



**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 Regulations”)**

**Chamber Ref: FTS/HPC/PR/25/0540**

**Property at 87B Countesswells Road, Aberdeen, AB15 7YH (“the Property”)**

**Parties:**

**Miss Corinne Johnston, Miss Cheryl Johnstone, 12 Farepark Gardens, Westhill, Aberdeenshire, AB32 6WL; 36D Cattofield Place, Aberdeen, AB25 3QP (“the Applicants”)**

**Mrs Jordan Lyon, Jessica Lyon, The Croft, Mid Auguston, Peterculter, Aberdeenshire, AB14 0PP; 8 Prospecthill Road, Bleldside, Aberdeen, AB15 9AN (“the Respondents”)**

**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 £900 should be made in favour of the Applicants.**

**Background**

- 1. The Applicants seek 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 Respondents and emails from the three approved tenancy deposit schemes were lodged with the application.**
- 2. A copy of the application was served on the Respondents, and parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 31 July 2025 at 2pm. Prior to the CMD, the Respondents lodged a submission and bundle of documents.**
- 3. The CMD took place at 2pm on 31 July 2025. Both Applicants and both Respondents participated.**

## Summary of discussion at CMD

4. The Legal Member noted that the Respondents concede that a deposit of £650 had been paid at the start of the tenancy and had not been lodged in an approved scheme. It was not clear from the paperwork, whether any part of the deposit had been returned to the Applicants at the end of the tenancy. Ms Corinne Johnstone told the Legal Member that nothing has been repaid. They went back and forwards for a while and eventually the Respondents asked for their bank details so that they could transfer £400, which was the sum that the Applicants stated was due. In response to a question from the Legal Member, Ms Johnstone said that there were no conditions attached to the offer. However, as the present application had been lodged with the Tribunal, the Applicants did not respond to the offer as they did not know whether it would affect the application. Ms Jessica Lyon confirmed that they had decided to pay the £400 but had been unable to do so without bank details or a current address.
5. In response to questions from the Legal Member, Ms Lyon said that the property in question had been inherited. It was only to be rented out in the short term. There was one previous tenant, prior to the Applicants' tenancy. As the Respondents did not know about their obligations in terms of the Regulations, the previous tenant's deposit was not placed in a scheme. The property is no longer rented out and their grandfather is preparing to move into it. Ms Jessica Lyon said that she has no other rental properties. Ms Jordan Lyon said that she has one other flat. Since becoming aware of her obligations, she has lodged the deposit for that property in a scheme.
6. Ms Johnstone told the Legal Member that she could not dispute anything said by the Respondents in relation to their experience of renting properties as it is information which is outwith their knowledge. She said that the Applicants had been new to the rental process as well and a friend alerted them to the Respondents' failure to comply with the Regulations. She said that the Applicants understand that the Respondents had some personal issues at the relevant time and they were content for the Tribunal to determine an appropriate award. In relation to the impact on them of the failure to lodge the deposit, she said that they had planned to put the money towards their deposits for their new accommodation but had to find the funds elsewhere. She acknowledged that they had been offered £400 some months after the tenancy ended and said that they should have taken advice on whether to accept that offer. They also accepted that the Respondents had been entitled to deduct £250 from the deposit but disputed the statement that the property had not been cleaned.
7. Ms Lyon told the Tribunal that the failure to comply with the Regulations was not intentional. It was the result of a genuine oversight on their part. They fully appreciate that the purpose of the Regulations is to protect both landlords and tenants. The offer of the £400 was made in good faith. She said that the Respondents only ask that their submissions and circumstances are taken into account by the Tribunal.

## **Findings in Fact**

8. The Applicants are the former tenants of the property.
9. The Respondents were the landlords of the property.
10. The tenancy started on 1 March 2020 and terminated on 6 January 2025.
11. Prior to the start of the tenancy the Applicants paid a deposit of £650.
12. The deposit was not lodged in an approved scheme.
13. The deposit has not been re-paid to the Applicants.
14. The Respondents initially refused to repay any of the deposit. Later, they asked for bank details to repay the sum of £400.
15. The Applicants had previously indicated a willingness to accept £400 and stated that the Respondents were entitled to retain the sum of £250.
16. The Applicants did not provide their bank details to the Respondents.
17. The property was occupied by one previous tenant whose deposit was not secured in scheme. The first Respondent has one other rental property. The deposit for that property has only recently been lodged in a scheme.

## **Reasons for Decision**

18. 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.
19. 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

20. 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.**”

21. From the documents lodged with the application, the Respondents’ written submissions, and the information provided by both parties at the CMD, the Legal Member is satisfied that the Applicants paid a deposit of £650 at the start of the tenancy in March 2020, which was not lodged in an approved scheme. The Applicants have therefore established that the Respondents failed to comply with the 2011 Regulations.

22. 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 Applicants occupied the let property for almost five years, and the deposit was unsecured for the whole period.

(b) When the tenancy ended, there was a dispute about re-payment. The Respondents insisted that they were entitled to retain the whole deposit. As the deposit had not been secured, the Applicants were deprived of the opportunity of having the dispute adjudicated by an independent body. In the absence of a pre tenancy check in report/inventory the Respondents may have struggled to persuade an adjudicator that they were entitled to any part of the deposit.

(c) Although the Applicants had expected to use the deposit funds for their new tenancies, it is unlikely that it this would have been received in time to be used as a deposit, if a deposit scheme had been involved. Furthermore, it would not have covered two new deposits and there was no suggestion of financial hardship.

(d) The Respondents are not experienced, commercial landlords but are not completely lacking in experience. The property had been occupied by one previous tenant and one of the Respondents has another rental. It was conceded that the deposit for the previous tenancy was not secured, and the deposit for the other property was only recently lodged in a scheme.

(e) Although they initially refused to repay the deposit, the Respondents later offered the sum of £400 which the Applicants had indicated they would accept. There is no evidence that this was not a genuine offer, and it was unconditional. Had the Applicants cooperated, it seems likely that the sum would have been paid.

(f) Although the Applicants did not dispute the Respondents’ claim that there were mitigating personal circumstances, the Legal Member is not persuaded that these carry much weight. The Respondents did not fail to lodge the deposit because they were dealing with personal issues. They failed to do so because

they did not know this was required. It is evident that they decided to become landlords without investigating what was involved or ensuring that they were complying with the law. As well as failing to comply with the Regulations, the tenancy agreement provided to the Applicants was in the wrong form. It was a short assured tenancy rather than a private residential tenancy. They also failed to carry out pre tenancy inspection or provide an inventory. Furthermore, they had five years to take advice or carry out their own research. Had they done so, they could have rectified their failure before the tenancy came to an end.

23. 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.”
24. In the present case, most of the aggravating factors listed by Sheriff Ross have not been established. The only one which might apply is the fact that there have been other tenants who have also experienced a breach of the Regulations by the Respondents. As the number of other tenants is low, the Legal Member is not persuaded that the award should be at the higher end of the scale. The Legal Member also notes that the Respondents fully acknowledge their failure and recognise that it is a serious matter. However, having regard to their somewhat casual attitude to their landlord obligations during the tenancy, the length of time involved and their initial refusal to repay the deposit when the matter was brought to their attention, the Legal Member is satisfied that the penalty should be significant. An award of £900 is made.

## **Decision**

25. The Tribunal determines that an order for payment of the sum of £900 should be made in favour of the Applicants.

## **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**

**1 August 2025**