



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

Chamber Ref: FTS/HPC/PR/25/1824

Re: Property at 15 High Street, Laurencekirk, AB30 1AA (“the Property”)

Parties:

Mrs Anne Burke Lopez, 15 High Street, Laurencekirk, AB30 1AA (“the Applicant”)

RBS Properties Ltd, Mr Rushpal Singh, 28 Crathes Gardens, Livingston, EH54 9EN (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011, and it would make an order for payment of £1,500.00 in favour of the Applicant.

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order against the landlord for failure to lodge a tenancy deposit.

2. The application contained:-

- a. Tenancy agreement;
- b. Covering letter

3. The case called for a case management discussion (CMD) on 20 October 2025. The applicant appeared with her husband, Mr Emmanuel Burke Lopez. The respondent did not appear. There was evidence of service of the application on the respondent. The tribunal proceeded in the respondent's absence.

Discussion

4. The applicant confirmed that they were seeking an order as the landlord had breached the tenancy deposit regulations. The landlord had failed to lodge the tenancy deposit within the 30 working day period. They advised that the landlord had never placed their deposit in an approved scheme. When they were contacted by the landlord's mortgage company in January 2025, they were told by the mortgage company, they were now the owners and that they had to leave. When they were told this, they wanted to get their deposit back. They contacted the approved deposit schemes but no one had any record of it being paid into a scheme. Their deposit had not therefore been secured.

5. It transpired that the landlord had not paid the mortgage since 2017. They advised that they are still in the property, as they have nowhere else to go, and the fact that they do not have their deposit compounds the matter, as they would need this to get somewhere else. The mortgage company had raised eviction proceedings. They have a business in the village they live in, it is a fairly new business, they also claim universal credit, and they have no car. They are worried that they will not be able to find suitable property near the business and the fact that they have no deposit makes this more difficult for them.

6. They advised that they had lived in St Albans for a number of years, they had moved up to Scotland as the landlord had advertised the property and showed it to be in good condition, but when they got there, they discovered it was in poor condition. The landlord did not take steps to rectify the repairs and ultimately just told the tenants they could forego paying rent until the repairs were done. He advised that, as time went on, the landlord did not respond to any contact from them.
7. They advised that the landlord had rented out several other properties; they were aware of this from speaking to other people who lived in the village. They also understood that he had been renting out properties for over 20 years. He was therefore an experienced landlord.

Findings in Fact

8. The Tribunal made the following findings in fact:-
9. There was a private residential tenancy in place between the parties.
10. The tenants were Emmanuel Burke Lopez and Anne Burke Lopez.
11. The landlords were Rushpal Singh, RBS Properties Limited.
12. The property was 15 High Street, Laurencekirk.
13. It started on 1 April 2022.
14. The tenancy has not ended.
15. The deposit was £675.00
16. The tenant agreement had a condition about payment of the deposit; the terms of that clause were different to the mandatory terms which are required for a private residential tenancy. The wording about the requirement to place deposit monies into an approved scheme within 30 working days was not in the tenancy agreement.
17. The deposit was paid at the start of the tenancy.
18. The deposit should have been lodged with an approved scheme within 30 working days of the commencement of the tenancy.
19. The deposit was not lodged with any approved scheme.
20. The deposit has never been protected.

21. On 30 January 2025, the tenants were advised that the property had been repossessed by Together Commercial Finance Limited. Together Commercial Finance Limited have advised the tenants that they wish to sell the property and have asked the tenants to leave.
22. The applicants made their application to the tribunal on 28 April 2025.
23. The landlords had been renting out properties for around 20 years, and he had rented out multiple properties.
24. The tenancy deposit paid by the applicants had not been lodged with an approved tenancy deposit scheme within 30 working days of the tenancy commencing.

Reasons for Decision

25. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations:-

Duties in relation to tenancy deposits

3.— (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.

Sanctions

9.— (1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal] 1 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 [...]2 no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal] 1 — (a) must order the landlord to pay the

tenant an amount not exceeding three times the amount of the tenancy deposit; and (b) may, as the [First-tier Tribunal] 1 considers appropriate in the circumstances of the application, order the landlord to— (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42.

26. The tenancy deposit regulations apply in this case. The landlord received a deposit in connection with a relevant tenancy. They had a duty to therefore place it into an approved scheme. They did not do so. Given this breach, the tribunal is required to order the landlord to pay the tenant an amount not exceeding three times the tenancy deposit.

27. The tenants moved into the property in April 2022, and the deposit has never been placed into an approved scheme. It appears that the landlord is no longer the owner of the property; however, he was the landlord at the time that the obligation to lodge the deposit applied. The respondent did not appear at the case management discussion, and we do not know if he admits this breach.

28. When deciding on the amount of the award, the tribunal has to take into account that the sanction is to mark the gravity of the offence; it is not paid as compensation; the assessment should be fair and proportionate; and there should be an assessment of mitigating and aggravating factors.

29. I consider that this breach is at the higher end of the scale. In assessing the relevant factors:

30. I am unaware of any mitigating factors.

31. In terms of aggravating matters in this case. I find the following are aggravating factors:-

- a. The deposit was paid over 3 years ago and has never been secured.
- b. The landlord was an experienced landlord, having rented out properties for over 20 years and having rented out multiple properties.

- c. The landlord has changed the mandatory wording in the tenancy agreement, taking out the reference to placing the deposit in an approved scheme. I find this to be a particularly serious aggravation as it was clearly intentional, and the outcome of such an amendment would deprive tenants of the ability to understand what should happen to their deposit.
- d. More generally, I consider that the landlord's conduct towards the tenants, in terms of misleading them to rent the property in the first place, failing to deal with repairs, and now having had the property repossessed but not providing any notice to the tenant of these changes, appears indicative of a poor landlord. While those actions do not directly impact the failure to lodge the tenancy deposit, they support the assessment that this was not a good landlord and was one who did not have regard to the rights of his tenants, and the obligations that he owed them.
- e. I believed that the failure to protect the tenant's deposit had caused them stress, and it had impacted their ability to seek and secure suitable accommodation for themselves and their family.

32. The regulations require me to make an order in the event of breach; for all of the reasons I have set out above, I consider that the failure to lodge the deposit was intentional and the landlord knew that he had an obligation to put the deposit into the scheme and he deliberately breached those obligations. The deposit has been unsecured for over 3 years. It has caused detriment to the applicants. In all the circumstances, I consider that was a serious breach of the regulations and I should therefore make an award of £1500 to reflect the seriousness of the landlord's conduct.

Decision

33. The Tribunal determined that there had been a breach of the Tenancy Deposit Scheme (Scotland) Regulations 2011, and it would make an order for payment of £1,500.00 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.

Melanie Barbour

Melanie Barbour

20 10 2025

Legal Member/Chair

Date