



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

**Chamber Ref: FTS/HPC/PR/24/2934**

**Property at 70 Dougalston Gardens South, Milngavie, GLASGOW, G62 6HT (“the Property”)**

**Parties:**

**Lucy (AKA Lucinda) Johnston, 3 Learmont Place, Milngavie, G62 7DT (“the Applicant”)**

**Alister Flett, Unknown, Unknown (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Decision - in absence of the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £675 should be made in favour of the Applicant.**

**Background**

1. The Applicant seeks an order in terms of Regulation 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). A tenancy agreement and correspondence with the Respondent were lodged with the application.
2. A Tribunal attempted to serve a copy of the application on the Respondent but was unsuccessful. The application was therefore served by advertisement on the Chamber website.
3. The CMD took place at 2pm on 21 May 2025. The Applicant participated and was represented by Mr Heath of the CAB. The Respondent did not participate.

## **Summary of discussion at CMD**

4. Ms Johnstone told the Legal Member that the Respondent had obtained an eviction order at the beginning of 2024, and she had moved out of the property on 30 April 2024. The Respondent had decided to sell the property. She was unable to obtain alternative accommodation and had to go through the homeless route. The Council insisted on an eviction order being obtained. This took some time. After she moved out, the deposit was not returned, and she contacted the Respondent. He initially requested her bank details then later told her that he would not be returning the deposit because of damage at the property. She did not agree with this. She took advice and notified the Respondent that she was applying to the Tribunal. She copied in his solicitor. She lodged the application on 27 June 2024, and the deposit was paid into her bank account on 1 July 2024. The late return caused her stress, inconvenience and financial problems as she had to move out of the property and into temporary accommodation and put furniture into storage.
5. Ms Johnstone said that she knew the Respondent before she became his tenant. The property had been his home, but he was living in Dubai. It had been occupied by a previous tenant. To her knowledge, he does not have any other rental properties. She assumed that he was complying with all relevant legislation in relation to the tenancy and only discovered that the deposit should have been lodged when she moved out and he refused to return it. Mr Heath told the Legal Member that the Applicant had been a good tenant and had never caused any issues during the tenancy.

## **Findings in Fact**

6. The Applicant is the former tenant of the property.
7. The Respondent is the former owner and landlord of the property.
8. The tenancy started on 1 November 2012 and terminated on 30 April 2025.
9. Prior to the start of the tenancy the Applicant paid a deposit of £525.
10. The deposit was not lodged in an approved scheme.
11. The Respondent initially refused to repay the deposit. The deposit was eventually repaid in full on 1 July 2024.
12. The Applicant experienced stress, inconvenience and financial difficulties because of the late return of the deposit.
13. The Respondent has been a landlord for over 12 years .

## Reasons for Decision

14. Regulation 3 of the 2011 Regulations states –

(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.

(1A) Paragraph (1) does not apply –

- (a) Where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and
- (b) The full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,  
Within 30 working days of the beginning of the tenancy.

15. Regulation 9 of the 2011 Regulations states that (i) 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 no later than 3 months after the tenancy has ended

16. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it “**(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.**” The Tribunal therefore determines that an order must be made in favour of the Applicant.

17. From the documents lodged with the application, and the information provided by the Applicant at the CMD, the Legal Member is satisfied that the Applicant paid a deposit of £525 at the start of the tenancy, which was not lodged in an approved scheme. The Applicant has therefore established that the Respondent has failed to comply with the 2011 Regulations.

18. In terms of Regulation 10, an award **must** be made where there has been a failure by a landlord to comply with the Regulations. In assessing the award, the Legal Member had regard to the following factors: -

- (a) The tenancy ended on 30 April 2024. The Respondent only repaid the deposit two months later, when he and his solicitor were advised that an application to the Tribunal might be made. The Respondent had previously refused to repay the deposit.
- (b) The deposit paid by the Applicant was not secured in a scheme throughout the tenancy, a period of 12 years. The failure meant that the Applicant was unable to use a scheme adjudication process when a dispute arose in relation to the

return of the deposit.

- (c) The Respondent is an experienced landlord of more than twelve years. Although he has no other properties, as far as the Applicant is aware, the property had been occupied by tenants before. However, it is noted that the Regulations only came into force the year before the Applicant's tenancy began.
- (d) The Applicant experienced stress and inconvenience as a result of the failure. It also caused financial difficulty as she did not have access to the deposit funds when she was moving out of the property to temporary accommodation and putting furniture into storage.
- (e) The Respondent did not participate in the CMD and his reasons for failing to lodge the deposit are unknown.

19. In the case of *Rollett v Mackie* (2019 UT 45), the Upper Tribunal refused the appeal by the Applicant who argued that the maximum penalty ought to have been imposed. Sheriff Ross commented that the "level of penalty requires to reflect the level of culpability" and that "the finding that the breach was not intentional...tends to lessen culpability" (13). He goes on to say, "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."

20. In the present case, none of the aggravating factors listed by Sheriff Ross have been established. The Legal Member is therefore not persuaded that the award should be at the higher end of the scale. However, having regard to the factors previously outlined, the Legal Member is satisfied that this is not a minor breach which had no consequences for the Applicant. The sum of £675 is awarded.

## **Decision**

21. The Tribunal determines that an order for payment of the sum of £675 should be made in favour of the Applicant.

## **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.**

Josephine Bonnar

**Josephine Bonnar, Legal Member**

**23 May 2025**

