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 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations")

Chamber Ref: FTS/HPC/PR/25/5227

Re: Property at Seal View, 8 LennoxPlace, Port Gordon, Buckie, AB56 5RY ("the Property")

Parties:

Mr Bry McCluck, Mrs Melody McCluck, C/O 27 Main Road, Aislaby, Whitby, YO21 1SW ("the Applicant")

Mrs Kathryn O'Reilly, 8 Lennox Place, Port Gordon, Buckie, AB56 5RY ("the Respondent")

Tribunal Members:

Fiona Stephen (Legal 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 One Thousand Eight Hundred and Twelve Pounds and Fifty Pence (£1 812.50) Sterling.

Background

1. By application dated 2 December 2025 the Applicants seek an award under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") in respect of an alleged failure by the Respondent to comply with those regulations.

2. The Application was accepted by the Tribunal on 10 December 2025 and referred for determination by the Tribunal.

3. The Respondent was served with the papers in this case by Sheriff Officers on 17 March 2026 conform to Execution of Service of the same date. The Respondent was therefore aware that a CMD was fixed for 22 April 2026 at 10am by teleconference call and that any written representations ought to be

lodged with the Tribunal by 4 April 2026. No written representations were lodged. The Respondent was aware that the Tribunal might make a decision at the CMD in her absence.

4. The Tribunal had before it:

(i) The Application Form G;
(ii) The Tenancy Agreement between the Applicants and Kathryn and Peter O'Reilly;
(iii) Confirmation from the Scottish Landlord Register that no registration details are available for the property;
(iv) Proof of payment of the deposit and rent by the Applicants;
(v) Confirmation that no deposit was lodged with any of the three deposit protection schemes; and
(vi) Case Papers

5. A Case Management Discussion (CMD) took place on 22 April 2026 by teleconference call. The Applicants attended personally. The Respondent, Mrs O'Reilly was not present. The Tribunal waited a few minutes to give her the opportunity to join the call. She did not. The CMD proceeded.

6. The Tribunal explained the purpose of the CMD and the powers of the Tribunal to determine matters. The Tribunal asked various questions of the Applicants with regard to the application.

7. The Tribunal explained to the Applicants the maximum award which could be made in terms of the 2011 Regulations and the requirement that an award must be made if the Tribunal finds that there has been a breach of the 2011 Regulations.

Discussions at the CMD

8. Mrs McCluck spoke at the CMD for her and her husband. She indicated that the tenancy had commenced on 15th December 2024 and a deposit of £725 had been paid. It was never lodged in an approved tenancy deposit protection scheme.

9. Mrs McCluck explained that in a prior tenancy, the Applicants' landlady had not lodged their deposit and she was anxious that the same situation should not arise in this tenancy. She spoke with Mr and Mrs O'Reilly about this and provided them with copies of correspondence between the Applicants and the previous landlady. Mrs McCluck had no doubt that the Landlords knew of their obligations concerning a deposit.

10. The Legal Member asked Mrs McCluck if she could explain why the tenancy agreement produced had not been signed. She said it had been signed around the day they moved in. She had taken a photo of it but no longer had it. The Legal Member noted that the tenancy agreement clearly set out the

terms of the tenancy including the requirement of the Applicants to pay a deposit of £725.00 (clause 13) and that the Landlord would lodge that in accordance with the 2011 Regulations and provide a receipt to the Applicants (clause 14).

11. Mrs McCluck explained that there were some delays getting moved in and realised some time later that she had not received any information about the deposit. She did not broach this with Mrs O'Reilly as she had her own health issues to deal with.

12. Some time later, the Applicants decided that they did not want to live in the property any longer. This was due to a number of factors, including noise disruption and the general behaviour of Mrs O'Reilly towards them. They found her hostile and felt that living in the property was detrimental to their health. Mrs McCluck explained that she has a number of serious health conditions.

13. On 15 August 2026, the Applicants gave the Respondent notice that they would leave the property on 14 September 2025. After discussion with the Respondent, it was agreed that the Applicants could leave a few days later on 20 September 2025. That was the date they left the property. Before leaving, the Applicants checked with the deposit schemes and noted that no deposit had been lodged. They suggested to the Respondent that the deposit of £725.00 should be used to pay the last month's rent. The Applicants were fearful that had they raised the issue of the deposit not being lodged at that point, the Respondent may not have agreed and there would have been issues getting that back. Mrs McCluck described the Respondent as being quite hostile at that point. The Applicants concerns appear justified from the content of the email sent to them by the Respondent on 21 September 2025 (which was in the case papers) in which complaints are made about the condition the Applicants left the property in.

14. The Applicants advised that the Respondent had other tenants moving into the property after they vacated. This appears to be confirmed by the Respondent's email dated 21 September 2025 in which reference is made to "our new tenants".

15. The Applicants have noted that the Respondent is not a registered Landlord and that is confirmed by the search in the Scottish Landlord Register. That remains the position today.

16. The Applicants have invited the Tribunal to make an award in respect of the failure to lodge the deposit at the maximum allowable level. The deposit was unprotected for the entire terms of the tenancy (9 months). In light of the experience they had with their previous tenancy this has caused a lot of distress and upset.

Findings in Fact

17. The parties entered into a private residential tenancy agreement in respect of the Property that commenced on 15 December 2024 and ended on 20 September 2025.

18. The monthly rent payable in the tenancy was £725.00.

19. Clause 13 of the tenancy agreement provided that a security deposit of £725.00 was payable by the Applicants. Clause 14 provided that the Respondent would lodge this with a tenancy deposit scheme within 30 days of the start of the tenancy in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

20. A tenancy deposit of £725.00 was paid to the Respondent by the Applicants at commencement of the tenancy.

21. The deposit was not lodged with an approved tenancy deposit scheme throughout the duration of the tenancy.

22. The Respondent agreed that the last month's rent for the property would be met from the deposit payment.

23. The Applicants had discussed the importance of lodging the tenancy deposit in an appropriate scheme with the Respondent prior to commencement of the tenancy due to a problem with a previous landlady at another property who had failed to lodge their deposit in an appropriate scheme.

24. The Applicants were distressed to find out that the Respondent had not lodged the deposit in an approved scheme.

25. The Respondent appears not to be a registered Landlord in respect of the Property. No registration details were available for the property on the Scottish Landlord Register when this Application was lodged nor on the date of the CMD.

Reasons for Decision

26. This application relates to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy.

27. 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.

28. 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 3 months after the tenancy has ended.*

29. 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][1] —*
> *(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit*;

30. It is clear that in this case the Respondent has failed to place the deposit in an appropriate scheme and has breached Regulation 3 of the 2011 Regulations. The duties are two-fold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with specified information regarding the tenancy deposit. The Respondent failed in both duties.

31. The present application has been made timeously in terms of Regulation 9. The Tribunal is required to make an order for payment in terms of Regulation 10. The only matter to be determined by the Tribunal is the amount of the payment.

32. The legal test to be applied in determining an appropriate level of sanction is set out in *Jenson v Fappiano 2015 GWD 04-89* and subsequent case law. Those authorities are reviewed by Sheriff Cruickshank in *Ahmed v Russell 2023 SLT (Tr 33).* He indicates at para [38] that *"Previous cases have referenced various mitigating or aggravating factors which may be considered relevant. It would be impossible to ascribe an exhaustive list. Cases are fact specific and must be determined on such factors as may be present.*" At para [39] he states that *"The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose is not to compensate the tenant"*. The amount awarded should represent a "fair and

proportionate sanction when all relevant factors have been appropriately balanced." para [44].

33. The Tribunal also had regard to the decision of the Upper Tribunal in *Rollett v Mackie [2019] UT 45* (also cited as UTS/AP/19/0020) in which Sheriff Ross states at para [13] *"In assessing the level of a penalty charge, the question is one of culpability and the level of culpability requires to reflect that culpability… The finding that a breach was not intentional is..rational on the facts and tends to lessen culpability"* At paragraph [14], he goes on "*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*".

34. In reaching a determination, the Tribunal took into account that the Respondent is in clear breach of the 2011 Regulations. She did not attend the CMD and failed to provide any representations setting out any mitigation of her failure to lodge the deposit or provide information on the deposit in accordance with the 2011 Regulations.

35. The Tribunal took into account that the deposit was a reasonably significant sum (£725) and that it had been left unprotected for the entire duration of the tenancy (9 months). The Tribunal gave weight to the fact that the Respondent was well aware of the obligations contained in the 2011 Regulations, as is evidenced by the tenancy agreement itself, coupled with the fact that the Applicants had made the Respondent aware of their concern that any deposit ought to be protected given the experience they had with a previous landlady. The Tribunal also took into account that the Respondent appears to have let out this property without being a registered landlord in terms of Part 8 of the Antisocial Behaviour etc (Scotland) Act 2004 which demonstrates further disregard of her legal responsibilities. The only point in favour of the Respondent (and it is not a significant one) is that she permitted the Applicants to use the deposit sum in place of the last month's rent although that was at the Applicants' suggestion, not the Respondent's.

Decision

36. Having regard to all the facts and circumstances, the Tribunal determined that there had been a breach of Regulation 3 which was significant in nature and which merited a penalty towards the higher end of the available range. The Tribunal determined that an award of 2.5 times the deposit (£725) 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.

Fiona Stephen	**22 April 2026**
Legal Member/Chair	**Date**