



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/24/5372

Re: Property at Inton, New Galloway, Castle Douglas, DG7 3RN (“the Property”)

Parties:

Miss Adele Baird, Miss Heather Kay, Bellevue, Mossdale, Castle Douglas, DG7 2NJ (“the Applicants”)

Mr Anthony Lavelle, Drumrash Farm, Castle Douglas, DG7 3NF (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with his duties under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Tribunal therefore makes an order requiring the Respondent to pay to the Applicants the sum of £575.

Background

1. An application was received from the Applicants on 21 November 2024 seeking a payment order under Rule 103 of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”). The Applicants sought an order for payment in respect of the Respondent’s alleged failure to lodge the tenancy deposit paid by the Applicants with an approved tenancy deposit scheme within 30 working days of the beginning of their tenancy, as required by Regulation 3 of the 2011 Regulations.
2. Attached to the application form were:

- (i) Copy private residential tenancy agreement between the parties, which commenced on 9 February 2024.
 - (ii) Copy deposit protection certificate from Safe Deposits Scotland confirming that the Applicants' deposit was received from the Respondent on 4 September 2024, with covering email addressed to the second Applicant dated 5 September 2025.
 - (iii) Copy email dated 9 August 2024 from the second Applicant to the Respondent giving notice to end the tenancy.
 - (iv) Copy undated WhatsApp message from the Respondent to the first Applicant.
3. The application was accepted on 25 November 2024. Notice of the case management discussion (CMD) scheduled for 8 May 2025, together with the application papers and guidance notes, were served on the Respondent by sheriff officers on behalf of the Tribunal on 6 March 2025.
4. The Respondent was invited to make written representations in relation to the application by 22 March 2025. Written representations were received from the Respondent by post on 19 March and by email on 26 March 2025.

The case management discussion

5. A CMD was held by remote teleconference call on 8 May 2025. Both Applicants were present on the teleconference call and represented themselves. The Respondent was present on the teleconference call and represented himself.

The Applicants' submissions

6. The first Applicant, Miss Baird, told the Tribunal that the Applicants' deposit had not been paid into an approved tenancy deposit scheme within 30 working days of the start of their tenancy. She said that they had paid a deposit of £575 to the Respondent on 7 February 2024, shortly before the start of their tenancy.
7. The Applicants had discussed with the Respondent the duty to pay the deposit into an approved scheme prior to the start of their tenancy. He had asked them if they could recommend a scheme. They gave him details of all three approved schemes, and told him they had previous experience of Safe Deposits Scotland. They had received no information from the Respondent about the whereabouts of the deposit after their tenancy started. They had not followed it up with him, assuming that there had been some kind of administrative issue.
8. Miss Kay had sent an email to the Respondent on 9 August 2025, giving him written notice that the Applicants intended to end their tenancy. She asked in

that email for details of which deposit scheme he had used. He did not respond to this and when the Applicant enquired again about this, the Respondent had admitted that he had not paid the deposit into an approved scheme.

9. The Respondent had finally paid the deposit into Safe Deposits of Scotland on 4 September 2024, after the Applicants had moved out of the property on 31 August 2024.
10. Miss Baird confirmed that the Applicants had requested that the deposit be repaid to them by Safe Deposits Scotland (SDS), but the Respondent had contested this. He had claimed the deposit in respect of alleged damages to the property and cleaning costs. The Applicants had not challenged this as they had found the situation regarding the deposit stressful. They had decided it was better not to do so and that they would pursue the tribunal application instead.
11. Miss Baird said that the Applicants wished the Tribunal to make an order for whatever amount it considered to be fair.

The Respondent's submissions

12. The Respondent confirmed that the Applicants had paid him a tenancy deposit of £575. He admitted that he had failed to lodge the deposit with an approved scheme within 30 working days of the start of the tenancy. He confirmed that he was aware that he was required to do so, having discussed it with the Applicants before the start of their tenancy. He had intended to do this but had forgotten. He was preoccupied at the time with his adult daughter, who lives in Manchester. She had been very unwell for some time and was diagnosed with a rare cancer in August 2024.
13. He had never been a landlord before, and was registered as a landlord on 8 January 2024. He had initially intended to rent the property as a holiday let, but had seen an advert placed by Miss Baird seeking a property to rent and had decided to help the Applicants by letting it to them.
14. When Miss Kay had asked for details of the tenancy deposit scheme in August 2024, he realised he had not paid the deposit into a scheme. He decided that the best thing to do was to pay it into a scheme at that stage, in order to try to put things right and to provide protection for both parties.
15. He paid the deposit into SDS on 4 September 2024. After the Applicants had moved out, he inspected the property and found it to be in a poor state. He contacted SDS, providing evidence of the damage to the property, and asked to be awarded the deposit to cover the necessary damage and cleaning costs. SDS had said it would contact the Applicants but it had received no response from them, despite sending them a reminder. The deposit was therefore repaid

to him in full by SDS.

Findings in fact

16. The Tribunal made the following findings in fact:

- The Respondent is the registered landlord of the property. He became registered on 8 January 2024.
- The parties entered into a private residential tenancy agreement, which commenced on 9 February 2024.
- The tenancy agreement stated that a tenancy deposit of £575 was to be paid by the Applicants to the Respondent.
- The Respondent was aware of his responsibilities under the 2011 regulations before entering into the tenancy agreement.
- The tenancy was a 'relevant tenancy' in terms of the 2011 regulations.
- The Applicants paid a tenancy deposit of £575 to the Respondent on or around 7 February 2024.
- The Respondent did not pay the Applicants' tenancy deposit into an approved tenancy deposit scheme within 30 working days of the beginning of the tenancy.
- The Respondent lodged the Applicant's tenancy deposit with Safe Deposits Scotland on 4 September 2024.
- The Applicants vacated the property on 31 August 2024.
- The tenancy deposit was repaid to the Respondent in full by Safe Deposits Scotland.

The relevant law

17. Rule 3(1) of the 2011 Regulations provides that: *"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.*

Reasons for decision

18. In light of all the evidence before it, and having regard to the overriding objective, the Tribunal considered that it was able to make sufficient findings to determine the case without the need for a hearing, and that to do so would not be contrary to the interests of the parties.

19. The Respondent admitted that he had failed to comply with the duty under Regulation 3(1) of the 2011 Regulations to pay the Applicant's deposit into an approved tenancy deposit scheme within 30 working days of the start of the

tenancy. The Tribunal chairperson explained to the parties that the Tribunal was therefore obliged to make an order requiring the Respondent to make payment to the Applicants, in terms of rule 10 of the 2011 Regulations.

20. The Tribunal is then required to consider the sum which the Respondent should be ordered to pay to the Applicant, which could be any amount up to three times the amount of the tenancy deposit. The amount of any award is the subject of judicial discretion after careful consideration of the circumstances of the case, as per the decision of the Inner House of the Court of Session in the case of *Tenzin v Russell* 2015 Hous. LR. 11.
21. In considering the appropriate level of payment order to be made in the circumstances, the Tribunal considered the need to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach (Sheriff Welsh in *Jenson v Fappiano* 2015 GWD 4-89).
22. The Tribunal noted the view expressed by Sheriff Ross in *Rollet v Mackie* ([2019] UT 45) that the level of penalty should reflect the level of culpability involved. It did not consider that any of the aggravating factors which might result in an award at the most serious end of the scale were present in this case. The Respondent was aware of his duty to pay the Applicants' deposit into an approved scheme within 30 working days of the start of the tenancy, and had admitted that he had failed to do so. As Sheriff Ross noted, at para 13 of his decision: "*The admission of failure tends to lessen fault: a denial would increase culpability*".
23. The Tribunal considered the various factors to be taken into account as set out in *Rollet v Mackie*. The Tribunal accepted that the Respondent had intended to pay the deposit into an approved scheme, but had forgotten to do so. It noted the difficult family circumstances which he had been experiencing at the time.
24. The Tribunal did not consider that there had been fraudulent intention on the part of the Respondent or a deliberate or reckless failure to observe his responsibilities. The Respondent was new to being a landlord, and there was therefore no question of previous breaches against other tenants. He had belatedly paid the tenancy deposit into an approved scheme. While he had done so only after the Applicants moved out, they had been afforded the opportunity to dispute his claim on the deposit through the scheme. They had not suffered any financial loss as a result. While they had chosen not to dispute the Respondent's claim, their deposit had been protected to that extent.
25. The Applicants' tenancy deposit should have been protected throughout their tenancy, but it was not protected during the almost 7 months when

they were living in the property. It was the Respondent's responsibility to ensure that it was so protected. The whole matter had caused the Applicants some distress and inconvenience.

26. Taking all of the above considerations into account, the Tribunal considered that an award at the lower level of the possible penalty scale would be appropriate. It therefore determined that an order for £575, representing the amount of the tenancy deposit paid, would be fair, proportionate and just, having regard to the seriousness of the breach.

Decision

27. The Tribunal determines that the Respondent has failed to comply with the duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to pay a tenancy deposit to the scheme administrator of an approved scheme within the prescribed timescale. The Tribunal therefore makes an order requiring the Respondent to pay to the Applicants the sum of £575.

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.

Sarah O'Neill

12 May 2025

Legal Member/Chair

Date