

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/26/0133

Property at 27 Spencer Court, 36 Froghall Terrace, Aberdeen, AB24 3PF (“the Property”)

Parties:

Mr Joao Francisico Ferreira Lourenco, 485 A George Street, Aberdeen, AB25 3YB (“the Applicant”)

Mr Fraser Mitchell, 41 Polo Park, Stoneywood, Aberdeen, AB21 9JW (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £600 should be granted in favour of the Applicant.

Background

1. The Applicant seeks a payment order in relation to a tenancy deposit which was not lodged in an approved scheme by the Respondent. The Applicant stated that he was not given a tenancy agreement but had paid a deposit of £415 at the start of the tenancy on 9 November 2025.
2. A copy of the application was served on the Respondent, and the parties were notified that a case management discussion would take place on 2 July 2026 at 10am.
3. Prior to the CMD, the Respondent submitted an application for a time to pay direction (TTPA) in terms of Section 1 of the Debtors (Scotland) Act 1987 in

relation to a related case which was also due to be discussed at the CMD. He admitted the debt and offered to pay the sum claimed in a lump sum within one month of the date that the order is issued. He did not provide any information about his income, outgoings or assets and liabilities. He did not provide any submissions in relation to this application.

4. The CMD took place on 2 July 2026. The Applicant participated. The Respondent did not participate and was not represented. The related application under case reference CV/26/0129 was also discussed.

Summary of discussion at CMD

5. The Applicant told the Legal Member that he had found the property for rent on SpareRoom.Com. It is a two bedroom flat and there was another tenant living at the property with him. He only stayed until the end of December 2025 because there were issues with the other tenant and the condition of the property. He contacted the Respondent about the return of the deposit at the end of the tenancy, but he refused to return it. In response to further questions, the Applicant confirmed that the Respondent is of retirement age. He told the Applicant that he had been a plumbing engineer. He made reference to owning other rental properties. He did not provide the Applicant with a tenancy agreement. The failure to return the deposit had been stressful and the Applicant had incurred overdraft charges. The Applicant said that he regretted how things ended with the Respondent as they had initially got on well. The Applicant had recently lost a family member to cancer, and the Respondent told him that he had been treated for cancer. The Applicant invited the Tribunal to make an award in the middle range of the scale. He said that a penalty should be imposed but did not seek the maximum award.

Findings in Fact

6. The Applicant is the former tenant of the property.
7. The Respondent is the owner and landlord of the property.
8. The tenancy started on 9 November 2025 and ended on 31 December 2025.
9. At the start of the tenancy the Applicant paid a deposit of £415.
10. The deposit was not lodged in an approved scheme.
11. At the end of the tenancy the Applicant requested the return of the deposit. The Respondent refused to return the deposit to the Applicant.

Reasons for Decision

12. 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.

13. 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

14. 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.**”

15. The Respondent did not participate in the CMD and did not lodge written submissions. However, he lodged a TTPA in connection with the related application. In this application he admitted the debt. The Legal Member therefore concludes that the Respondent does not dispute that the deposit of £415 was paid or that it is still in his possession. An admission that he did not lodge the deposit in an approved scheme can be inferred.

16. 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) Based on the information provided by the Applicant, the Respondent is an experienced landlord. He told the Applicant that he had other rental properties. His failure to provide the Applicant with a written tenancy agreement, as well as his failure to lodge the deposit, suggests a somewhat casual attitude towards his landlord obligations.
- (b) The failure to lodge the deposit has caused financial loss and inconvenience to the Applicant. The tenancy ended over 6 months ago and the deposit has not been returned, although a time to pay application has been made in connection with the related case. Had the deposit been lodged, an adjudication could have taken place shortly after the end of the tenancy.

(c) The Respondent has provided no mitigating information about the reasons for the breach. However, the Applicant told the Legal Member that the Respondent said he had received treatment for cancer so it would appear that there have been health issues. The Applicant also told the Legal Member that he regretted how things had turned out and that he had been forced to make an application to the Tribunal. He invited the Tribunal to impose a penalty in the middle of the scale and not the higher end.

17. 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.”

18. In the present case, the only one of the aggravating factors listed by Sheriff Ross which applies is the fact that the Applicant has suffered a financial loss. Although an offer to make payment has been made, the funds have not been received and there is no guarantee of recovery. There is no evidence that the failure was deliberate. Having regard to the factors outlined in paragraph 16, the Legal Member is therefore satisfied that an award in the middle of scale is appropriate. The Tribunal awards £ 600.

Decision

19. The Tribunal determines that an order for payment of the sum of £600 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.

