



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

Chamber Ref: FTS/HPC/PR/25/3713

**Re: Property at First Floor Right 278 Hardgate, Aberdeen City Aberdeenshire,
AB106AA (“the Property”)**

Parties:

**Mr Gabriel Carpenter, 5 Guthrie Gardens, Newburgh Fife, KY146HD (“the
Applicant”)**

**Mr David Cowe, 1 St. Nathalan Crescent Banchory, Aberdeenshire, AB31 5YU
 (“the Respondent”)**

Tribunal Members:

James Bauld (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent should be ordered to make payment
to the Applicants of the sum of SEVEN HUNDRED AND FIFTY POUNDS (£750)**

Background

1. By application dated 1 September 2025 the applicant sought an order in terms of Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”) in respect of an alleged failure by the respondent to comply with those regulations.
2. The application was accepted by the Tribunal and referred for determination by the tribunal.

3. A Case Management Discussion (CMD) took place on 15 January 2026 by telephone case conference. The applicant and the respondent both attended personally.
4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters. The tribunal asked various questions of the applicant with regard to the application.
5. The tribunal explained to the applicant the maximum award which could be made in terms of the 2011 Regulations
6. The tribunal indicated that it would be entitled to utilise the power within regulation 17 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the tribunal rules”) and that the tribunal could make a final decision at the case management discussion without remitting the matter to a further full hearing.

Agreed matters of fact

7. Certain matters were agreed between the parties.
8. The applicants and respondent had entered into a tenancy agreement relating to the property
9. The tenancy had commenced on 19 July 2024 and had ended on 18 September 2025
10. The rent was £625 per month.
11. A deposit of £625 had been paid by the applicant to the respondent’s letting agent on 19 July 2024.
12. The deposit was lodged in any approved tenancy deposit scheme on 24 November 2024.
13. The deposit was repaid in full to the applicant at the conclusion of the tenancy

Summary of discussions

14. During the hearing, the parties were asked various questions by the tribunal members.
15. The applicant was asked by the tribunal to summarise the way in which he had been inconvenienced by the respondent’s failure to lodge the deposit. In

those s He admitted that he had effectively not been inconvenienced at all. He accepted that the deposit had been returned in full at the end of the tenancy.

16. The respondent had lodged written representations in advance of the hearing. He explained that the failure to lodge the tenancy deposit with the required time scale of thirty working days was a simple mistake. In his written representations he stated "***I totally forgot to transfer the deposit into a deposit scheme after I received it from the letting agent I use, it wasn't until I was preparing my end of year accounts that I noticed it hadn't been done. Although it looks bad, it was not in any way my intention to keep the deposit by not securing it in a scheme at the time but just a simple mistake that was overlooked on my part.***
17. On being questioned by the tribunal, the respondent indicated that he owned six or seven properties in the Aberdeen area. He has been a private landlord for a number of years. He uses a letting agent to find tenants for the properties. The letting agent would draw up the tenancy agreement, have it signed by the tenant, take the payment of the deposit from the tenant and the first month's rent and thereafter remit to the respondent the balance of the rent and the deposit. Ongoing management of the tenancy would be done by the respondent. He indicated that in addition to being a landlord he has a full-time job. He discovered this failure when starting to prepare his end of year accounts and tax return and took immediate steps to lodge the deposit with an approved scheme.
18. He invited the tribunal to accept that the failure in this instance was a simple human error.
19. At the conclusion of the hearing, both parties indicated that they were content for the tribunal to consider all the evidence that had been presented to the tribunal both orally and in writing and to make the decision in accordance with the relevant regulations. The tribunal is grateful to the parties for their attendance at the hearing and their assistance in answering questions.

Discussion and decision

20. This application related to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy. In this case it was accepted by the Landlord that he had failed to do so. Accordingly, he was in breach of the duties contained in Regulation 3 of the 2011 Regulations. Those duties are twofold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties.
21. Regulation 9 of the 2011 Regulations indicates that if a Landlord does not comply with any duty in regulation 3, then the Tribunal must order that a

Landlord makes payment to the Tenant of an amount “not exceeding three times the amount of the tenancy deposit”.

22. Accordingly in this case the Tribunal is required to make an order for payment. The only matter to be determined by the Tribunal is the amount of the payment.
23. In this case the Tribunal carefully considered the evidence which had been produced by both parties. There was clear evidence, agreed and acknowledged by the respondent, that the respondent had failed to pay the tenancy deposit into the appropriate scheme until 25 November 2024. It should have been lodged no later than 30 August 2024. The delay was a period of twelve weeks or 60 working days. The deposit was thereafter lodged in accordance with the requirements of the 2011 Regulations.
24. The Regulations were introduced to safeguard deposits paid by Tenants. They were introduced against a background of Landlords abusing their position as the holder of deposit moneys. The parliament decided that it should be compulsory to put the deposit outwith the reach of both the Landlord and the Tenant to ensure that there was a dispute resolution process accessible to both Landlord and Tenant at the end of a tenancy and which placed them on an equal footing. The Regulations make it clear that the orders to be made by Tribunals for failure to comply with the Regulations are a sanction or a penalty
25. In this case, the Respondent was in clear breach of the 2011 Regulations.
26. The tribunal notes that in an Upper Tribunal decision, (**Ahmed v Russel** UTS/AP/22/0021 2023UT07) Sheriff Cruickshank indicates (at Para 38) that **“previous cases have referenced various mitigating or aggravating factors which may be considered relevant. It would be impossible to ascribe an exhaustive list. Cases are fact specific and must be determined on such relevant factors as may be present”** . The amount awarded should represent **“a fair and proportionate sanction when all relevant factors have been appropriately balanced”**.
27. The sanction to be imposed is intended to mark the gravity of the breach which has occurred. It should reflect the level of overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations. The tribunal is required to determine a fair and proportionate sanction based on the facts as recorded.
28. The tribunal was not persuaded that the award should be made at the maximum level available to the tribunal which based on the deposit being £625 would have been £1875
29. In this case, the deposit was unprotected for a period of just over four months. The tenancy lasted for a period of fourteen months. The tribunal does accept that this appears to have been an isolated incident and notes that the respondent has expressed remorse and has apologised for the failure.

Ultimately, the entire deposit was returned to the tenant. The tribunal takes the view that this was not the most egregious breach of the 2011 Regulations. The tribunal accepts that the failure to lodge the deposit was caused by a simple human error.

30. However, all landlords should be aware that deposits should be lodged and that they should have systems in place to try to avoid such errors. The failure to lodge the deposit in this case was a serious error but was mitigated by the fact that it was lodged when the respondent became aware of the error.
31. The tribunal is willing to accept the submission that the respondent simply made a mistake in this matter rather than being in wilful defiance of the purpose of the 2011 Regulations. The tribunal also notes that no actual prejudice occurred and in the final analysis, the purpose of the regulations was not defeated, and the deposit was returned to the tenant, in full, without dispute. The tribunal also notes the early admission by the respondent of his breach of the regulations in these proceedings
32. In the circumstances, the tribunal determines that the appropriate amount of the award to be made should be £750 which reflects the seriousness of the breach but acknowledges the mitigatory factors put forward by the respondent.

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.

Jim Bauld

15 January 2026

Legal Member/Chair

Date