



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/25/4287

Re: Property at 4 Bellfield Avenue, Musselburgh, East Lothian, EH21 6QU (“the Property”)

Parties:

Miss Linda Bernard, Fraser Wood, 30 Laburnam Arch Court, Prestonpans, East Lothian, EH32 9GZ; 30 Laburnum Arch Court, Prestonpans, East Lothian, EH32 9GZ (“the Applicants”)

Ms Fiona Gilfillan, Feemade, Myreside Studios, The Chippendale International School of Furniture, Myreside Grange, Gifford, East Lothian, EH41 4JA (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order for payment against the Respondent in favour of the Applicants in the sum of £150.

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 (“the 2011 Regulations”).
2. A Convenor of the Housing and Property Chamber (“HPC”) having delegated power for the purpose, referred the applications under Rule 9 of the Rules to a case management discussion (“CMD”).

3. Letters were issued on 12 March 2026 informing both parties that a CMD had been assigned for 29 April 2026 at 2pm, which was to take place by conference call. In the 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 2 April 2026.
4. On 30 March 2026 the Tribunal received an email from the Respondent setting out her position in relation to the deposit. She indicated that she is prepared to pay the deposit back to the Applicants.

The case management discussion – 29 April 2026

5. The CMD took place by conference call. Both parties joined the conference call and represented themselves. The Tribunal explained the purpose of the CMD. This case called alongside a related case which proceeds under chamber reference FTS/HPC/PR/25/4287.
6. The Tribunal explained that since the Respondent indicated in her response that she intends to pay the Applicants the deposit, the parties could have an opportunity to make arrangements for that payment to be made and to discuss the related application. The Tribunal adjourned the CMD briefly to allow that to happen. When the CMD was reconvened, the parties advised that the deposit had been repaid by the Respondent today. The parties were unable to reach agreement in relation to the present application and the Tribunal explained that the application would be determined today. The parties were advised that the terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) are mandatory and if the Tribunal is satisfied that the 2011 Regulations were breached, it must make an order for payment against the Respondent. The Tribunal explained that there may be aggravating or mitigating circumstances which may assist the Tribunal in determining the application.
7. The Applicants advised that they contacted the Respondent directly in August 2025 to advise that their deposit had not been secured in an approved scheme. The Respondent explained that she contacted her letting agent to resolve the issue and assumed that it had been resolved because she heard nothing further about it until she received intimation of the present application. The Respondent’s position is that she instructed her letting agent to take the Applicants’ deposit and secure it in an approved scheme. The Respondent did not receive the deposit. She changed letting agent and again relied on her letting agent ensuring that the deposit was secured in an approved scheme. The Respondent recognised that the obligation to comply with the 2011 Regulations is imposed on her rather than her letting agent.

8. The Applicants did not have any information to suggest that there was any deliberate act on the part of the Respondent in failing to have their deposit secured, nor was there any information to suggest that the Respondent has breached the 2011 Regulations in respect of any other tenant.
9. Having considered the papers and noted the information from the parties, the Tribunal decided that the Respondent breached the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The parties 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 6 September 2016.
11. In May and June 2016, the Applicants paid a deposit of £650 to the Respondent’s letting agent.
12. On 6 April 2023, the Applicants entered into a new Private Residential Tenancy with the Respondent and it was understood that the deposit paid in May and June 2016 would be transferred to the new tenancy.
13. The tenancy ended on 8 July 2025.
14. The Applicants’ deposit was not secured in an approved scheme.
15. The Respondent failed to comply with her duty in terms of Regulation 3 of the 2011 Regulations in respect that the deposit paid by the Applicants was not paid to an administrator or an approved scheme within 30 working days as required.

Reason for Decision

16. 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 Applicant. The Tribunal did not identify any issues to be resolved in this case that would require a hearing to be fixed.
17. 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 Applicants paid the deposit to the Respondent’s letting agent. 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 made requests of the Respondent’s letting

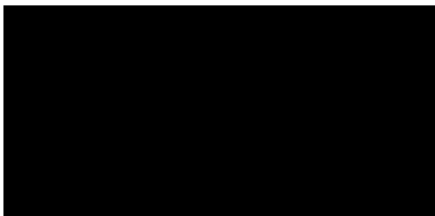
agent for payment. The Respondent relied upon her letting agent to manage the Applicants' deposit and secure it in an approved scheme. When the Respondent was contacted about this in August 2025, she contacted her letting agent and proceeded on the basis that the matter had been resolved. When the Applicants vacated the Property, the Respondent noticed damage which she had to pay for because there was no deposit secured. When the Respondent received intimation of the present application, she submitted a response indicating that she was willing to pay the deposit to the Applicants. She did not know the mechanism for paying, and payment was made on the day of the CMD. There was no material before the Tribunal to indicate that the Respondent had ever breached the 2011 Regulations in the past.

18. The 2011 Regulations exist to protect a tenant's deposit and to provide the benefit of dispute resolution, if required.
19. 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.*"
20. The Tribunal was satisfied that the Respondent failed to comply with her 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 observed that the deposit was not protected for the entirety of the tenancy. The Tribunal also took account of the fact that the Applicants recovered the deposit in full, albeit only on the day of the CMD.
21. 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.
22. 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 or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals.*"
23. In the present case, the Respondent did not secure the Applicants' deposit, and ultimately it was repaid. The Applicants therefore did not suffer a loss. The Respondent relied upon her letting agent managing the Applicants' deposit. The Respondent did not receive the deposit. There is no information about repeated breaches of the 2011 Regulations or fraudulent intent. The Tribunal accepted that the Respondent relied on her letting agent. There was no intention by the Respondent to breach the 2011 Regulations, nor was she reckless in her failure

to observe her responsibilities. The failure by the Respondent to secure the deposit deprived both parties of the adjudication process. The Tribunal viewed the breach of the 2011 Regulations as being at the less serious end of the scale. An appropriate sanction in these circumstances for failure to comply with the duties was to order the Respondent to pay the Applicant £150.

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

29 April 2026

Date