



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 (the 2011 Regulations)

Chamber Ref: FTS/HPC/PR/25/5129

Re: Property at East Hattrick Cottage, Craigbet Road, Bridge of Weir, PA11 3SF (“the Property”)

Parties:

Mr James O'Neill, 54 Alexander Fleming Avenue, Kilbirnie, KA25 6HD (“the Applicant”)

Mr Robert Crawford Baxter, Gibblaston Farm, Bridge of Weir, PA11 3SJ (“the Respondent”)

Tribunal Members:

Hilary Macandrew (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment is made in favour of the Applicant due by the Respondent in the sum of £725 (SEVEN HUNDRED AND TWENTY FIVE POUNDS ONLY).

Background

1. The Applicant made an application in Form G (“application”) dated and lodged on 26 November 2025 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“2011 Regulations”).
2. The documents produced to the Tribunal by the Applicant were:
 - Copy Tenancy Agreement

- Copy letter from Safe Deposits Scotland to the landlord dated 6 January 2020 acknowledging receipt of the deposit.
 - E Mail correspondence between the Applicant and the Respondent and the Applicant and Eleanor O'Neill
3. The timeous application was accepted by the Tribunal on 8 December 2025.
 4. The application and relevant paperwork were served on the Respondent by sheriff officers on 28 April 2026.
 5. Following service, the Respondent lodged written representations on 15 May 2026 which included a statement by the Respondent, an email resolution proposal and confirmation from the Respondent that Joe McKenzie from Hames-Estates could represent the Respondent at the First-tier Tribunal.

Case Management Discussion

6. A Case Management Discussion (“CMD”) took place by teleconference on 3 June 2026. The date and time of the hearing together with the dial in details were intimated to both parties on 28 April 2026. The Applicant attended as did the Respondent and the Respondent’s representative Joe McKenzie.
7. There was no dispute that the deposit had been lodged out with the prescribed 30 day period.
8. The Respondent explained that the failure to lodge the deposit came about due to an oversight. The Respondent and his wife had been going through a divorce which had taken five years to resolve. The divorce settlement negotiations continued throughout this period and were taking place around the time of the lease and around the time the deposit ought to have been lodged. The Respondent stated that his wife had normally dealt with the deposits for his properties and due to the breakdown of the relationship this had not been prioritised.
9. The Respondent acknowledged that the deposit ought to have been submitted within 30 days of the commencement of the tenancy and was not lodged until 8 January 2020.

Findings in Fact

10. The parties entered into a Private Residential Tenancy (“PRT”) in respect of the property which commenced on 1 April 2018. It ended around 4th October 2025.
11. A tenancy deposit of £725 was paid to the Respondent by the Applicant on 19th March 2018.

12. The deposit was not lodged with an approved tenancy deposit scheme within 30 days of the commencement of the tenancy.
13. The deposit was lodged with an approved tenancy deposit scheme on 3 January 2020.
14. The Respondent has breached Regulation 3 by failing to pay the deposit into an approved tenancy deposit scheme timeously.

Reasons for Decision

15. There is no defence raised to the application.
16. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. In light of the submissions by the parties, the Tribunal was satisfied both that the necessary level of evidence had been provided through the application, further papers, and orally at the CMD and that it was appropriate to make a decision under regulation 10 of the 2011 Regulations at the CMD.
17. There was little dispute between the parties on the material points. The Tribunal was satisfied that the evidence provided by both parties was credible and reliable on the material issues of the application. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. In this case the Respondent did not lodge the deposit with an approved scheme or provide the prescribed information within the 30 working day period.
18. The Tribunal had regard to Upper Tribunal authorities in similar cases, in particular *Rollett v Mackie* [2019] UT 45 and *Ahmed v Russell* [2023] UT 7.

In *Rollett*, above, Sheriff Ross said [at para 9] that:

'Each case has to be examined on its own facts, upon which a discretionary decision requires to be made by the FtT. Assessment of what amounts to a "serious" breach will vary from case to case – it is the factual matrix, not the Page 5 or 6 description, which is relevant. Comparison with other cases is therefore of minimal assistance in the present case. The general principles of the law apply and these include that for a discretionary decision to be overturned it must be one which no reasonable tribunal could make.'

19. And further [at para 13]:

'In assessing the level of a penalty charge, the question is one of culpability and the level of penalty requires to reflect the level of culpability. Examining of the FtT's discussion of the facts, the first two features (purpose of Regulations;

deprivation of protection) are present in every such case. The question is one of degree and these two points cannot help on that question. The admission of failure tends to lessen fault; a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the fact and tends to lessen culpability.'

20. In *Ahmed*, above, Sheriff Cruickshank outlined the purpose and policy objectives of the Regulations [at para 19] and referred to Sheriff Ross's '*helpful summary Rollett*, above [at para 29], stating:

'Furthermore, in Rollett, Sheriff Ross considered that in assessing the level of sanction the question was one of culpability. When it came to the level of sanction the question was one of degree and provided examples of the factors which could lessen or increase the level of culpability' [at para 30].

21. In the present case, the Tribunal took the approach of establishing the facts and then considering any aggravating and mitigating factors to determine culpability of the Respondent and decide on the appropriate level of sanction.
22. The Tribunal considers the fact that the Respondent stated orally at the CMD that he had been going through divorce negotiations for a period of around five years whilst the tenancy was created and the deposit paid. The Tribunal considered that the Respondent had entrusted the management of the tenancies to his former wife and that there was a delay in his receipt of the tenancy documentation. The Tribunal considered the fact that the Respondent instructed a letting agent to manage the administration of the tenancy in November 2019 and that on 3rd January 2020 the deposit was lodged
23. The Tribunal considers this to be a mitigating factor. Whilst the Respondent had an obligation to lodge the deposit within 30 days and whilst the Respondent is a landlord in respect of other properties, the Tribunal accepted that he was undergoing matrimonial difficulties and involved in separation negotiations at the relevant time.
24. Whilst the Tribunal accepts that there were issues between the Applicant and the Respondent in relation to ancillary matters concerning the tenancy such as liability for an oil account and a dispute in relation to payment being received by the Applicant in respect of the purchase by a subsequent tenant of a shed, nonetheless these attracted little weight in relation to the overall admission by the Respondent that the deposit had not been paid.
25. The amount to be awarded is a matter for the discretion of the Tribunal having regard to the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the

FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.

[14] Cases at the most serious end of the case 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. None of these aggravating factors is present."

26. Applying Sheriff Ross's reasoning in *Rollett* to the current case, the purposes of the 2011 Regulations are to ensure that a tenant's deposit is insulated from the risk of insolvency of the landlord or letting agent, and to provide a clear adjudication process for disputes at the end. The Tribunal is satisfied that this case falls in the lower range of the scale of seriousness of breaches, and is awarding one times the deposit amount, under regulation 10 of the 2011 Regulations. This coincides with the offer of settlement made by the Respondent however the decision is based on the evidence before it. The Tribunal accordingly decided to make an order for payment by the Respondent to the Applicant of the sum of £725. That sum was considered by the Tribunal to be reasonable in all 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.

Legal Member of the Panel

Hilary Macandrew

Date: 10 June 2026