Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations")

Chamber Ref: FTS/HPC/PR/25/4427

Property at Flat 7, 20 Russell Gardens, Edinburgh, EH12 5PP ("the Property")

Parties:

Mr Michael McClafferty, Flat 25, 11 Slateford Gait, Edinburgh, EH11 1GW ("the Applicant")

Mr Samuel Priyadharshan, 1 Brae Park, Edinburgh, EH4 6DJ ("the Respondent")

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of the sum of £800 should be granted in favour of the Applicant.

Background

1. The Applicant seeks a payment order in relation to a failure by the Respondent to lodge a tenancy deposit in an approved scheme. A tenancy agreement and emails from the three approved schemes were lodged with the application.

2. A copy of the application was served on the Respondent, and both parties were notified that a case management discussion ("CMD") would take place on 30 March 2026 at 2pm and that they were required to participate. Prior to the CMD, the Respondent's legal representative lodged written submissions in relation to the application and a related application under Chamber reference CV/25/5168.

3. The CMD took place at on 30 March 2026 at 2pm. The Applicant participated. The Respondent was represented by Ms McKenzie, solicitor. The related application was also discussed.

Summary of discussion at CMD

4. The Legal Member noted that the following facts are not disputed: -

(a) The tenancy started in July 2019 and ended on 31 August 2025.

(b) A deposit of £550 was paid by the Applicant to the Respondent at the start of the tenancy

(c) The deposit was not lodged in an approved scheme.

(d) The deposit was not repaid to the Applicant at the end of the tenancy.

5. Mr McClafferty told the Legal Member that he had not known that the deposit was supposed to be lodged in a scheme. He only discovered this to be the case when he was trying to get his deposit back at the end of the tenancy. He said that the Respondent refused to return the deposit, claiming that he had caused damage, then stopped responding to messages. The issues regarding the deposit did not cause him any particular difficulty, although he thought that it should have been returned. Mr McClafferty said that the property has three bedrooms and the other two rooms were occupied by other tenants. He doesn't believe that the Respondent ever lived there as one of his flatmates had lived in the property since 2016. In response to questions from the Legal Member, he said that he did not believe this breach to be accidental. Rather, it was a deliberate failure to comply. The Respondent also failed to register as a landlord and did not have an HMO license. He also believes that other tenants have also had similar experiences and their deposits withheld.

6. Ms Mckenzie told the Legal Member that the Respondent had been unaware of his obligations under the 2011 Regulations. He has now instructed a letting agent to manage the property, and all current tenancy deposits have been secured. She said that it is her understanding that the Respondent lived in the property when it was first purchased. He moved abroad in 2019, and the property has been let out since that time. His father managed it for him. It is their only rental property. Ms Mckenzie said that the failure to comply with the Regulations was not deliberate. She said that the reference to other tenants' alleged experiences should be disregarded, and that she was not in a position to comment on the matter of landlord registration or HMO licenses. Ms Mckenzie also pointed out that prior to the 2011 Regulations coming into force, and before the introduction of PRTs in 2017, it was usual for landlords to hold the deposit and retain all or part if this was justified. In this case, the decision to retain the deposit was because of damage.

7. Ms McKenzie referred the Legal Member to the documents lodged with her submissions. These include a copy of an email to the Applicant dated 25 February 2026, offering to repay the deposit in full if he would provide his bank details. The offer was conditional upon the application being withdrawn. The Legal Member noted that it was not clear which application had to be withdrawn

or of the offer required both applications to be withdrawn. Ms McKenzie said that she had not appreciated that there were two separate applications at that point. She said that the Respondent was still willing to repay the deposit, on condition that the CV case was withdrawn. She said that the Respondent understood that the PR case is a separate matter and that the Tribunal would make a decision in relation to it, even if the other case is resolved.

8. On 16 April 2026, the Applicant notified the Tribunal that the tenancy deposit had been repaid in full.

Findings in Fact

9. The Applicant is a former tenant of the property.

10. The Respondent is the owner and landlord of the property.

11. The tenancy started on 27 July 2019 and terminated on 31 August 2025.

12. At the start of the tenancy the Applicant paid a deposit of £550.

13. The deposit was not lodged in an approved scheme.

14. The property is the Respondent's only rental property and was managed by his father between 2019 and 2026. A letting agent has now been appointed to manage the property.

15. The Respondent refused to return the tenancy deposit at the end of the tenancy.

16. The tenancy deposit was repaid on or about 16 April 2026.

Reasons for Decision

17. Regulation 3 of the 2011 Regulations states –

(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.

(1A) Paragraph (1) does not apply –

(a) Where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and

(b) The full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord,
Within 30 working days of the beginning of the tenancy.

18. Regulation 9 of the 2011 Regulations states that (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. (2) An application under paragraph (1) must be made no later than 3 months after the tenancy has ended

19. Regulation 10 of the 2011 Regulations stipulates that if the Tribunal is satisfied that the landlord did not comply with a duty in terms of regulation 3, it "(**a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit**.

20. Although there are one or two facts upon which the parties do not agree, the essential facts are not in dispute. The Legal Member is satisfied that a decision can be made on the application without further procedure or a hearing.

21. From the documents lodged with the application, the parties' written submissions, and the information provided by both parties at the CMD, the Legal Member is satisfied that the Applicant paid a deposit of £550 at the start of the tenancy in July 2019, which was not lodged in an approved scheme. The Applicant has therefore established that the Respondent failed to comply with the 2011 Regulations.

22. In terms of Regulation 10, an award **must** be made where there has been a failure by a landlord to comply with the Regulations. In assessing the award, the Legal Member had regard to the following factors: -

(a) The deposit was not secured throughout the tenancy, a period of six years.

(b) The Respondent refused to return the deposit at the end of the tenancy and the Applicant was therefore deprived of access to the adjudication process provided by the approved schemes.

(c) The Respondent's offer to repay the deposit in full was not made until the application had been made, served on the Respondent and legal advice obtained. The Applicant's failure to accept the offer cannot be criticised. It appeared to be conditional on the present application being withdrawn, an unreasonable requirement.

(d) The Respondent is not a commercial landlord. However, he is not without experience as the property has been occupied by tenants for at least 6 years. It appears to be conceded that the Respondent did not lodge any tenancy deposits in an approved scheme until recently when management of the property was taken over by a letting agent. However, there is no evidence that the Respondent was aware of his responsibilities in relation to deposits and chose to disregard them. Ms McKenzie stated that prior to the Regulations coming into force it was usual for deposits to be held by landlords, until the end

of the tenancy. However, this is not a particularly convincing argument since the Respondent did not become a landlord until 2019, so presumably had no experience of the previous regime.

(e) Other than a lack of awareness of the requirements of the Regulations, no other mitigating factors have been put forward. The fact that the Respondent arranged for his father to take charge of the property is not an excuse. As a landlord, he ought to have ensured that that person managing the property was aware of all legal obligations associated with being a landlord. The Applicant stated that the Respondent did not have an HMO license and was not a registered landlord. No evidence was provided of the former. In relation to the latter, it is part of the Tribunal process to check landlord registration when applications are received. The Respondent was a registered landlord at that point, and no evidence was produced that he was not previously registered.

(f) The Applicant did not experience financial hardship as a result of the breach, or the delayed return of the deposit. However, he has experienced inconvenience as he had to make the applications to the Tribunal to secure the return of the deposit and an award for the breach.

(g) The deposit has recently been repaid in full.

23. Both parties raised matters which the Legal Member concluded were not relevant. In the written submissions, the Respondent stated that costs were incurred re-instating the property at the end of the tenancy. The condition of the property is certainly relevant to the return of a tenancy deposit. However, it is not a relevant consideration in a Rule 103 application. An award for breach of the Regulations is intended to be a sanction or penalty rather than compensation for the tenant. The Applicant's submission about the lack of an HMO license, and whether the Respondent had ever lived in the property are not substantiated and appear to have no bearing on the case. The claim that the failure was deliberate is also not substantiated. The Applicant himself was unaware of the legal requirement, and although this does not excuse the Respondent's ignorance, the documents lodged indicate that he Applicant did not raise the issue with the Respondent until after the tenancy ended.

24. In the case of Rollett v Mackie (2019 UT 45), the Upper Tribunal refused the appeal by the Applicant who argued that the maximum penalty ought to have been imposed. Sheriff Ross commented that the "level of penalty requires to reflect the level of culpability" and that "the finding that the breach was not intentional…tends to lessen culpability" (13). He goes on to say, "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."

25. In the present case, most of the aggravating factors listed by Sheriff Ross have not been established. The only one which appears to apply is that deposits paid by other tenants were also retained. However, the Respondent now fully

acknowledges his failure and has taken steps to ensure it does not happen again. In the circumstances, an award at the highest end of the scale is not warranted. However, the breach is not a minor or technical breach, the result of oversight. Having regard to the factors outlined in paragraph 22, the Legal Member is satisfied that an award in the middle of the scale is appropriate and that the penalty should be £800.

Decision

26. The Tribunal determines that an order for payment of the sum of £800 should be made in favour of the Applicant.

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.

Josephine Bonnar, Legal Member **29 April 2026**