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 Scheme (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/26/1980

Re: Property at 2/1, 11 Carrington Street, Glasgow, G4 9AJ ("the Property")

Parties:

Miss Sophie Wollen, 2/1, 55 Gardner Street, Glasgow, G11 5DA ("the Applicant")

Mr Barry McDermott, Westgate Estate Agents, 49 Byres Road, Glasgow, G11 5RG ("the Respondent")

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent is in breach of the duties in relation to the Applicant's tenancy deposit under regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations").

The Tribunal therefore made an order for payment against the Respondents in the sum of Five hundred pounds (£500) Sterling.

Background

1 This is an application under regulation 9 of the 2011 Regulations and rule 103 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules"). The Applicant sought a determination that the Respondent had failed to comply with their duties under regulation 3 of the 2011 Regulations along with a payment order of up to three times the amount of the deposit.

2 In terms of regulation 9 of the 2011 Regulations, an application under rule 103 must be made within three months of the end date of the tenancy. The tenancy

between the parties terminated on 14 April 2026. The application was determined to have been made to the Tribunal on 1 June 2026. The application is therefore timeous.

3 The application was accepted as valid and referred to a tribunal for determination. A case management discussion ("CMD") was scheduled to take place by teleconference on 9 November 2026 at 10am. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. The notice together with a copy of the case papers was served upon the Respondent by sheriff officers on 11 September 2026 and required the Respondent to make written representations in response to the application no later than 1 October 2026.

4 On 30 September 2026 the tribunal received written representations from the Respondent's representative, Westgate Letting Agents, in response to the application. In summary, the Respondent acknowledged that the deposit was lodged late but confirmed that it has been fully repaid to the Applicant. The Respondent provided evidence of compliance with the duties in relation to tenancy deposits. The Respondent explained that complications had arisen due to the transient nature of the occupants within the property. It was an administrative issue. The Respondent had not been found in breach of the 2011 Regulations before this case and apologised, explaining that a new software package had been put in place to avoid further error. The Respondent pointed out that the Applicant had not been financially put out by the breach.

The CMD

5 The CMD took place on 9 November 2026 by teleconference. The Applicant joined the call. The Respondent was represented by Mr Stephen McGlone of Westgate Letting Agents.

6 The tribunal had before it the application form together with supporting documents including private residential tenancy agreement, emails between the parties, and correspondence from SafeDeposits Scotland. The tribunal also had the Respondent's written representations.

7 The tribunal explained the purpose of the CMD and proceeded to hear submissions on the application. The following is a summary of the key elements of the submissions.

8 The tribunal noted that the Respondent did not dispute he was in breach of regulation 3. The issue for the tribunal to determine therefore was what level of sanction should be awarded in the circumstances of this case.

9 The Applicant was unclear on the appropriate level of award. She understood it may have been a one off mistake by the Respondent. Because the deposit was not put into the scheme until two weeks after the tenancy terminated on 14 April 2026, there were delays in the repayment of her deposit. She did not receive it

back until 1 June 2026. She confirmed that she had paid the deposit directly to the Respondent's letting agent along with the first months rent.

10 Mr McGlone explained that Westgate Letting Agents have managed the property on behalf of the Respondent since 2021. There had never been any issues with securing tenants' deposits. The Applicant's situation had been a bit awkward as she was replacing an existing joint tenant. Mr McGlone referred to an email he had submitted which highlighted the Respondent's willingness to give the Applicant the deposit back. The Applicant had been asked if she would accept her deposit from the incoming tenant. The tenancy deposit was paid back in full to the Applicant after it was lodged with the scheme. There were no issues with the Applicant's conduct of the tenancy. Mr McGlone asked for leniency in terms of the sanction. Westgate Letting Agents are a small business. The Applicant had not been financially harmed. The Respondent has five rental properties which are all managed by Westgate Letting Agents. This is the first time such an error has occurred. Mr McGlone explained that new software has been installed to prevent this happening again. The Respondent relies upon his agent for compliance with his statutory duties. Mr McGlone was unaware that money laundering requirements had resulted in a delay in the repayment of the Applicant's deposit from the scheme.

11 Both parties confirmed that they did not dispute any of the substantive facts of the case and did not have any further evidence to present to the tribunal. They were content for the tribunal to proceed to a decision on the information before it.

Findings in fact

12 The Respondent is the owner and landlord, and the Applicant was the tenant, of the property in terms of a private residential tenancy agreement, which commenced on 30 October 2025. The Applicant replaced an outgoing joint tenant of the property.

13 In terms of clause 11 of the tenancy agreement the Applicant undertook to pay a tenancy deposit of £750 at the start date of the tenancy or before.

14 The Applicant paid the tenancy deposit to the Respondent prior to the start date of the tenancy.

15 The tenancy between the parties terminated on 14 April 2026.

16 The Respondent has instructed Westgate Letting Agents to manage the property on his behalf, which includes the administration of tenancy deposits. The Respondent has five rental properties which are all managed by his agent.

17 On 14 April 2026 the Respondent's letting agent wrote to the Applicant and the incoming tenant suggesting that the incoming tenant pay her share of the deposit to the Applicant. The incoming tenant declined to do so.

18 The Respondent's letting agent lodged the Applicant's tenancy deposit with a tenancy deposit scheme on 29 April 2026.

19 The Applicant received a full refund of her deposit in the sum of £750 from the scheme on 1 June 2026. The Applicant was affected financially as she did not have the funds to put towards the deposit for her next flat.

20 The Respondent's letting agent has accepted responsibility for the breach. The Respondent's letting agent has apologised for the error.

21 The Respondent's letting agent has installed new software to mitigate against future breaches.

22 There is no evidence that the Respondent has previously been found in breach of the 2011 Regulations.

Reasons for decision

23 The tribunal took into account all documents and submissions from the parties in its determination of the application. The tribunal considered it had sufficient information to make relevant findings in fact and reach a decision on the application in the absence of a hearing under Rule 18 of the Rules, and that to do so would not be contrary to the interests of the parties. There were no substantive facts in dispute that would require a hearing to be fixed.

24 The tribunal considered the provisions of regulations 3, 9 and 10 of the 2011 Regulations:-

""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.

(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 by summary application and 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."

25 The tribunal determined that the tenancy between the parties was a relevant tenancy for the purpose of regulation 3(3) of the 2011 Regulations having had sight of the private residential tenancy agreement between the parties.

26 The tribunal further determined that the Respondent was in breach of regulation 3(1) of the 2011 Regulations regarding the Applicants' tenancy deposit because of their failure to timeously lodge the Applicant's deposit with a scheme and provide the Applicant with the prescribed information prior to the statutory deadline. The Respondent did not dispute this.

27 The tribunal therefore considered regulation 10 which requires the tribunal to order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. There is no discretion afforded to the tribunal under the 2011 Regulations. If the tribunal finds the landlord in breach of regulation 3, it must make an order for payment.

28 In determining an appropriate level of sanction, the tribunal considered the decisions from the Upper Tribunal for Scotland in *Rollett v Mackie ([2019] UT 45)* and *Ahmed v Russell* (*UTS/AP/22/0021*).

29 In *Rollett,* Sheriff Ross states at paragraph 9 of his decision 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 description, which is relevant"*. He goes on to state at paragraph 14 that "*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."

30 In *Ahmed,* Sheriff Cruickshank also 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 £2250. 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*."

31 The tribunal considered the relevant factors in this case, both aggravating and mitigating.

32 The tribunal took into account the fact that the Applicant's deposit was not lodged with a scheme until after her tenancy had ended and had been unprotected for a period of around six months. The tribunal accepted that this had resulted in delays in the return of the Applicant's deposit due to the scheme's money laundering requirements. The tribunal took into account the negative impact this would have had in terms of the availability of the funds to put towards her new tenancy. The tribunal gave weight to these matters as aggravating factors.

33 The tribunal accepted however that this had been a simple administrative error on the part of the Respondent's letting agent. There did not appear to be any malicious intent to evade the Respondent's obligations in relation to tenancy deposits. There was no evidence of repeated breaches of the Respondent's duties under the 2011 Regulations. Whilst those duties are ultimately incumbent upon the Respondent as landlord, he had relied upon his letting agent to ensure compliance with his statutory duties. There has been no attempt on the part of his agent to evade responsibility for their error. They fully accepted the breach in this case and have apologised to the Applicant, as well as putting new procedures in place to ensure such an error does not happen again.

34 The tribunal also gave weight to the fact that the Applicant's deposit had been secured in a tenancy deposit scheme, albeit after the tenancy had ended. One of the primary aims of the 2011 Regulations is to ensure tenants have access

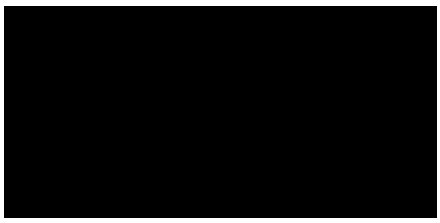
to the independent scheme dispute resolution process should any disputes arise. The Applicant was not deprived of this protection. She would have had the opportunity to challenge any deductions from her deposit through the proper channels, albeit she had ultimately received her deposit back in full. The Applicant does not appear to have suffered any actual financial loss insofar as her deposit. These will generally be mitigating factors that weigh heavily in favour of a lower award.

35 The tribunal therefore concluded that, having balanced the aggravating and mitigating factors in this case, an award towards the lower end of the scale was appropriate. The tribunal considered that the level of culpability in this case was very low. The maximum the tribunal can award in this case is £2250. The tribunal therefore determined that a penalty of £500 would be proportionate, fair and just.

36 The tribunal therefore made an order for payment in the sum of £500.

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.



Ruth O'Hare	**9 November 2026**
Legal Member/Chair	**Date**