

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 Regulation 10 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/25/1951

Re: West Park Cottage, Dunnet, Thurso KW14 8XD ("the Property")

Parties:

Joseph Lord, West Park Cottage, Dunnet, Thurso KW14 8XD ("Applicant")

Housing In Court Advice Project, Suie House, Market Square, Alness, Ross-shire IV17 OUD (Applicant's Representative")

Fiona Macleod, Bayview, Dunnet, Thurso KW14 8YD ("Respondent")

BBM Solicitors, Unit 5 Wick Business Park, Wick KW1 4QR("Respondent's Representative")

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 £950.

Background and Documents Lodged

1. The Applicant made an application in Form G ("Application") dated 7 May 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 1 November 2024; copy screenshot from websites of MyDeposits Scotland, SafeDeposits Scotland and Letting Protection Scotland indicating the deposit was not protected with any of those organisations and copy (undated) letter from the Applicant to the Respondent.

2. A copy of the Application and notification of a Case Management Discussion fixed for 17 September 2025 was given to the Respondent by Sheriff Officer on 13 August 2025. On 10 September 2025 the Respondent's Representative lodged copy text messages; copy notice to leave dated 22 April 2025 with sheriff officer certificate of service; screenshot of account ending 6618 and copy invoice for repair of kitchen tap.

Case Management Discussion ("CMD")

3. A CMD took place on 17 September 2025 by conference call. The Applicant was in attendance and was represented by Martin Rattray of the Applicant's Representative. The Respondent was not in attendance and was represented by Thomas Holligan and Callum Bunting of the Respondent's Representative.
4. The Tribunal noted that the tenancy began on 1 November 2024 and that a deposit of £750 had been paid. The Tribunal asked Mr Rattray if the tenancy was ongoing and he said that it was. The Tribunal noted that the deposit had not been lodged with an approved scheme. Mr Holligan confirmed that all of those points were agreed.
5. Mr Holligan told the Tribunal that when the deposit was received the Respondent set up a separate bank account to hold the deposit. He said that the screenshot lodged showed that the funds were still held in that account. He said that the Respondent accepted that the deposit should have been lodged in an approved scheme but the Respondent was unaware of the need to do so. He said that the Respondent had subsequently tried to lodge the deposit in a scheme but was told that she could not do so as the tenancy had already commenced. He said that the Respondent had let the Property to the Applicant for 6 months so that he could be closer to family. He said the Respondent had not let the Property before and had no other rental properties. He said the Property was a former family home. He said he accepted that the rental agreement produced is a private residential tenancy.
6. Mr Rattray said that the Applicant sought compensation of 3 times the deposit. He said the Applicant had occupied the Property since November 2024 with his child. He noted that the Respondent had not been registered as a landlord but had now applied for registration. He said that the Applicant had raised concerns with the Respondent by letters dated 5 and 19 April 2025 but no response was received. He said that a notice to leave had been served but the Respondent remains in occupation. He said the Applicant believed there had been a tenant in the Property before as when the Respondent viewed the Property he was shown round by the previous tenant.

7. The Tribunal noted that the following was agreed : the tenancy commenced on 1 November 2024 and was ongoing; the Applicant paid a deposit of £750 to the Respondent; the deposit was not placed in an approved scheme.
8. The Tribunal noted the terms of regulation 3, 9 and 10 of the 2011 Regulations and asked Mr Holligan if he had made the Respondent aware of the contents of the 2011 Regulations. He said that he had.
9. 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.
10. The Tribunal asked Mr Holligan whether he had anything to say as regards the amount of compensation to be awarded. He said that the Respondent was unaware if the 2011 Regulations although he accepted that ignorance of the law is not an excuse. He said that the rent was in arrears of £3,300 and the Respondent would wish to offset the deposit against any arrears due. The Tribunal asked Mr Rattray why the rent was in arrears. He said the rent was being withheld due to outstanding repair issues at the Property.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement which commenced on 1 November 2024. The tenancy is ongoing.
2. The Applicant paid to the Respondent a deposit of £750.
3. The deposit was not paid to the administrator of an approved scheme in compliance with the 2011 Regulations.

Findings in Fact and Law

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

Relevant Legislation

11. 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.....

12. 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."

13. 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

14. 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.

15. The amount to be awarded is a matter for the discretion of the Tribunal having regard 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."

16. The Respondent did not lodge the deposit in an approved scheme as they were unaware of the need to do so. Ignorance of the law is not an excuse for non-compliance. The admission of failure lessens fault. However, as the deposit is not lodged in an approved scheme, the Applicant will be deprived of the opportunity to approach the scheme administrator regarding return of the deposit and for any dispute in that regard to be resolved by the scheme. In these circumstances the purpose of the 2011 Regulations will be defeated.
17. There was nothing before the Tribunal which suggested repeated breaches of the 2011 Regulations or fraudulent intent. There was no denial of fault. As the tenancy is ongoing, there is no evidence, as yet, of actual loss.
18. Taking into account all of the facts and circumstances the Tribunal considered that this is not a case at the higher end of the scale. The 2011 Regulations had however been breached and as the deposit was still unprotected, the purpose of the 2011 Regulations was defeated. The Tribunal determined that the sanction should be £950 in the particular facts and circumstances of this case.

Decision

The Tribunal granted an Order for payment of £950 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: 17 September 2025

