



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

Chamber Ref: FTS/HPC/PR/25/0719

Re: Tiree Cottage, Barcaldine House, Barcaldine, Oban PA37 1SG ("the Property")

Parties:

Reece McMichael, 3 Bealach Na Mara, Port Appin, Argyll PA38 4DR ("Applicant")

Gillian Abrams, 6 Holywell Close, Holywell, Whitley Bay NE25 OLD ("Respondent")

Tribunal Members:
Joan Devine (Legal Member)

Decision :
The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should pay to the Applicant the sum of £750.

Background and Documents Lodged

1. The Applicant made an application in Form G ("Application") dated 17 February 2025 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The documents produced to the Tribunal by the Applicant were:
 - A tenancy agreement between the Applicant and the Respondent which commenced on 26 July 2022.
 - Copy screenshots showing a payment of £600 being made on 14 July 2022 and a payment of £600 on 25 July 2022.
 - Copy text message confirming receipt of the deposit.

- Copy emails from Letting Protection Scotland, MyDeposits Scotland and Safe Deposit Scotland stating they did not hold a deposit for the Applicant.
 - Copy text messages between the Parties indicating the Applicant left the Property on 20 November 2024.
2. A Case Management Discussion (“CMD”) was fixed for 13 August 2025. On 10 July 2025 the Respondent lodged a written representation.

Case Management Discussion

3. A Case Management Discussion (“CMD”) took place on 13 August 2025 by conference call. The Applicant and the Respondent were both in attendance.
4. The Tribunal noted that the tenancy between the Parties commenced on 26 July 2022, the tenancy ended on 20 November 2024, a deposit of £600 was paid by the applicant on 14 July 2022 and the deposit was not lodged with an approved scheme administrator as required by the 2011 Regulations. The Parties confirmed that those matters were not in dispute.
5. Mrs Abrams told the Tribunal that the Property had been re-let and the deposit paid by the new tenant had been lodged in an approved scheme. She said that there are 5 cottages on the same site which are let to tenants. She said that only 2 had paid deposits and they had been lodged in an approved scheme. The Tribunal noted the written representation lodged by Mrs Abrams in which she explained that in the year the deposit was paid, she lost her brother to cancer and her nephew was diagnosed with a terminal brain tumour. She said she spent much of her time that year supporting her brother’s family.
6. The Tribunal asked Mr McMichael what level of compensation he would have the Tribunal award. He said he was looking for 3 times the deposit. Mrs Abrams said that seemed very high.
7. The Tribunal expressed the view that it had sufficient information to proceed to make a decision without the need for a further Hearing. The Parties stated that they were content for the Tribunal to make a decision on the basis of the information presented.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a tenancy agreement which commenced on 26 July 2022.
2. The tenancy came to an end on 20 November 2024.
3. The Applicant paid to the Respondent a deposit of £600 on or about 14 July 2022.
4. The deposit was not paid to the administrator of an approved scheme in compliance with the 2011 Regulations.

Findings in Fact and Law

5. The Respondent breached Regulation 3 of the 2011 Regulations.

Relevant Legislation

8. Regulation 3 of the 2011 Regulations provides *inter alia* :

"(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....."
9. Regulation 9 of the 2011 Regulations provides:

"(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.

(ii) An Application under paragraph 1 must be made no later than three months after the tenancy has ended."
10. Regulation 10 of the 2011 Regulations provides *inter alia* :

"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"

Reasons for the Decision

11. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. It was a matter of admission that the Respondent did not lodge the deposit with an approved scheme.
12. The amount to be awarded is a matter for the discretion of the Tribunal having regard to the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. the finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.

[14] 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. None of these aggravating factors is present."
13. The Respondent took responsibility for failure to lodge the deposit. In her written submission she said that in the year when the tenancy commenced her brother passed away and her nephew was diagnosed with a brain tumour. She said she spent much of that year supporting her brother's family. She admitted failing to protect the deposit and stated that the deposit received from the current tenant had been lodged in an approved scheme.
14. The explanation given for the failure to comply with the 2011 Regulations was difficult personal circumstances.
15. As the deposit was not lodged in an approved scheme the Applicant was deprived of the opportunity to approach the scheme administrator regarding return of the deposit. In these circumstances the purpose of the 2011

Regulations was defeated. This also meant that the Applicant required to apply to the Tribunal to seek recovery of the deposit. The Tribunal had before it a conjoined civil case in which the Applicant sought return of the deposit and it was clear there was a dispute in that case. The Tribunal considered that there were no other aggravating factors in this case. In those circumstances the Tribunal considered that it would be appropriate to make an award of compensation at the lower end of the scale.

16. Having regard to factors put forward by both parties the Tribunal determined that the sanction should be £750 in the particular facts and circumstances of this case.

Decision

The Tribunal granted an Order for payment of £750 in terms of Regulation 10(a) of the 2011 Regulations.

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.

Joan Devine

**Joan Devine
Legal Member**

Date: 13 August 2025