



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

Chamber Ref: FTS/HPC/PR/24/5580

Re: Property at 27 May Baird Wynd, Aberdeen, AB25 3RR (“the Property”)

Parties:

Miss Chioma Ajare, 27g Union Place, Dundee, DD2 1AB (“the Applicant”)

**Mrs Chandima Jayasinghe Liyanage, 275 Westburn Road, Aberdeen, AB25
2QH (“the Respondent”)**

Tribunal Members:

Mark Thorley (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of Two Hundred and Fifty Pounds (£250) be made.

- Background

Both parties had previously attended a case management discussion. The issue between the parties was whether this was a tenancy or a lodging agreement. There was no dispute about some of the other facts in the case. It was accepted that the deposit had ultimately gone into a tenancy deposit scheme and that the applicant had received the whole amount back of the tenancy deposit in the sum of £500.

- The Case Management Discussion

At the case management discussion both parties attended on the teleconference hearing. The respondent was represented by her husband. Submissions were made

by both parties in respect of whether this was in fact a tenancy agreement or a lodging agreement. The issue primarily for the respondent was that a document set out as a tenancy agreement had been signed by the parties. This setup clearly that a deposit was being paid by the applicant and was due to be lodged in a tenancy deposit scheme within the requisite 30 day period.

- Findings in Fact

1. That the parties entered into a tenancy agreement dated 3rd September 2023 in respect of the rental of the property
2. That contained within that tenancy agreement was a clause requiring that the respondent pay into the tenancy deposit schemes the deposit of £500 .
3. That they responded failed to do so until September 2024
4. That in November 2024 the applicant received the total deposit back nearly £500.

- Reasons for Decision

There was little dispute Between the parties. The respondent indicated that it was never intended that this was anything apart from a lodger's agreement. The difficulty for the respondent was that there was a signed tenancy agreement which set out very clearly that this was a tenancy with requirements regarding the deposit. It fulfilled all the criteria of a tenancy

1. In the leading case on leases and licences, *Street v Mountford 1985, AC 809 (HL)* in the oft-quoted passage, Lord Templeman noted,

“If the agreement satisfied all the requirements of a tenancy, then the agreement produced a tenancy and the parties cannot alter the effect of the agreement by insisting that they only created a licence. The manufacture of a five-pronged implement for manual digging results in a fork even if the manufacturer, unfamiliar with the English language, insists that he intended to make and has made a spade.”

2. Having decided that a tenancy was created, the Tribunal then had to decide if a deposit was taken. The Tribunal considered the Applicant's evidence to be consistent and credible. At the outset of the tenancy, she had paid £500 as a deposit. Throughout the lengthy history of this case, the Respondent has at no time offered an alternative explanation for taking this payment.
3. Having decided that the Respondent had failed to comply with the duty under Regulation 3(1) of the 2011 Regulations to pay the tenancy deposit into an approved tenancy deposit scheme within 30 working days of the start of the tenancy, the Tribunal was therefore obliged to make an order requiring the Respondent to make payment to the Applicant, in terms of regulation 10 of the 2011 Regulations.

4. The Tribunal is required to consider the sum which the Respondent should be ordered to pay to the Applicant, which could be any amount up to three times the amount of the tenancy deposit. The amount of any award is the subject of judicial discretion after careful consideration of the circumstances of the case, as per the decision of the Inner House of the Court of Session in the case of *Tenzin v Russell* 2015 Hous. LR. 11.
5. In considering the appropriate level of payment order to be made in the circumstances, the Tribunal considered the need to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach (Sheriff Welsh in *Jenson v Fappiano* 2015 GWD 4-89).
6. The Tribunal noted the view expressed by Sheriff Ross in *Rollet v Mackie* ([2019] UT 45) that the level of penalty should reflect the level of culpability involved. And as Sheriff Ross noted, at para 13 of his decision: “*The admission of failure tends to lessen fault: a denial would increase culpability*”.
7. The Respondent has failed to admit liability or, despite advising the Tribunal that a solicitor had been instructed, to have that solicitor contact the Tribunal and lodge authorities or arguments in support of his position.
8. The tribunal considered the various factors to be considered as set out in *Rollet v Mackie*. The Respondent had no other rental property and was an amateur landlord. The available evidence did not support a finding that there had been fraudulent intention by the Respondent. The Tribunal, however, feels that the failure to take appropriate legal advice on the status of this agreement amounts to a reckless, if not deliberate, failure to observe the responsibilities of a landlord.
9. The Tribunal notes that the Respondent received back her whole deposit . The requirement to pay a tenancy deposit into an approved scheme is intended to protect the deposit and offers protection for both parties in the event of any dispute at the end of the tenancy.
10. Taking all of the above considerations into account, the Tribunal considered that an award at the lower end of the possible penalty scale would be appropriate. It therefore determined that an order for £250, one half the amount of the tenancy deposit paid, would be fair, proportionate and just, having regard to the seriousness of the breach.

Decision

11. The Tribunal determines that the Respondent has failed to comply with the duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to pay a tenancy deposit to the scheme administrator of an approved scheme within the prescribed timescale. The Tribunal therefore makes an order requiring the Respondent to pay to the Applicant the sum of £250.

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.

Mark Thorley

22 October 2025

Legal Member/Chair _____

Date _____