



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

Chamber Ref: FTS/HPC/PR/25/2518

Parties:

Mr Finbar Horgan, PF2, 5 Thistle Place, Edinburgh, EH11 1JH (“the Applicant”)

Mr Garry Mason, UNKNOWN, UNKNOWN (“the Respondent”)

Property at 24/2 Coltbridge Avenue, Edinburgh, EH12 6AH (“the Property”)

Tribunal Members:

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent did not comply with any duty in terms of regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and determined that the Respondent should pay to the Applicant the sum of £2985.

Background

2. This was a case management discussion (CMD) in connection with an application in terms of rule 103 and regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, (the regulations). The CMD on 27 November 2025 was adjourned to enable the Applicant to provide evidence from the three approved deposit schemes that there was no deposit lodged. The Applicant provided the evidence from the three schemes. The Applicant attended the CMD. The Respondent did not attend but was represented. The tribunal had sight of the certificate confirming that notification of the application had been served on the Respondent by advertisement. The tribunal was

satisfied that notice had been given in terms of rule 24 and proceeded with the hearing in terms of rule 29.

The Applicant's position

3. The Applicant found the property on Gumtree and viewed it around 31 March 2025. He paid the deposit and one month's rent on that date and moved in on 1 April 2025. The Respondent did not provide a written tenancy agreement but told the Applicant that he would provide a written agreement in due course. No written agreement was provided. The deposit was not lodged in an approved scheme. The Respondent asked the Applicant to leave the property on 5 May 2025 and the Applicant moved out on 8 May 2025. The Respondent contacted the Applicant on 1 June 2025 to tell him he had inspected the property and would return his deposit. The deposit was not returned and the Applicant did not receive a refund of the May 2025 rental payment. The Applicant made a separate application to receive the deposit and rent and the tribunal granted an order on 27 November 2025. The Applicant contacted the local authority for advice about the deposit and rent and was advised that the Respondent is not registered as a landlord and is continuing to let the property.

4. Findings in fact

- The Respondent is the owner of the property.
- The Respondent is not registered as a landlord.
- The parties entered into a private residential tenancy agreement for let of the property, with the Applicant taking entry on 1 April 2025.
- There was no signed tenancy agreement.
- The agreed rent was £995.
- The Applicant paid a deposit of £995 on 31 March 2025.
- The tenancy was of short duration, and it came to an end on 8 May 2025 when the Applicant left the property at the Respondent's request.
- The deposit was not lodged with an approved scheme within 30 days of the start date of the tenancy.
- The Respondent messaged the Applicant on 1 June 2025 to state that he had inspected the property and would be returning the deposit.
- The deposit has been retained by the Respondent was not returned to the Applicant at the end of the tenancy.

Reasons

5. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. This was a clear breach of the regulations. The Respondent did not lodge the deposit within 30 days of the start of the tenancy,

or comply with any of the duties set out in regulation 42. The deposit has never been lodged in an approved scheme.

6. Once it was established that a breach of the regulations had occurred, the tribunal then considered the gravity of the breach. The amount to be awarded is a matter for the discretion of the tribunal having regard to the facts before it. The tribunal considered the recent case law. In *Rollett v Mackie* UTS/AP/19/0020 at para 13 and 14 Sheriff Ross considered the assessment of the level of penalty and said: "[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. [14] Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present." In the case of *Kirk-v-Singh* B22/15 Sheriff Jamieson having reviewed the recent case law said the sanction should be "fair, proportionate and just having regard to the seriousness of the non compliance".

7. This deposit was unprotected for the duration of the short tenancy. The Respondent did not return the deposit at the end of the tenancy. The Respondent inspected the property and told the Applicant the deposit would be returned but he has failed to do so. This is the type of situation the regulations are designed to prevent happening. The tribunal decided that this was a clear and serious breach of the regulations and there were no mitigating factors. The tribunal decided that a penalty of three times the deposit, namely £2985, was fair proportionate and just in all of the circumstances.

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.

Lesley A Ward

18 February 2026

Legal Member/Chair

Date