Applicants who are students. Ms Umerova also retained the deposit until she was satisfied the outstanding bills were paid (although she maintains it was always her intention to repay the deposit in full). This is exactly the situation the scheme is designed to prevent. The tribunal can award up to three times the deposit. The tribunal decided the breach was not at the top end of the scale, but the breach was still serious. The tribunal decided it was fair proportionate and just to award a penalty of two times the deposit in 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 them.

L Ward

L A Ward

22 July 2026

Legal Member

Date