

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“The Regulations”)

Chamber Ref: FTS/HPC/PR/26/1366

Re: Property at 346 King Street, Aberdeen, AB24 5BJ (“the Property”)

Parties:

Mr Jamie Ferguson, 102 HeathryFold Circle, Aberdeen (“the Applicant”)

Ms Kerry Stewart, 19 St. Johns Walk, Newtonhill, Aberdeenshire, AB39 3WY (“the Respondent”)

Tribunal Members:

Robert MacDonald (Legal Member)

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for payment of the Sum of One thousand five hundred pounds (£1500) Sterling to the Applicant.

Background

1. By application dated 25th March 2026 the Applicant sought an order for payment in respect of the failure of the Respondent to comply with Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“The 2011 Regulations”). The Applicant complained that the Respondent had failed to lodge his deposit of £750 in respect of a Private Residential Tenancy (“the tenancy”) with an Approved Tenancy Deposit Scheme provider.
2. The application was accepted by the Tribunal on 28th April 2026. A Case Management Discussion was assigned for 7th August 2026 by teleconference. A copy of the application was served on the Respondent by Sheriff Officer depositing it at her place of residence on 6th July 2026. The Respondent was

invited to lodge written submissions with the Tribunal by the 24th July 2026. No submissions were received by the Tribunal.

Case Management Discussion

3. A Case Management Discussion was held by teleconference at 2pm on the 7th August 2026. The Applicant's representative Mr Derek Imray was present to represent his interests. There was no appearance on or behalf of the Respondent. The Tribunal delayed starting for a few minutes to give the Respondent an opportunity to appear. Mr Imray asked that the Case Management Discussion should proceed in the absence of the Respondent. As there had been no prior submission made by the Respondent and the Tribunal was satisfied that she had been given due notice of the Case Management Discussion, the Tribunal was satisfied that the Case Management Discussion should proceed in her absence.

The Applicants Submission

4. Mr Imray confirmed to the Tribunal that the Applicant had paid a deposit of £750 to the Respondent at the start of the tenancy. The duration of the tenancy was relatively short, the start date being the 20th of July 2024 and the end date being the 19th of February 2026. The Applicant had given notice to bring the tenancy to an end because the rent had become unaffordable. When the Applicant had sought return of his deposit it had become apparent that the Respondent had not placed it on with a recognised tenancy deposit scheme provider.
5. In support of the Applicants claim Mr Imray referred the tribunal to the inquiries that had been made with My Deposit Scotland, Safe Deposit Scotland, and Letting Protection Service Scotland, none of which had any record of a deposit being protected in relation to this tenancy. He had lodged vouching of these inquiries with the Tribunal. Mr Imray further referred the Tribunal to a text message lodged with the Tribunal from the Respondent to the Applicant after the tenancy had ended. The text message made reference to repairs for which the Respondent said the Applicant was liable. The Applicant denied any liability for these repairs. The Respondent stated in the text message : -

"The deposit of £750 will be used towards these repairs".

The tenancy deposit as at the date of the Case Management Discussion remained with the Respondent.

6. The Tribunal advised Mr Imray that it would take some time to consider the documentation lodged in support of the application and the submission made

at the Case Management Discussion and would issue its decision in due course.

Findings in Fact and Law

7. The parties entered into a Private Residential Tenancy agreement which commenced on 24th July 2024.
8. The Applicant paid a deposit of £750 to the Respondent at the commencement of the tenancy.
9. The Respondent failed to lodge the deposit of £750 with an approved tenancy deposit scheme as she was obliged to do under Regulation 3 of the 2011 Regulations.
10. The tenancy ended on the 19th of February 2026.
11. The Respondent has failed to return the tenancy deposit to the Applicant.
12. The Respondent was in breach of her duties under Regulation 3 of the 2011 Regulations which provide

3 (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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

20. As a result of Respondent’s failure, the Applicant has been deprived of his right to seek an adjudication from a tenancy deposit scheme provider in relation to the repair issues raised by the Respondent.

21. The Tribunal must grant an order in terms of Regulation 10 which provides

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—(i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42.

Reasons for Decision

21. Rule 17 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 allows the Tribunal to do anything at a Case Management Discussion which it may do at a hearing including making a decision. The Tribunal was satisfied that there was sufficient information available to it to make a decision at a Case Management Discussion.

22. The Tribunal was satisfied that the Respondent had failed to comply with the duties set out in Regulation 3. The deposit had not been placed with a scheme administrator of an approved scheme at any time during the tenancy.

23. The Tribunal determined that the Respondents failure to lodge the deposit with an approved Tenancy Deposit Scheme was serious. She had not engaged with the Tribunal. She had not made any written submission setting out her position, nor had she attended the Case Management Discussion.

24. The Tribunal noted that that tenancy deposit was unprotected throughout the period of the tenancy and that the Respondent had failed to repay it to the applicant.

25. The 2011 Regulations had been in place for more than ten years prior to the commencement of this tenancy agreement. The onus lay with the Respondent as a landlord to familiarise herself with the legal requirements imposed on

landlords in terms of the Regulations. The purpose of the Regulations is to protect tenants deposits and to avoid tenants being disadvantaged when tenancies come to an end, as there is an independent adjudication process to resolve any disputes between landlords and tenants which is carried out by the approved deposit scheme.

26. In terms of Regulation 10 if it is satisfied that the landlord did not comply with their obligations under Regulation 3 the Tribunal is required to make a payment order of up to 3 times the deposit. In this case the maximum penalty the Tribunal could impose is £2250.
27. Having considered all the facts and circumstances of this particular case, the Tribunal took the view that the Respondent's failure was serious and prolonged. Nothing was put forward in mitigation. The purpose behind the Regulations had been circumvented by the failure to place the deposit on with an approved deposit scheme provider.
28. The Tribunal decided that a fair, reasonable and proportionate sum that the Respondent should be ordered to pay to the Applicant would be one thousand five hundred pounds (£1500).

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.

Robert MacDonald

Robert MacDonald

07.08.2026

Legal Member/Chair

Date