



**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/25/1876

Re: Property at 61 Hammerman Avenue, Aberdeen, AB24 4SE (“the Property”)

Parties:

**Ms Niamh Fingleton, 3 Strathcona Gardens, Bucksburn, Aberdeen, AB21 9XN
 (“the Applicant”)**

Vivian Reid, 41 Roseberry Street, Aberdeen, AB15 5LN (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

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 £600.00 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. Website checks from approved tenancy deposit schemes.
3. The respondent submitted written representations on 21 September 2025.
4. The applicant submitted a written response to the written representation on 25 September 2025.
5. The case called for a case management discussion (CMD) on 20 October 2025. The applicant appeared. The respondent appeared together with the other two joint owners of the property, namely Shona Reid and Susan McLaren.

Discussion

6. The applicant confirmed that she was seeking an order as the landlord had failed to protect her deposit. The landlord had failed to lodge the tenancy deposit within the 30 working day period. The landlord had never placed her deposit in an approved scheme.
7. She advised that some of her deposit had been deducted at the end of the tenancy for damage to a dining chair. She said that she was not disputing that money which had been deducted, she accepted that it had not been unfairly deducted, although she indicated she did not wholly understand what the damage to one chair meant, that a brand new chair had to be paid for. She confirmed that she had now received the balance of her deposit back from the landlord after deduction of the replacement chair and postage.
8. The applicant advised that she considered that the landlord was not keeping up to date with their legal obligations.
9. She had not been aware that the deposit had not been in a scheme until after the tenancy had ended. She had been trying to find out when she would get her

deposit back, and it was then that she discovered it had never been put in a scheme. She checked with the approved schemes and found that there was no record of her deposit being paid into any.

10. The applicant had also responded to the respondent's written representations, and of note, she questioned the extent of the landlord's adherence to statutory duties, including that she had notified the landlord about the need for a new carbon monoxide monitor, and she had subsequently purchased one herself as the landlord had not done so.
11. The respondent confirmed that she accepted that the deposit had not been paid into an approved scheme. She said it was not intentional; she had not known that a deposit was to be placed in an approved scheme. She had not known about the Tenancy Deposit regulations. She apologised for this oversight. She said that they were shocked when the application papers were served.
12. She advised that she and her two sisters own and let out two properties. The respondent advised that she has most to do with letting out the properties. She said that they take their landlord responsibilities seriously, and they are landlord registered, they do the annual tenancy checks to make sure all is in order in the properties.
13. She advised that there was never any intention of not returning the deposit; once the checks were done, appropriate deductions would be made and the balance returned to the tenant.
14. She had been in correspondence with the applicant after the end of the tenancy about what was happening with the deposit, about the damage to the chair, and about how much it would cost to replace the item. Once they had been replaced, they deducted the cost and returned the balance of the deposit to the tenant. Any delay in returning the deposit was only due to sourcing the replacement chair.
15. She advised there she and her sisters have caring responsibilities for their mother, who has dementia; and she and one of her sisters have given up work to care for their mother. They have had a rather stressful time, given their family circumstances.
16. She advised that they have been landlords for around 15 years. They have one other property. They always ask for a deposit.

17. They were asked why the tenancy agreement had used a short assured tenancy format. They advised they had obtained this style from a friend. They let the properties out themselves and they do not rely on a letting agent or a factor.
18. She had advised that they have now spoken with Safe Deposits Scotland and they are now in that scheme to secure deposits. They registered with them on 19 September 2025.
19. Her written representations set out a detailed timeline about what had happened at the end of the tenancy regarding the damage to the chair, her contact with the applicant and confirmation that the balance had been deducted.

Findings in Fact

20. The Tribunal made the following findings in fact:-
21. There was a private residential tenancy in place between the parties.
22. The tenant was Niamh Fingleton.
23. The landlord was Vivian Reid.
24. The property was 61 Hammerman Avenue, Hilton Campus, Aberdeen.
25. The tenancy commenced on 2 October 2021.
26. The tenancy ended on 31 March 2025.
27. The deposit was £600.
28. The deposit was returned on 16 May 2025, being the sum of £343.50 (the cost of a dining chair and postage, £238.335 and £18.35 was deducted).
29. The tenancy agreement had a condition about payment of the deposit; there was no reference in the agreement to the deposit monies being placed into an approved scheme within 30 working days.
30. The tenancy agreement, which had been used, was for a short assured tenancy and was not in the correct style of the private residential tenancy agreement.
31. The deposit had been paid at the start of the tenancy.
32. The deposit should have been lodged with an approved scheme within 30 working days of the commencement of the tenancy.

- 33. The deposit was not lodged with any approved scheme during the course of the tenancy.
- 34. The deposit has never been protected.
- 35. The applicant had her application accepted by the tribunal on 6 May 2025.
- 36. The landlord had been renting out properties for around 15 years; she and the two other owners of the property owned and leased one other property.
- 37. The tenancy deposit paid by the applicant had not been lodged with an approved tenancy deposit scheme within 30 working days of the tenancy commencing.
- 38. The applicant did not know when she would get her deposit returned to her at the end of the tenancy, and she had been asking the landlord when it would be returned.
- 39. The applicant was unable to benefit from the adjudication scheme at the end of the tenancy in relation to the deductions made to the deposit by the landlord.

Reasons for Decision

- 40. 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.

41. 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.

42. The tenant moved into the property in October 2021 and left in March 2025, and the deposit was never placed into an approved scheme. The landlord appeared and admitted this breach and apologised for it. She has now taken steps to register with an approved scheme, and so, it appears that going forward, there will be no further breach of these regulations by this landlord.

43. I found both parties to do their best to be honest in explaining their positions. I did not consider that this landlord had any intention to withhold the deposit, once she had deducted what she considered were appropriate deductions for damage to the property. I also considered that the landlord had taken the application seriously, given that not only she but the other two owners all attended the case management discussion.

44. That said, I was not wholly convinced that this landlord took her statutory responsibilities as a landlord seriously, or to put another way, she was rather careless in discharging these duties. I note what the applicant said about not

addressing safety aspects relating to the property after being given notice to do so. The tenancy agreement which was used was not in accordance with what is required by the Scottish Government. There is a prescribed tenancy agreement which should be used for all private residential tenancies since December 2017. That tenancy agreement makes specific reference to approved tenancy deposit schemes. The parties' tenancy agreement was granted in October 2021, and was in the style of a short assured tenancy; such tenancies have not been competent to grant since 2017. The tenancy deposit regulations came into force in March 2011; with the approved schemes operating since 2012. They have therefore been in force almost for the entire time that this landlord has been renting out properties. Given these facts, while this landlord may have had some awareness of landlord regulation, there was clearly more that she could and should have been aware of.

45. While I sympathise with her and her sisters' family circumstances, I can place little weight on that factor in the circumstances of this case. These regulations have been in force for over 14 years, and there are three owners who lease out the property. It seems reasonable to think that someone should have taken responsibility to keep up-to-date with a landlord's duties.

46. When deciding on the amount of any award in these applications, 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.

47. I consider that this breach is a lower to mid-scale breach, and any sanction should reflect that. In assessing the relevant factors:

48. I consider the mitigating factors are:-

- a. The applicant said on the whole, the landlord was a reasonable landlord.
- b. The landlord had returned the balance of the deposit to the tenant after deduction of a replacement chair.

- c. On balance, the applicant did not object to the deduction of the deposit money for the damage to the chair.
- d. I did not consider that there was any deliberate attempt to fail to place the deposit in an approved scheme.
- e. The landlord had admitted their error.
- f. The landlord had apologised for their error.
- g. The landlord had now taken steps to register with an approved scheme.

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

- a. The deposit was paid in October 2021 and was not secured during the whole time that the applicant was a tenant until March 2025, for around 3 and a half years.
- b. The landlord had rented out at least one property for 15 years and was therefore an experienced landlord.
- c. The landlord always took a deposit, and on that admission, must also have not secured any deposit in an approved scheme since the regulations were in operation.
- d. The landlord was still using an old-style tenancy agreement which did not comply with the current prescribed style for private residential tenancies, and had she done so, both landlord and tenant would have been alerted to the requirement to place a deposit into an approved scheme.
- e. The landlord had deducted money from the deposit at the end of the tenancy, and in doing so, she had deprived the tenant of the ability to challenge or dispute the amount deducted through an independent adjudication scheme.

50. The regulations require me to make an order in the event of breach; for all of the reasons I have set out above, while I consider that the failure to lodge the deposit was not intentional, I do consider that the landlord had been careless in ensuring that she met her obligations regarding tenancy deposits. The deposit was unsecured for over 3 years, and the tenant had no independent adjudication system to use to assess if the deduction that the landlord intended

to make was fair. I consider that the tenant was prejudiced by the failure to place the deposit into an approved scheme. I also consider that this landlord has taken steps to address her failure, and she has also accepted the breach and apologised for her actions. For all of those reasons, I consider that the breach is at the lower end of a medium sanction. I consider that it would be fair and proportionate to make an award of £600 in this case.

Decision

51. 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 £600.00 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

30 10 2025

Legal Member/Chair

Date