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 the Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/25/1340**

**Re: Property at 10 Dippol Crescent, Auchinleck, Cumnock, KA18 2BZ ("the Property")**

**Parties:**

**Mr Robert MacFarlane, Mrs Litsa Turner, 10 Dippol Crescent, Auchinleck, Cumnock, KA18 2BZ ("the Applicant")**

**Mrs Kate Magoma, 10 Westfarm Wynd, Cambuslang, Glasgow, G72 7RP ("the Respondent")**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Donald Wooley (Ordinary Member)**

**Decision (in absence of the Appellants)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that Respondent, the Landlord, 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 £2475 (TWO THOUAND FOUR HUNDRED AND SEVENTY FIVE POUNDS) which is equivalent to one and half times the deposit.**

## Background

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 dated 28th March 2025.

<u>The Case Management Discussion</u>

2. A CMD was held on 17th September 2025 at 10am. The Applicants were present and represented themselves. The Respondent was not present but was

represented by Mr Frank Benson, who is the Respondent's husband. As there was no agreement between parties the application continued to a hearing.

3. On 31st August 2026, all parties were written to with the date for the hearing of 1st October 2026 at 10am by teleconferencing.

The hearing

4. A hearing was held on 1st October 2026 at 10am. The Applicants were not present and were not represented. The Respondent was not present but was represented by Mr Frank Benson, who is the Respondent's husband. The Tribunal Clerk attempted to telephone both of the Applicants when neither had appeared by 10.05am. The Clerk was unable to reach Mr McFarlane. The telephone number was not recognised. She rang it twice to make sure that it was the one noted. The Tribunal Clerk said that she was able to reach Ms Turner. Ms Turner said that she was no longer living in Scotland and was estranged from Mr McFarlane. The Tribunal proceeded in terms of Rule 29 of the Rules in terms of the Applicants not being present.

5. The Tribunal explained the purpose of the hearing, the overriding objective of the Tribunal and the powers available to the Tribunal to determine matters.

6. Mr Benson said that the Respondent was not able to attend. She had a medical emergency. She had just come off her night shift and had to deal with it straight away. She was aware of the hearing. She had told Mr Benson to proceed without her rather than cancel the hearing. Mr Benson said that the Respondent owns this property. He has 10 properties of his own. He effectively manages it for her as she is his wife.

7. Mr Benson said that in terms of his own properties he does not usually take a deposit as they are often for short periods of times, sometimes his tenants just stay for a couple of months. The deposits that he does take are lodged with Safe Deposit Scotland.

8. The Tribunal was concerned that there were three documents lodged which were pertaining to be the lease.

9. The first lease, at page 10 of the papers, was titled "accommodation agreement' which had an accommodation fee which equalled one months rent. It stated that there was a refundable deposit of £1650. The start date of the tenancy was 21st September 2026. The Applicants lodged this lease. The lease was not signed but was dated 23rd August 2024.

10. The second lease, at page 32 of the papers, was also titled "accommodation agreement". The Applicants lodged this lease. It stated that there was a refundable deposit of £1650. This lease was signed on 23rd August 2025 with the start of the tenancy being 9th September 2024.

11. The third lease, at page 44 of the papers, was also called “accommodation agreement”. This was provided to the Housing and Property Chamber by Mr Benson. It was silent to there being a deposit. It was signed by both Applicants but not the Respondent. Though it did have the Respondent’s name typed in. All were dated 23rd August 2024 with the lease start date 21st September 2024.

12. The Tribunal noted that there were two different dates of entry. The Applicants had said in the papers that this was due to needing to put the date back so that it could align with their benefits.

13. Mr Benson said that there was a change with the initial agreement. The Applicants were desperate to take on the Property. They had to delay it because of Mr McFarlane’s grandmother being ill and in hospital. The Tribunal noted that the leases were signed on the same date. Mr Benson said that he had met the Applicants at the Property on that date in the morning. Then he had got a telephone call later that date stating that the lease needed to be changed to the start date of 21st September 2026. Mr Benson said that this is normally a red flag. He did note that they had paid the first months rent plus and extra £1650 which he said was to be paid to the rent. Mr Benson initially said that the second lease had been signed at the Property in the afternoon of the same date. He then said that having reconsidered it again, that it was in fact signed in Glasgow. He lives in Glasgow and they were in Glasgow at the hospital. It was easier for all parties that it be signed in Glasgow. Mr Benson said he could not quite remember where. The Tribunal allowed him time to consider this. He subsequently remembered that it was signed in his car in Paisley but was uncertain of exactly where. After a few further minutes he remembered that the second lease had been signed outside a different property that he owns and was able to provide the Tribunal the exact address. Mr Benson explained that it was some time ago.

14. Mr Benson knew that the Applicants were in receipt of benefits. They had reassured him that they would be able to make the payment for the rent each month and would be getting a Discretionary Housing Payment. They had talked to the local council about it.

15. Mr Benson said the date of entry was supposed to be 24th August 2024. The Tribunal had not seen that in the papers. He said that they were originally to move in the day after the lease was signed. The Tribunal noted that the papers had not mentioned 24th August 2024 and it had no knowledge of this date until Mr Benson had mentioned it at the hearing.

16. Mr Benson confirmed that the Applicants had paid £1650 at the first meeting at the Property. It was to be used as an overpayment of rent to pay the first month’s rent charge. It was to be a deposit until there had been changes to the date of entry. The Tribunal put it to Mr Beneson that it was in fact a deposit. Mr Benson maintained that it was an overpayment of rent. The Tribunal asked if he had taken it as a deposit which he confirmed was the situation.

17. The Tribunal referred to the photos in in the papers with a lease shown. He said that the Applicants were having issues with payments. They had paid in February 2025 then half of March 2025 and nothing after. The photo was date stamped 28th April 2025. He had gone to see them to discuss the outstanding arrears. The lease was in the photos as it was brought out to show them how much was owed.

18. The Tribunal asked what measures have been undertaken to prevent a deposit not being lodged in the future. Mr Benson said that he managed the Property for his wife as she has a full time job. He did not think that the Respondent had taken legal advice in terms of her legal obligations as a landlord. She had asked him for help. He had his information from a local authority information seminar. Mr Benson said that he has been considering membership of the Scottish Association of Landlords ("SAL"). Had seen a solicitor and has passed that information onto the Respondent. Now all deposits are written in a diary and all the money goes into one bank account. Once the tenant moves in it is lodged with an approved deposit scheme.

19. Mr Benson said that he has learned a lot in his journey as a landlord and managing his wife's property. He said that in the past he did not know what to do but that now he has realised the significance of the legal obligations of a landlord.

Information for parties

20. This application relates to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy.

21. Regulation 9 of the 2011 Regulations indicates that if a landlord does not comply with any duty in regulation 3 then the Tribunal must order that a Landlord makes payment to the Tenant of an amount "not exceeding three times the amount of the tenancy deposit". Those duties are twofold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit.

22. It seems to be conceded by the Respondent's representative that the deposit had not been paid into an approved tenancy deposit scheme in accordance with the 2011 Regulations with a period of 30 working days from the commencement of the tenancy as he accepted that he took it as a deposit initially. In this case the Respondent is in breach of the 2011 Regulations.

23. If that is the case, then the Tribunal is required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment.

24. Parties should be aware that there are numerous decisions available on the Tribunal website setting out how the Tribunal has determined these applications.

25. Prior to the jurisdiction to determine these applications becoming part of the jurisdiction of the First-tier Tribunal, the applications were determined in the Sheriff Court. There were numerous Sheriff Court decisions which have been reported. In many of these cases, the Sheriff Courts have indicated that the Regulations were introduced to address what was a perceived mischief and that they will be meaningless if not enforced.

26. One such reported case is ***Phoebe Russell-Smith, Stephanie Dion-Jones and Alexis Herskowit v. Ijeoma Uchegbu*** ([2016] SC EDIN 64) a decision by Sheriff Welsh. In that case the sheriff calculated the award to be made by considering two broad aspects to the sanction, firstly an element to mark the sustained period of time which subjected the tenants and the deposit to a risk the regulations were designed to avoid and secondly, a weighting (or financial penalty) to reflect the fact that the landlord was aware of their obligations and still failed to comply. It should be noted that this is not the only method which a tribunal can use to determine the amount to be awarded.

27. In a decision by Sheriff Principal Stephen at Edinburgh Sheriff Court in December 2013, the Sheriff Principal indicated that the court was "entitled to impose any penalty including the maximum to promote compliance with Regulations". (***Stuart Russell and Laura Clark v. Samdup Tenzin*** 2014 Hous.L.R. 17).

28. The Tribunal notes that in an Upper Tribunal decision, (***Ahmed v Russel*** UTS/AP/22/0021 2023UT07) Sheriff Cruickshank indicates (at Para 38) that "***previous cases have referenced various mitigating or aggravating factors which may be considered relevant. It would be impossible to ascribe an exhaustive list. Cases are fact specific and must be determined on such relevant factors as may be present***". The amount awarded should represent "***a fair and proportionate sanction when all relevant factors have been appropriately balanced***".

Findings of fact

29. A Private Residential Tenancy Agreement commenced 21st September 2024. It was signed on the 23rd August 2024. The tenancy ended on 7th February 2026 when the Respondent found the Property to be abandoned.

30. A deposit of £1650 was paid on 23rd August 2024.

31. The deposit was not lodged within an approved deposit scheme within 30 days from the start of the tenancy. It was not lodged into an approved deposit scheme at any point during the tenancy.

32. The Respondent has failed to comply with the regulations to ensure that the deposit was lodged in an appropriate scheme within 30 days from the start of the tenancy. The Respondent has engaged with the Tribunal process, through her representative, to advise why this has happened and what steps have been taken to ensure that it will not happen again.

Decision

33. The Tribunal was required to determine which of the leases represented the true agreement between the parties. Having considered the evidence as a whole, it concluded on the balance of probabilities that the second lease was the operative lease. It was not in dispute that the Applicants entered into occupation of the Property on 21 September 2024 and paid a sum of £1,650 at the commencement of the tenancy. Mr Benson accepted that this payment was initially a deposit but contended that its purpose subsequently changed. The Tribunal did not accept that evidence as there was no other evidence to support this assertation.

34. The Tribunal noted that, in terms of section 3 of the Act, a tenancy agreement does not require to be in writing. As neither of the leases were a Private Residential Tenancy ("PRT") it could be argued that this was an unwritten lease following the standard terms. The fact that this was not a Government Model Tenancy Agreement did not alter the Tribunal's view that the payment of £1,650 was clearly intended and understood to be a tenancy deposit. Both of the leases lodged by the parties expressly referred to the payment as a deposit. By contrast, the third lease contained no reference to the payment of any money even though the money was received. The Tribunal was not provided with a credible explanation as to why such a significant term would be omitted if the third lease truly reflected the agreement between the parties. Furthermore, given that the Applicants were in receipt of Universal Credit Housing Element, the Tribunal considered it inherently unlikely that they would have agreed to make what was effectively an advance rental payment in excess of that required.

35. In reaching its decision, the Tribunal had significant concerns regarding the credibility and reliability of Mr Benson's evidence. His account of the purpose of the £1,650 payment changed during the course of the proceedings and he was unable to provide a clear, consistent or persuasive explanation for that change. The Tribunal also noted inconsistencies in his evidence regarding the circumstances in which the various lease agreements came to be signed. While the relevant events took place approximately two years ago, the Tribunal considered it reasonable to expect Mr Benson to have retained a clear recollection of them. The signing of two different lease agreements on the same day in respect of the same tenancy would be an unusual and memorable occurrence. His inability to provide a coherent account of these events significantly undermined the weight the Tribunal was able to place upon his evidence. Where his evidence conflicted with the documentary evidence and

the evidence of the Applicants, the Tribunal preferred the latter. The Tribunal therefore found that the payment of £1,650 was a tenancy deposit and rejected Mr Benson's evidence to the contrary. However, it did note that he has taken legal advice in terms of his obligations as a landlord and passed that information onto the Respondent.

36. The Respondent has a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The Respondent did engage with the Tribunal process to explain why the deposit was not lodged during the tenancy and what steps had been taken to prevent such a situation happening again. However, the deposit was not lodged in an approved scheme for the duration of the tenancy. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant one and half times the amount of the deposit (£2475.00).

**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.**

Gabrielle Miller

**1st October 2026**

**Legal Member/Chair** **Date**