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/26/3643

Re: Property at 127 Market Street, St. Andrews, KY16 9PE ("the Property")

Parties:

Mr Benjamin Bukovenczki, 71 (32f) Dalmeny Street, Leith, EH6 8PW ("the Applicant")

Mrs Fiona McDonald, Paul McDonald, St Catherines, Links Road, Leven, KY8 4HR ("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 Respondents failed to comply with the duties regarding the Applicant's tenancy deposit under regulation 3 of the 2011 Regulations.

The Tribunal therefore made a payment order against the Respondents in the sum of £675 under regulation 10 of the 2011 Regulations.

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 Respondents had failed to comply with the landlord's duties under regulation 3 of the 2011 Regulations, and a payment order of up to three times the amount of the tenancy 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 application stated that the tenancy between the parties ended on 31 July 2026. The application was made on 5 August 2026.

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 1 October 2026 at 2pm. Notice of the CMD was given to the parties in accordance with Rule 17(2) of the Rules.

4 On 17 September 2026, the tribunal received written representations from the Respondents in response to the application. In summary, the Respondents accepted the breach and the material facts of the case. The Respondents asked the tribunal to consider whether the application was time barred, given that the deposit was accepted under the first tenancy agreement signed by the Applicant which had terminated on 30 June 2025. The Respondents outlined the various tenancy agreements entered into between the parties, confirming that the Applicant's original £675 deposit was rolled over when a new agreement was signed. The Respondents took full and sincere responsibility for the breach. The first Respondent had been responsible for managing the deposits and due to her circumstances at the time which involved a fire in another of their rental properties, she had been under stress and financial uncertainty which impacted her personal capacity. Her systems for managing tenancy deposits broken down. The Respondents also outlined the complexities of the property in this case, being a house in multiple occupancy for students. This placed high demands on the Respondents given the frequent changeover of tenants. The first Respondent was also providing childcare at the time. The breach in this case was an isolated failure and not systemic across the Respondents' rental portfolio. The Respondents have otherwise an unblemished record as landlords, with no previous Tribunal applications or breaches. The Respondents immediately secured the deposit upon realising the error. It was a genuine mistake. The Applicant was not denied his statutory rights in terms of dispute resolution. The Applicant suffered no financial loss and his deposit was never at risk. The Respondents had now put new systems in place to ensure ongoing and proactive compliance. The Respondents provided various documents in support of their written submissions.

5 On 23 September 2026 the tribunal received further written representations from the Applicant. In summary, the Applicant disputed that the second Respondent was not involved in the handling of his deposit. He disputed that he had separate tenancies, submitting that the period from 1st September 2025 to 31 July 2026 constituted a single continuous tenancy agreement. His deposit of £675 had been held by the Respondents since May 2024 through his entire period of occupancy. The Applicant did not dispute the events outlined in the Respondents' written submissions but questioned whether they justified the extent of the breach. The Applicant provided various documents in support of his submissions.

6 On 1 October 2026 the tribunal received further written representations from the Respondents with a copy of the deposit scheme's adjudication outcome and an email from SafeDeposits Scotland to the Respondents.

The CMD

7 The CMD took place on 1 October 2026 by teleconference. The Applicant joined the call. The Respondents were represented by the second Respondent.

8 The tribunal explained the purpose of the CMD and highlighted some preliminary matters which required to be addressed. Firstly, the Respondents requested partial redaction of their details from the published decision. The tribunal advised that this would be considered in the drafting of any decision arising from the CMD, but that redaction requests would generally require to be submitted in writing to the Chamber President.

9 The tribunal noted that a separate application had been made to the Tribunal involving the same Respondents and a joint tenant in respect of the same property. A CMD in that application was due to take place in late October. The tribunal asked the Applicant whether he wished the applications to be conjoined and heard together for the sake of consistency. The Applicant declined, stating his wish for the CMD to proceed.

10 The tribunal noted that the Respondents did not dispute they were in breach of the duties in relation to the Applicant's tenancy deposit, albeit they had set out several mitigating factors in their response. The tribunal therefore heard submissions from the parties on the level of sanction to be awarded in this case. The following is a summary of the key elements of the submissions.

11 The Applicant referenced his written representations. He moved into the property in July 2024 and paid a deposit of £675. He subsequently signed new tenancy agreements when there was a change of tenants but his deposit of £675 had been carried over. It had never been returned to him at any point when a new tenancy agreement was signed. The breach in this case was not an isolated event. It involved other tenants of the property. The Respondents had failed to comply with the duties over a prolonged period. They only secured the deposit when another tenant raised the prospect of Tribunal proceedings. That did not align with the Respondents' position that this was an honest mistake. The Applicant did not raise any concerns regarding his deposit with the Respondents directly. He was not aware of the requirements of the 2011 Regulations. He was unsure as to whether his deposit was secure until he did some research towards the end of the tenancy. He was a full-time student and did not have time to investigate the position. The issue had been raised with the Respondents by another tenant. The Applicant confirmed that he had signed three tenancy agreements with the Respondents. The Applicant confirmed that he did not have cause to dispute the facts outlined by the Respondents, but he disputed their interpretation of events.

12 The Respondents' position is that the Applicant did not have a single continuous tenancy at the property, with reference to the three tenancy agreements. The Applicant gave notice to terminate the tenancy as of 3 May 2026 but latterly it was verbally agreed between the parties that he and others could remain in the property at a reduced rent until the end of July. Any delay in

the repayment of the deposit from the scheme was due to the scheme's money laundering requirements. The Respondents did not deliberately withhold the Applicant's deposit. The deposit had been adjudicated upon by the independent scheme therefore the Applicant had suffered no prejudice. The email from the other tenant to which the Applicant had referred was a trigger in prompting the Respondents to pay the deposit over to the scheme. The Respondents realised they needed to rectify the error immediately.

13 The Applicant clarified that he was not stating that he had a single continuous tenancy, but he felt this was something the tribunal should determine. The Applicant pointed out the email from the Respondents in which they had offered to return the deposit in cash or via direct bank transfer. Given that the Respondents have multiple rental properties, they should have been aware at that point of the breach.

14 Regarding the email referred to by the Applicant, the Respondents do not deny that the email was sent. It was a well-intended misguided attempt to be helpful by ensuring the Applicant could have unrestricted access to funds without having to wait. It was a symptom of the administrative collapse arising from this tenancy which the Respondents apologised for.

15 The tribunal noted that the material facts in this case did not appear to be in dispute and asked whether parties wished the application to be referred to a hearing for further evidence to be considered before the tribunal reached a decision on the application. Both parties confirmed that they had no further evidence to present and would be content for the tribunal to make a decision based on the information before it. The tribunal therefore concluded the CMD and advised that the decision would be issued in writing in due course.

Findings in fact and law

16 The Respondents are the owners and landlords, and the Applicant was the tenant, of the property in terms of a private residential tenancy agreement, which commenced on 1 July 2024.

17 The Applicant signed a second private residential tenancy agreement with the Respondents on 1 July 2025. The tenancy terminated on 31 August 2025.

18 The Applicant signed a third private residential tenancy agreement with the Respondents on 1 September 2025. The tenancy terminated on 31 May 2026.

19 On 1 June 2026 the parties verbally agreed that the Applicant could occupy the property with others until 31 July 2026. The verbal agreement between the parties constituted a private residential tenancy.

20 The Applicant's final tenancy with the Respondents terminated on 31 July 2026.

21 Prior to commencing occupation of the property on 1 July 2024 the Applicant paid the Respondents a tenancy deposit in the sum of £675.

22 The Applicant's tenancy deposit of £675 was carried over to each subsequent tenancy he held with the Respondents.

23 The Respondents paid the deposit into a deposit scheme on 2 July 2026. The Respondents did so after they were advised by a joint tenant of the property that the joint tenant had applied to the Tribunal. The Respondents had previously offered to transfer the deposit to the joint tenant directly.

24 The Applicant's deposit was not paid into an approved tenancy deposit scheme within thirty working days of the commencement of the Applicant's tenancy.

25 The Respondents have taken responsibility for the failure to timeously secure the Applicant's deposit.

26 The Respondents have a small rental portfolio. On 13 October 2023 one of the Respondents' properties was severely damaged by fire. The property was the first Respondent's father's former home.

27 The Respondents experienced financial difficulties because of the fire. Their administrative procedures, including management of deposits, were impacted due to the pressures of dealing with the matter as well as other caring responsibilities the first Respondent had for the Respondents' grandchild.

28 The property is a house in multiple occupancy for students. The transient nature of the occupants presents complexities in terms of tenancy management.

29 There is no evidence of any other established breaches of the 2011 Regulations by the Respondents, other than the claims that have arisen from the Applicant and the joint tenants of this property.

30 The Respondents have reviewed their administrative procedures for managing deposits to mitigate against the risk of future breaches.

31 The Applicant's deposit was adjudicated upon by the deposit scheme's dispute resolution process.

32 The Applicant has suffered no financial loss.

Reasons for decision

33 The tribunal considered it had sufficient information based on the documents produced and the submissions from the parties at the CMD 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. The tribunal considered that to do so would not be contrary to the interests of the parties. Both had confirmed that they

were content for the tribunal to proceed on this basis and the tribunal was satisfied that the substantive facts of this case were not in dispute.

34 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."

35 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 agreements between the parties. There is no requirement for a private residential tenancy to be in writing, therefore regarding the verbal agreement between the parties for the period from 1 June 2026 and 31 July 2026 the tribunal determined that this constituted a private residential tenancy, in that it met the definition of a statutory private residential tenancy under section 1 of the Private Housing (Tenancies) (Scotland) Act 2016:

"1 Meaning of private residential tenancy

(1)A tenancy is a private residential tenancy where—
(a)the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,
(b)the tenant occupies the property (or any part of it) as the tenant's only or principal home, and
(c)the tenancy is not one which schedule 1 states cannot be a private residential tenancy.
(2)A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied"

36 The tribunal therefore concluded that the Applicant had entered into four separate private residential tenancies with the Respondents over the course of his occupation of the property. Therefore, the tribunal had to consider how the relevant provisions of the 2011 Regulations should be applied in such circumstances.

37 Regulation 3 requires a landlord who has received a tenancy deposit to secure the deposit with a deposit scheme within 30 working days of the commencement of the tenancy, thus adhering to one of the main objectives of the 2011 Regulations which is to ensure that deposits are safeguarded through the duration of the tenancy. In this case the Applicant's deposit was received by the Respondents at the commencement of the Applicant's first tenancy in July 2024. The deposit was then carried over each time a new private residential tenancy was constituted. It was held by the Respondents until shortly before his final tenancy ended on 31 July 2026.

38 When considering an application such as this, where a tenant has held multiple tenancies for the same property, and with the same deposit applicable to each, the tribunal considered that it can interpret the duties under regulation 3 as applying to the tenancy in respect of which the landlord has received the deposit. That would mean that the 30 working days within which the deposit required to be secured commenced on 1 July 2024. To determine otherwise would mean that the Respondents could not be found in breach for the previous

two years during which the deposit was unsecured, which would appear to be contrary to the aims of the 2011 Regulations.

39 The tribunal went on to consider the interpretation of regulation 9, which requires a tenant to apply to the tribunal within three months of the end date of the tenancy. The tribunal considered that the interpretation of regulation 9 when dealing with tenancies of multiple occupancy, where the occupants are transient in nature, must be looked at in that context. The Applicant's deposit had been continuously held throughout his occupancy of the property, rolling over to each new tenancy. The tribunal determined that the "tenancy" referred to in regulation 9 should therefore be the last tenancy in respect of which the deposit was held, which in this case was the period between 1 June 2026 and 31 July 2026. The tribunal was therefore satisfied that the application had been made timeously in accordance with regulation 9.

40 The tribunal therefore determined that the Respondents were in breach of regulation 3(1) of the 2011 Regulations regarding the Applicants' tenancy deposit because of their failure to lodge the Applicant's deposit with a scheme and provide the Applicant with the prescribed information prior to the statutory deadline.

41 The tribunal 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.

42 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*).

43 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."*

44 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 £2025. 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*."

45 In terms of aggravating factors, the tribunal considered the fact that the deposit had been retained by the Respondents until shortly before the tenancy ended, a period of around two years. It was a significant period, during which the Applicant's deposit would have been unprotected. The tribunal also considered that the Respondents have a rental portfolio and are therefore experienced landlords. They should have been fully aware of their duties in relation to tenants' deposits. They have sought to primarily apportion responsibility for the breach to the first Respondent, but as joint landlords they are both equally responsible for compliance with their statutory duties under the 2011 Regulations.

46 The tribunal also found it difficult to understand why the error regarding the Applicant's deposit had not come to light at an earlier stage. The signing of each new tenancy agreement should have served as a reminder of the Respondents' obligations regarding the deposits held for the property. The tenancy agreement is clear regarding the obligations the Respondents have in terms of securing deposits in a scheme. It was concerning that in respect of this particular property, the Respondents appear to have lost sight of their statutory duties and are now facing claims by at least one other tenant in addition to the Applicant in this case.

47 In terms of mitigating factors, the tribunal gave great weight to the fact that the deposit had ultimately been paid over to the deposit scheme by the Respondents. The tribunal accepted that they had done so after first offering to return the deposit directly to another tenant, and after that tenant made reference to applying to the Tribunal. The Respondents did not therefore immediately secure the deposit upon being made aware of their error. However, the tribunal did not view this as malicious conduct on their part. The tribunal accepted that this was an attempt on their part to resolve the matter as swiftly as possible.

48 The tribunal considered that 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. Whilst the Respondents may have claimed against the deposit, the

Applicant has been able to challenge this through the scheme's adjudication process. He has not suffered any financial loss. He does not appear to have suffered any significant stress or inconvenience during his time in the property because of the breach. He was unaware that his deposit was unprotected until the issue was raised by a fellow tenant. These will always be significant mitigating factors that weigh in favour of a lower award.

49 The tribunal also took into account the fact that the Respondents have now taken full responsibility for the error and do not seek to evade responsibility. The tribunal had no evidence that they have previously been found in breach of the 2011 Regulations, other than the claims arising from this property. The tribunal accepted that there were other circumstances in their life at the time that would have impacted upon their ability to manage this property, particularly due to the complexities of the tenancy arrangements. Whilst the tribunal did not consider these matters to fully excuse the breach in this case, they were relevant factors that could be taken into account in the assessment of the award.

50 The tribunal was therefore satisfied that the gravity of the breach is at the lower end of the scale in this case, and in relation to culpability, the mitigating factors can be given more weight than the aggravating factors. The tribunal accordingly concluded that an award of £675 would be proportionate, fair and just.

51 For the avoidance of doubt, the tribunal's determination of this application is focused solely on the circumstances surrounding the tenancy deposit. The parties' conduct of any other aspects of the tenancy is not considered a relevant factor in determining an appropriate sanction in this case.

52 Finally, regarding the Respondents' request for the removal of certain personal information from this written decision, the tribunal is satisfied that the Respondents' name and address as recorded above is sufficient in terms of identifying the parties and fulfilling the requirements of open and transparent decision making.

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.

Legal Member/Chair **Date 31 October 2026**

Ruth O'Hare