



**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/25/2372

Re: Property at Glenmorris, 13 Main Street, Kilconquhar, Fife, KY9 1LF ("the Property")

Parties:

Mrs Fay Gooding, Glenmorris, 13 Main Street, Kilconquhar, Fife, KY9 1LF ("the Applicant")

Mr Christopher Powell, Samara, Kilconquhar, Fife, KY9 1JU ("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 by the respondent to the applicant in the sum of £750 be made.

- Background

The applicant applied to the tribunal for an order under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The applicant set out that a deposit paid on 2 July 2024 had not been paid into an approved scheme until 26 May 2025.

The application was accepted for determination on 10 June 2025 and served by sheriff officer on 8 October 2025.

The respondent had sent in a detailed response in which it was acknowledged that the deposit had not been paid into a scheme timeously and setting out a detailed mitigation.

- The Case Management Discussion

Both parties attended the teleconference hearing. There was no dispute between the parties regarding the facts in the case. The applicant continues to reside in the property.

- Findings in Fact

1. The parties entered into a tenancy agreement for the rental of the property on 2 July 2024.
2. A deposit in the sum of £950 was paid on 2 July 2024.
3. Occupation commence on 26 July 2024.
4. The tenancy was only secured on 26 May 2025 outwith the 30 day time period allowed in terms of the regulations.
5. The applicant remains in occupation of the property.

- Reasons for Decision

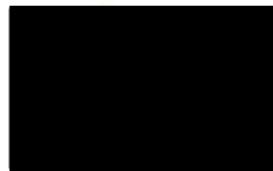
1. Having decided that the Respondent had failed to comply with the duty under Regulation 3(1) of the 2011 Regulations to pay the tenancy deposit into an approved tenancy deposit scheme within 30 working days of the start of the tenancy, the Tribunal was therefore obliged to make an order requiring the Respondent to make payment to the Applicant, in terms of regulation 10 of the 2011 Regulations.
2. 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.*
3. 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).
4. 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*”.
5. The Respondent has admitted liability and has set out mitigatory facts.

6. The respondent has another property that is rented out. The respondent acknowledged that the deposit should have been placed in a protected scheme. This was not done as a matter of inadvertence. However the money is protected now and any issues at the end of the tenancy can be dealt with under the scheme. The deposit was not used for any other purpose and the applicant is still in possession.
7. The tribunal determined that this was not at the most serious end of the spectrum of cases where a deposit had never been placed in a scheme and was never returned. Likewise it was not at the lowest end as the deposit had not been protected for a period of nearly a year. The respondent had never been in breach previously but was a landlord with more than one property
8. Balancing the different facts and taking in to account the mitigatory factors the tribunal took the view that the imposition of a sum of £750 would be an appropriate penalty being a sum less than the deposit itself but still representing a significant penalty.
 - Decision

To make an order for payment by the respondent to the applicant in the sum of £750.

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.



14/11/2025

Legal Member/Chair

Date