

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 Regulations 9 and 10 Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/24/5884

Property at 81C Urquhart Road, Aberdeen, AB24 5ND (“the Property”)

Parties:

Mr Miguel Barrero Santamaria, Basement Flat, 106 Crown Street, Aberdeen, AB11 6HJ (“the Applicant”)

Ms Fiona Soutar, Ivy Cottage, Pitcairn Road, Cardenden, Lochgelly, KY5 0AB (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £150 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, correspondence with the Respondent’s agent and certificate from Safe Deposits Scotland were lodged with the application.
2. A copy of the application was served on the Respondent, and parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 18 June 2025 at 2pm. Prior to the CMD, the Respondent’s letting agent lodged a brief submission which stated that they had been responsible for lodging the deposit on behalf of the landlord. As a result of oversight on their part, it had been lodged a few days late.
3. The CMD took place at 2pm on 18 June 2025. The Applicant participated and the Respondent was represented by Ms Munro of Easthaven Property Management.

Summary of discussion at CMD

4. Mr Barerro told the Legal Member that he gave notice to leave the property on 17 September 2024. The tenancy started on 28 August 2024. Although the tenancy did not end until 15 October, he was due to be abroad and actually moved out of the property on 9 October and returned the keys on 10 October. He had not previously known about the requirement to lodge deposits in approved schemes and the issue came to light when he was told that the agent wished to make a deduction from the deposit to cover cleaning. It was after he notified them that he disputed this that he received the deposit certificate. Following his rejection of the proposal to deduct cleaning costs, the whole deposit was repaid to him.
5. Ms Munro confirmed that the information provided by the Applicant is correct and stated that the member of staff who had been dealing with the deposit and the end of tenancy inspection and claim had gone on maternity leave. It was realised that, although the deposit had been registered on 9 October 2024, it was not actually paid into the scheme until 15 October 2024, the day after the tenancy officially came to an end. They notified SDS that the deposit should be repaid to the Applicant in full and this was processed through the deposit scheme website. Ms Munro told the Legal Member that the oversight was due to staffing issues at the relevant time. However, the deposit had been held by the agent throughout the relevant period and had not been given to the landlord.
6. Mr Barerro said that he accepted that the time period involved in the breach was small and that the delay in lodging the deposit had not caused any issues, although the dispute over cleaning costs and delay in repayment had been inconvenient. He said that a small amount of compensation would be appropriate. Ms Munro said that the sanction should be at the lower end of the scale in the circumstances.

Findings in Fact

7. The Applicant is the former tenant of the property.
8. The Respondent is the owner and landlord of the property.
9. The tenancy started on 28 August 2024 and terminated on 14 October 2024.
10. Prior to the start of the tenancy the Applicant paid a deposit of £550.
11. The deposit was not lodged in an approved scheme until 15 October 2024.
12. The agent failed to lodge the deposit within 30 working days as a result of oversight. It was lodged 34 working days after the start of the tenancy.
13. The deposit was repaid to the Applicant in full on the instructions of the Respondent's agent.

14. The late lodging of the deposit did not have adverse consequences for the Applicant.

Reasons for Decision

15. 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.

16. 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

17. 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.

18. 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 £550 at the start of the tenancy, which was not lodged in an approved scheme until 15 October 2024, four working days after the 30 working days’ time limit. The Applicant has therefore established that the Respondent has failed to comply with the 2011 Regulations.

19. 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 only lasted 7 weeks, terminating on 14 October 2024. The deposit was not secured throughout this period. However, the Respondent had until 9 October 2024 to submit the deposit, in order to comply with the Regulations. It was registered on that date but not paid.

- (b) The deposit was not paid into the scheme until the tenancy had ended.
- (c) Before the deposit was lodged, and while the deposit was still in the agents' possession, the agent notified the Applicant that there would be a deduction for cleaning. The Applicant challenged this.
- (d) The property, including the tenancy deposit, were managed by the agent and they were responsible for lodging the deposit in a scheme.
- (e) The whole deposit was repaid to the Applicant via the tenancy deposit scheme website

20. 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.”

21. 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. Based on the information provided, it was the Respondent's agent who failed to take the necessary steps to lodge the deposit. However, the Respondent is responsible for the actions (and failures) of her agent. The Legal Member is satisfied that the breach of the Regulations was due to oversight, that it was a minor breach and that there were no adverse consequences for the Applicant. A modest sanction is therefore appropriate. The Applicant is awarded £150.

Decision

22. The Tribunal determines that an order for payment of the sum of £150 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

18 June 2025