



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

Chamber Ref: FTS/HPC/PR/25/2983

**Re: Property at 4 Smith Place, Ryedale Meadows, Troqueer, Dumfries, DG2 7BL
("the Property")**

Parties:

**Mr Simon Andrew Howat, Kerry Howat, 11 Corberry Avenue, Dumfries, DG2 7QH
("the Applicants")**

**Thornwood Homes, Thornwood Homes, 2 Rigghead Cottages, Glencaple Road,
Dumfries, DG1 4TU ("the Respondent")**

Tribunal Member:

Nicola Irvine (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted an order for payment against the Respondent in favour of the Applicant in the sum of £1,100.

Background

1. The Applicants submitted an application under Rule 103 for an order for payment on the basis that it was said that the Respondent had failed to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. By decision dated 5 August 2025, a Convenor of the Housing and Property Chamber having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion ("CMD").
3. The Tribunal issued letters on 14 November 2025 informing both parties that a case CMD had been assigned for 13 January 2026, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make

a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to make written representations by 5 December 2025.

4. On 2 December 2025, the Tribunal received an email from the Respondent acknowledging receipt of the application on 20 November 2025 and requesting further time to submit written representations. No written representations were received.

The case management discussion

5. The Applicants joined the conference call and represented themselves. The Respondent did not join the conference call and the discussion proceeded in its absence. The Tribunal explained the purpose of the CMD.
6. The Applicants confirmed that the tenancy started on 15 September 2012 and ended on 6 June 2025. The Applicants paid a deposit of £590 in September 2012. At the end of the tenancy, the Respondent refused to return the deposit and the parties exchanged text and email messages about the deposit. The Respondent has not returned the Applicants' deposit.
7. The Applicants contacted the approved schemes to find out whether their deposit had been secured and were advised that there was no record of his deposit being secured.
8. The Applicants are aware that the Respondent lets out other properties and at one time, the Respondent let out 9 properties in the same area, with other rental properties elsewhere. However, the Applicants could not provide information about whether the Respondent has secured other tenants' deposits.
9. Having considered the papers and heard from the Applicants, the Tribunal decided that the Respondent breached the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Applicants were advised that the Tribunal would consider what level of payment order was appropriate and thereafter issue a written decision.

Findings in Fact

10. The parties entered into an assured tenancy which commenced 15 September 2012 and ended on 6 June 2025.
11. The Applicants paid a deposit of £590 to the Respondent.
12. The Applicants' deposit was not secured in an approved scheme.
13. The Respondent failed to comply with his duty in terms of Regulation 3 of the 2011 Regulations in respect that the deposit paid by the Applicant was not paid to an administrator or an approved scheme within 30 working days as required.

Reason for Decision

14. The Tribunal took into account the application and supporting papers and the submissions made at the CMD. The Tribunal was satisfied that it could reach a decision on the application without a hearing under Rule 18 of the Rules and make relevant findings in fact based on the information provided by the Applicants. The Tribunal did not identify any issues to be resolved in this case that would require a hearing to be fixed.
15. The Respondent did not join the CMD and did not lodge any written representations. The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 regulations") came into force in March 2011 and the Respondent was obliged to comply with those regulations. The information before the Tribunal was that the Respondent was an experienced landlord. The documentation provided by the Applicants showed that a deposit was paid and had not been secured in an approved scheme. The supporting papers also demonstrate that the Applicants had made requests of the Respondent for payment. Despite those requests, the information before the Tribunal was that payment has still not been made.
16. The Regulations exist to protect a tenant's deposit and to provide the benefit of dispute resolution, if required.
17. The terms of Regulation 3 of the 2011 regulations are mandatory and state "*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.*"

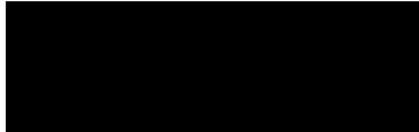
18. The Tribunal was satisfied that the Respondent failed to comply with its duties in terms of that regulation. It was the Respondent's duty to pay the deposit to the scheme administrator within 30 working days. The Tribunal was mindful that the deposit was not protected for the entirety of the tenancy. The Tribunal also took account of the fact that the Applicants asked for return of the deposit and the Respondent has not repaid the deposit. There appears to be no recognition on the part of the Respondent that it had failed to comply with the Regulations.
19. The Tribunal considered that its discretion in making an award requires to be exercised in a manner consistent with the case *Jenson v Fappiano (Sheriff Court) (Lothian & Borders, Edinburgh) 28 January 2015*. It must be fair, just and proportionate and informed by taking account of the particular circumstances of the case.
20. The Tribunal considered the decision of the Upper Tribunal (UTS/AP/19/0020) which states: "*Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate*

of reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.”

21. In the present case, the Respondent did not secure the Applicants' deposit, nor did it repay the deposit. The deposit was paid in September 2012. The Applicants have suffered a loss of £590. There is no information about repeated breaches of the Regulations or fraudulent intent, but there appears to be no acknowledgement on the part of the Respondent that it has failed to observe its responsibilities. The failure by the Respondent to secure the deposit has deprived the Applicants of the adjudication process. An appropriate sanction in these circumstances for failure to comply with the duties was to order the Respondent to pay the Applicant £1100.

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.



Legal Member/Chair

14th January 2026

Date