



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/24/2181

Re: Property at Flat 7 2 Toward, Greenock Rock, Wemyss Bay, PA18 6DT (“the Property”)

Parties:

Miss Barbara Mackay, 5 Dorset Road, Greenock, PA16 0LL (“the Applicant”)

Invergower Estates Ltd, 30 East Main Street, Darvel, KA17 0HP (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member), Frances Wood (Ordinary Member) and Elaine Paton (Legal Member [Observer])

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that there has been no breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Background

1. By application accepted on 20 June 2024 the applicant seeks an award for the maximum sanction available under regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).
2. The applicant lodged the following documents with the application:
 - Copy tenancy agreement
 - Emails from tenancy deposit schemes

3. The application was conjoined with application reference FTS/HPC/CV/24/2593 in terms of which the respondent seeks an order for payment to cover the cost of repairs, redecoration and outstanding rent at the end of the tenancy.
4. A case management discussion (“cmd”) took place on 14 March 2025. The respondent was represented by Mr Johnstone, Director of Invergower Estates Ltd. The applicant, Ms MacKay attended on her own behalf. It was not disputed that a deposit had not been lodged in a relevant scheme however, parties were in dispute as to whether the Regulations apply. The respondent’s representative disputed that a deposit had been held by the respondents when the Regulations came into force. Ms MacKay stated that the respondent had breached the Regulations and sought the maximum award.
5. The case was continued to an evidential hearing to resolve the following issues:
 - a) Was a relevant deposit under the Regulations held by the respondent?
 - b) If a relevant deposit was held what level of sanction should be awarded under Rule 10?
6. In a note issued after the cmd parties were requested to lodge any documents/correspondence they may have to support their position in relation to the treatment of the deposit from the tenancy, for example rent accounts, benefits letters, copy correspondence, file notes, proof of payment of rent at the commencement of the tenancy.
7. The evidential hearing took place via videoconference on 24 September 2025 and 29 January 2026. The applicant was represented by Mr Johnstone, Director of Invergower Estates Ltd. The respondent, Ms MacKay attended on her own behalf. In advance of the evidential hearing both parties had submitted additional written representations. The respondent submitted a file note dated 17 March 2010 and rent ledger spanning the period from 8 March 2010 to 27 July 2013. The Tribunal heard evidence from Mr Johnstone and Ms MacKay. The respondent called 1 witness, Alice Seggie, an employee of the respondent.

Ms MacKay and Mr Johnstone were given the opportunity to ask questions of witnesses. Both parties were given the opportunity to state their position on the dispute in full.

8. Summaries of the oral evidence heard at the hearing are undernoted. For the avoidance of doubt it is not a verbatim record and focuses on the areas relevant to the application and in particular areas of dispute between the parties.

Summary of Barbara Mackay's evidence

9. Ms Mackay stated that she had paid £475 deposit in her previous tenancy in Paisley. Mr Johnstone had also managed that tenancy. She stated that she had been in receipt of benefits at the time she had moved tenancy but that she always ensured rent was paid in full. She stated that at the time she moved tenancy she had a conversation with Mr Johnstone and agreed that the deposit of £475 would be transferred over from her previous property. She stated that as far as she can remember she met with Mr Johnstone to sign the tenancy agreement. She referred to the tenancy document which had been initialled by Mr Johnstone to show that a deposit had been received of £475. She stated that she had always been up to date with her rental payments. She stated that there had been a discussion with Mr Johnstone at the commencement of the tenancy agreement due to the gap in her benefits – she stated that he had consistently told her to pay what she could when she could but that there was no discussion about her deposit being used towards the rent charge.
10. Ms MacKay stated that when she gave notice to terminate the tenancy agreement she had been treated unfairly by Mr Johnstone in relation to charges sought for the condition of the tenancy. She stated that she had been advised at that time that the deposit of £475 would be deducted from the sums being claimed due to the condition of the property. This showed that it was accepted at that time that a deposit had been held by the respondent. She stated that she had sought advice from Citizens Advice and been made aware of the Regulations. She stated that the respondents failure to place the deposit in a

scheme had a direct impact on her due to the respondent's conduct after the tenancy terminated.

11. Ms MacKay denied that there had been any agreement that the deposit would be used to pay rent. She stated that had this been agreed there would have been a written agreement to that effect. Her position was that the previous deposit had been transferred and used as the deposit for the second tenancy. She maintained that the respondent had breached the Regulations and sought the maximum award.

Summary of Mr Johnstone's evidence

12. Mr Johnstone stated that he is the Director of Invergower Estates Ltd. The company is a landlord of several hundred properties. Mr Johnstone is also the Director of Chestnutt Skeoch Ltd.

13. Mr Johnstone stated that when the tenancy at Flat 7, 2 Toward, Greenock Rock, Wemyss Bay, PA18 6DT ended it had been assumed that a deposit of £475 had been paid as that was stated on the front page of the tenancy agreement. However, after the present application had been submitted he had retrieved the file for the tenancy to double check the position. He was referred to the tenancy agreement that had been submitted and confirmed that he had signed the front page of the agreement on the date the tenancy commenced to state that the deposit was £475. He confirmed that there had been initial agreement that the deposit from the previous tenancy would be transferred to the new tenancy.

14. Mr Johnstone stated that there had been an issue with payment of rent when the tenancy commenced. He stated that the applicant had been in receipt of housing benefit. As she had moved from one local authority area to another there was lack of continuity in the benefits payment and she went into rent arrears as housing benefit was not paid until 28 March 2010. He stated that thereafter monthly rent was due on the 28th day of the month which

corroborated the date upon which rent had first been paid which differed from the date the lease commenced.

15. Mr Johnstone referred to a file note from the tenancy file that had been submitted. This showed that he had discussed the situation regarding rent arrears with the applicant on 17 March 2023. The note records that as there was no housing benefit in payment the applicant requested that her deposit be used to cover an outstanding 9 days' rent for her previous tenancy and the period from 8-27 March 2010 in her new tenancy until housing benefit payments commenced.

16. Mr Johnstone referred to a rent ledger from the commencement of the tenancy which showed that on 19 March 2010, £335.54 had been paid from the deposit towards the ongoing rent charge. Mr Johnstone stated that he had made an error in not amending the tenancy agreement to show that the deposit had been used towards rent.

17. Mr Johnstone stated that when the tenancy commenced the Regulations were not in force. He recalled that as landlord of several hundred properties when the Regulations came into force deposits for over 300 properties were transferred from the respondent's client account into a deposit scheme. He stated that this was an administrative task for the company that was completed when the Regulations came into force. He stated that if there had been a deposit held in the client account for the property that would have been transferred automatically. He stated that the reason the deposit was not paid into the deposit scheme was because it had been used at the commencement of the tenancy to cover a shortfall of rent by agreement with the applicant.

Summary of Alice Seggie's evidence

18. Ms Seggie confirmed that she has been an employee of the respondent since the tenancy commenced. She worked on the administrative side and was a point of contact for the applicant. She confirmed that the respondent is a large scale landlord. She stated that deposits had been held in a client account and

had been transferred *en masse* to a deposit scheme when the new Regulations came into force.

Findings in fact

19. The Tribunal finds the following facts to be admitted or proved:

- a) Parties entered into a tenancy agreement with a commencement date of 8 March 2010.
- b) Prior to entering into the tenancy agreement the applicant rented a property from Chestnutt Skeoch Ltd in Paisley. A deposit of £475 had been paid to Chestnutt Skeoch Ltd.
- c) Kenneth Johnstone is a Director of Invergower Estates Ltd and Chestnutt Skeoch Ltd.
- d) Parties agreed that the applicant's deposit of £475 would be transferred to her new tenancy at Flat 7, 2 Toward, Greenock Rock, Wemyss Bay, PA18 6DT.
- e) The tenancy agreement states that the deposit for the property was £475.
- f) At the time the tenancy commenced the applicant was in receipt of housing benefit.
- g) On 17 March 2010 the applicant requested that her deposit be used to cover the rent for the period from 8 March to 27 March 2010 and for 9 days arrears due in her previous tenancy. The respondent agreed to the deposit being applied to the rent due.
- h) The Regulations came into force on 7 March 2011.
- i) The respondent is a large scale landlord of more than 300 properties. Prior to the Regulations coming into force the respondent held deposits in their client account.
- j) When the regulations came into force the respondent transferred all their deposits to a relevant deposit scheme. No deposit from the applicant was transferred as the sum had previously been applied to the rent account at the request of the applicant.

Reasons for the decision

20. The Tribunal took into account the application, written submissions, and documents that had been submitted in advance of the hearing together with the oral evidence of the Ms MacKay, Mr Johnstone and Ms Seggie.
21. It was not disputed that a tenancy had been signed on 8 March 2010 and that it had been agreed that the applicant's deposit of £475 from a previous tenancy would be transferred to the new tenancy agreement.
22. The applicant's position was that the tenancy deposit had been paid over and remained with the respondent for the duration of the tenancy agreement. In support of her position she relied on the tenancy agreement itself which stated that the deposit was £475. She also relied on the fact that no signed agreement had been produced to show that she had agreed to the deposit being used towards the rent account. She also relied on the fact that after she had terminated the tenancy agreement there had been a discussion about the tenancy deposit being used to cover certain costs which showed an acceptance on the part of the respondent that there had been a deposit. She stated that she had at no time agreed to the deposit being used to cover rent.
23. The respondent's position was that after the commencement of the tenancy there had been a further discussion between Mr Johnstone and the applicant when it had been agreed that the deposit would be applied towards the rent account. Mr Johnstone sought to rely on the file note dating from 17 March 2010 that had been produced, the rent ledger which showed that the deposit had been applied to the ongoing rent account and the fact that the deposit had not been transferred to a relevant scheme after the Regulations were introduced when more than 300 other deposits had. Mr Johnstone stated that as the applicant had moved to a different local authority area there was a gap before housing benefit was paid in the new tenancy. This was reflected in the rent account which showed that rent payments started on 28 March 2010. The gap in housing benefit payments explained why the deposit was used to cover the

rent due from the commencement of the tenancy on 8 March until housing benefit was paid on 28 March.

24. The Tribunal took into account that over 15 years had passed since the tenancy commenced which may impact parties' recollections of discussions at that time. The Tribunal gave considerable weight to the terms of the tenancy agreement itself which on the face of it clearly stated that a deposit had been paid.
25. The Tribunal considered that the onus was on the respondent to show how the factual position could be established as different from that in a lease document signed by both parties. In that regard the Tribunal found Mr Johnstone's evidence relating to the parties agreement to apply the deposit to the rent arrears to be credible. The Tribunal preferred Mr Johnstone's position as it was corroborated by the file note that had been produced, the rent ledger and the information provided that housing benefit would be paid in arrears. The Tribunal found Mr Johnstone's evidence that as a large scale landlord steps had been taken by the applicant to transfer all deposits to a deposit scheme when the Regulations had come into force to be credible. The fact that there was no deposit transferred for the property was a key piece of evidence in support of the respondent's position.
26. In contrast the applicant's evidence lacked detail beyond the terms of the tenancy agreement. She had not produced evidence to show how rent had been paid in the first month of the tenancy agreement or her benefits entitlement. It was understandable that given the length of time that had passed that she may not recall the specifics of her benefits entitlement at the time however given that this was a key area of dispute it would have been possible for her to provide some details regarding her benefits entitlement at the time.
27. The Tribunal considered that it was unfortunate that the respondent had not amended the lease agreement or produced written confirmation of the application of the deposit towards the rent account however the Tribunal determined on the balance of probabilities that the deposit was used to cover

rent during the first month of the tenancy and therefore no relevant deposit was in place at the date the Regulations came into force on 7 March 2011.

28. The Tribunal notes that had the regulations been in force when the tenancy commenced it would not have been competent for the respondent to use the deposit sum towards the rent account however as they were not in force at the time there was no legal bar to the respondent doing so at the request of the applicant.

29. Having determined that no deposit was in place at the time the Regulations came into force the Tribunal determines that there was no breach of the Regulations.

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.

Mary Claire Kelly

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Legal Member/Chair

✓
29 January 2026

Date