



Decision with Statement of Reasons under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/25/1351

Re: Property at 64D or 64A Flat 2/L, Shore Street, Gourock, PA19 1RF (“the Property”)

Parties:

Mr Darren Maclean, 16k Binnie Street, Gourock, PA19 1JS (“the Applicant”)

Mr Sukhpal Singh, Ms Paramjit Kaura, 21 Teal Drive, Inverkip, PA16 0LU (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of EIGHT HUNDRED AND SEVENTY-FIVE POUNDS (£875.00)

Background

1. By application dated 28 March 2025 the applicant seeks an award under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the regulations”).

The applicant lodged with the application:

- Copy private residential tenancy agreement
- Correspondence with the respondent
- Correspondence with 3 tenancy deposit schemes

2. The respondents submitted written representations, photographs of the property and invoices relating to works carried out at the property after the tenancy ended.
3. A case management discussion took place via teleconference on 2 October 2025. Mr Maclean and Ms Kaur were in attendance. Ms Kaur accepted that a deposit of £350 had been received at the commencement of the tenancy which had not been placed in a recognised tenancy deposit scheme. The Tribunal fixed an evidential hearing to consider the level of any sanction to be awarded.

Evidential hearing – teleconference – 5 March 2026

4. Mr Maclean and Ms Kaur were in attendance. Ms Kaur stated that her husband Mr Singh was unable to attend due to work commitments. She confirmed that she appeared on behalf of both respondents.
5. It was not disputed that a deposit of £350 had been paid at the commencement of the tenancy and this had not been placed in a tenancy deposit scheme. It was not disputed that the tenancy ended on 30 April 2025.
6. The Tribunal heard evidence from the parties in relation to the level of any award under regulation 10.
7. Mr Maclean stated that he had not received the deposit back after the tenancy ended. He stated that this had a financial impact on him as he had additional rental payments over the period when he moved to a new property. A refund of the deposit would have been of assistance to him at that time. Mr Maclean stated that he had always dealt directly with Ms Kaur in relation to the tenancy. He stated that as far as he was aware the respondents owned multiple rental properties. He stated that shortly after he had moved into the property it had been redecorated. He stated that there had been some wear and tear during his occupation of the property. He stated that he had attempted to make good some of the wear and tear before moving out of the property. Mr Maclean stated that the property had been left in a better condition that it had been when he

moved in. In his view the respondents should have returned the full deposit to him. Ms Maclean stated that this had been his first tenancy. After the respondents refused to return his deposit he had become aware of the regulations. He stated that he had spent a considerable amount of time on the present application which would not have been necessary had the respondent's dealt with his deposit properly.

8. Ms Kaur stated that she owns 9 rental properties. She stated that deposits had been held for 4 of the properties in a property account. She stated that she accepted that she had made a mistake in not being aware of the regulations. She stated that after the present application had been raised she had engaged a letting agent, Infinity Estate & Letting. She had arranged for the other deposits to be transferred to the letting agents in order that they could be placed in a deposit scheme. Ms Kaur stated that she had accessed legal advice previously relating to the contents of the lease however she had not received advice on the treatment of the deposit.
9. Ms Kaur was apologetic that the deposit had not been placed in a scheme however she stated that it had been in a property account for the entire duration of the tenancy. Ms Kaur confirmed that the deposit had not been returned to Mr Maclean. She stated that this was due to the condition the property had been left in. She stated that she had suffered stress and anxiety due to the condition of the property. She referred to the invoices that had been submitted which showed sums spent on the property after the tenancy ended.
10. Ms Kaur accepted that any determination of whether the deposit should have been retained should have been made by a deposit scheme under the regulations. Ms Kaur stated that she would return the deposit to Mr Maclean however she maintained that she had retained it because of the condition of the property. Ms Kaur stated that she first became aware of the regulations when it was raised by Mr Maclean after he gave notice to end the tenancy. She stated that she had not considered placing the deposit in a scheme after she was made aware of the regulations.

Findings in fact

11. Parties entered into a private residential tenancy agreement with a commencement date of 15 December 2021.
12. A deposit of £350 was paid at the commencement of the tenancy.
13. Monthly rent payable in the tenancy was £350.
14. The tenancy terminated on 30 April 2025.
15. The applicant requested return of his deposit after the tenancy terminated. The respondents refused to return the deposit and continue to retain the deposit.
16. The tenancy deposit was not placed in a tenancy deposit scheme throughout the duration of the tenancy.
17. The respondents are landlord's of 9 rental properties.
18. Deposits for 4 tenancies were held in a bank account owned by the respondents until the present application was intimated on the respondents.
19. The applicant's finances were negatively impacted due to the respondents failure to return the deposit.

Reasons for the decision

20. Regulation 3 of the 2011 Regulations provides inter alia :

(1) 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..

21. Regulation 9 of the 2011 Regulations provides:

- (i) *A Tenant who has paid a tenancy deposit may apply to the First Tier Tribunal for an order under Regulation 10 where the Landlord did not comply with any duty in Regulation 3 in respect of that tenancy deposit.*
- (ii) *An Application under paragraph 1 must be made no later than three months after the tenancy has ended.*

22. Regulation 10 of the 2011 Regulations provides inter alia :

If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal –

- (a) *must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit*

23. It was not disputed that there had been a breach of the tenancy deposit regulations and that the present application had been made timeously. The Tribunal proceeded to consider an appropriate level of award in terms of regulation 10 in light of the information provided.

24. The legal test to be applied in determining the level of sanction is set out in *Jenson v Fappiano* 2015 G.W.D. 04-89 and subsequent case law. Those authorities are reviewed by Sheriff Cruickshank in *Ahmed v Russell* 2023 S.L.T. (Tr) 33 and confirm the Tribunal should seek to assess a sanction that is “*fair and proportionate*” in all the circumstances, taking into account both aggravating and mitigating circumstances.

25. The Tribunal also had regard to the decision of the Upper Tribunal (*Rollett v Mackie* 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 or reckless failure to observe responsibilities; denial of fault; very high

financial sums involved; actual losses caused to the tenant, or other hypotheticals.”

26. In reaching a determination the Tribunal took into account that there had been a breach of the regulations which had left the entire deposit unprotected for the entire duration of the tenancy – a period of over 40 months. The Tribunal took into account that the applicant had been entitled to expect that the deposit would be placed in an appropriate scheme and that he had been disappointed and inconvenienced at the breach of the regulations.

27. The Tribunal also gave weight to the negative financial impact on the applicant as the deposit had not been returned to him at a time when he incurred additional costs due to moving to a new tenancy.

28. The Tribunal considered the following to be aggravating factors which led to a determination that the award should be at the more severe end of the scale:

- The respondents were a landlord of multiple properties. As landlords of considerable experience their lack of knowledge of the statutory protection of tenancy deposits was at a reckless failure to observe the regulations. The respondents had access to legal advice and could easily have accessed information on their statutory duties.
- The respondents had failed to protect deposits in 4 properties.
- The respondents continued to hold the tenancy deposit, even after they were made aware of the regulations. They had not accepted that a determination of whether the deposit should be retained required to be made by a tenancy deposit scheme rather than their views.

29. Ms Kaur sought to raise the condition of the property was left in as a mitigating factor. She stated that this was the reason the deposit had not been returned. Mr Maclean disputed that the property had been left in a condition that justified retaining the deposit. The Tribunal determined that the question of whether a deduction was appropriate was for a deposit scheme to determine. It was not

the purpose of the hearing to make detailed findings on the condition of the property. The fact that the issue was disputed was a clear indication of the importance of placing the deposit in a scheme in the first place.

30. Having regard to all the factors the Tribunal determined that there had been a serious breach of the rules. The Tribunal determined that an award of 2.5 times the deposit (£875.00) was fair and proportionate in 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.

Mary-Claire Kelly

Legal Member/Chair

5 March 2026

Date