



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy  
Deposit Scheme (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/25/1446**

**Re: Property at Drum Court, Flat B, Woodside Terrace, Inverness, IV2 3UJ ("the  
Property")**

**Parties:**

**Dr Chris van de Konijnenburg, 60 School Drive, Aberdeen, AB24 1TE ("the  
Applicant")**

**NHS Highland, Accommodation Department, Raigmore Hospital, Old Perth Road,  
Inverness, IV2 3UJ ("the Respondent")**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that the Applicant was entitled to an order for payment by  
the Respondent to the Applicant in the sum of £1000.00.**

**Background**

1. The Applicant made an application in Form G ("Application") dated 7 April 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 6 August 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, copy bank transaction receipt confirming payment of the deposit of £446.47 and copy emails between 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 19 August 2025.
3. On 8 and 9 September 2025 the Respondent's Representative submitted written representations to the Tribunal acknowledging the breach of the 2011 Regulations and offering an explanation in mitigation.
4. By email dated 17 September 2025 the Applicant submitted further written representations to the Tribunal in response to the Applicant's written representations and provided a timeline of events together with further emails and extracts from Highland Council website.

### **The Case Management Discussion**

5. A Case Management Discussion was held by teleconference on 25 September 2025. The Applicant attended in person. The Respondent was represented by Miss Kate Donachie from NHS Central Legal Office, Edinburgh.
6. After noting the basic facts of the application, the Tribunal ascertained from Miss Donachie that the Respondent did not dispute that it was in breach of Regulation 3 of the 2011 Regulations and that the Tribunal should impose a financial sanction on the Respondent in terms of Regulations 9 and 10. With regards to the appropriate level of award Miss Donachie said that the Respondent acknowledged the serious nature of the breach and the length of time it had taken from becoming aware of the need to lodge the Applicant's deposit to steps being taken to remedy the situation and that it did not demur from the Applicant's claim that the maximum award of three times the deposit was appropriate.
7. Miss Donachie went on to say that the Respondent had held a genuine but mistaken belief that as a government body it was exempt from the 2011 Regulations and offered its sincere apologies to the Applicant. Miss Donachie also said that the Applicant's deposit had been repaid in full to him on the first pay day after the tenancy had ended. Miss Donachie also suggested that there had been no previous difficulties with deposits not being lodged in the past and that it was not correct to say that the Respondent had only acted in response to intervention from the Applicant's MSP and Highland Council.
8. The Applicant said that he had not said that the Respondent had only acted in response to intervention from his MSP and Highland Council. The Applicant reiterated his position that the Tribunal should award the maximum penalty of three times the deposit.

### **Findings in Fact and Law**

9. The Applicant and the Respondent had entered into a tenancy agreement which commenced on 6 August 2024 and ended on 29 July 2025.

10. The Applicant paid to the Respondent a deposit of £446.47
11. The deposit was not paid to the administrator of an approved scheme in compliance with the 2011 Regulations.
12. The Respondent was in breach of Regulation 3 of the 2011 Regulations.
13. The Applicant's application to the Tribunal in terms of Regulation 9 of the 2011 Regulations was timeous.
14. In terms of Regulation 10 of the 2011 Regulations the Tribunal must impose a financial penalty on the Respondent.

### **Reasons for Decision**

15. The Respondent admitted the breach of the 2011 Regulations. Notwithstanding the concessions made by Miss Donachie the amount of any award to the Applicant is at the discretion of the Tribunal. The Tribunal considers that its discretion in making an award requires to be exercised in the manner set out in the case *Jenson v Fappiano* (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015) by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal must consider the facts of each case appropriately.
16. 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.*" The Respondent did not lodge the deposit in an approved scheme as they were under the erroneous belief that as a government body, they were exempt from the regulations. Ignorance of the law is not an excuse for non-compliance. The admission of failure lessens fault. However, The Respondent having had this error pointed out to them in August 2024 allowed matters to drift for an extraordinary amount of time during which the Applicant's deposit was unprotected and potentially he was deprived of utilising a schemes adjudication process. There is no doubt that the Tribunal considers this a serious breach particularly as it appears there have been multiple breaches in the past and others that have still to be resolved. Having considered everything that has

been submitted by both parties the Tribunal considers that a fair just and proportionate amount to award the Applicant is £1000.00.

### **Decision**

17. Having carefully considered the information before it and being satisfied it had sufficient information to allow it to make a decision without the need for a hearing finds the Applicant entitled to a payment by the Respondent in the sum of £1000.00.

### **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.**

# Graham Harding

**Graham Harding  
Legal Member/Chair**

**25 September 2025  
Date**