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

Chamber Ref: FTS/HPC/PR/26/1509

Re: Property at 3A Seaton Avenue, Aberdeen, Scotland, AB24 1XB ("the Property")

Parties:

Miss Carol-ann Gillespie, 3A Seaton Avenue, Aberdeen, Scotland, AB24 1XB ("the Applicant")

Mr Ernie Booth, 87 Hutcheon Low Drive, Aberdeen, AB21 9WJ ("the Respondent")

Tribunal Members:

Julie McKinlay (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 ONE THOUSAND POUNDS (£1000) STERLING should be made in favour of the Applicant.

Background

1. The Applicant seeks an order in terms of Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations ("the 2011 Regulations") in respect of an alleged failure on the part of the Respondent to comply with these Regulations.

2. The application was accepted by the Tribunal on 24 April 2026.

3. A Case Management Discussion ('CMD") took place at 10am on 5 August 2026 by teleconference. The Applicant and the Respondent attended the CMD.

Summary of the discussion at CMD

4. The Respondent conceded that the deposit had not been paid into an approved scheme. The deposit of £600 had been paid over a period of eight months or so in small amounts. The Respondent explained to the Tribunal that he had genuinely been unaware of the need to pay the deposit into a scheme and that the lease had been entered into during Covid. As at the date of the CMD the Respondent had not paid the deposit into a relevant scheme. He did not do so as he is looking to recover possession of the Property. The Respondent advised the Tribunal that he held the deposit in a bank account.

5. The lease had been entered into in February 2021. The Property is the only leased property owned by the Respondent. The Property was not purchased for the purpose of renting it out. He had lived in the Property as his home for 40 years. In 2021 he moved and decided to rent the Property to the Applicant. The Applicant is the first and only tenant of the Property. The Respondent did not use a letting agent and obtained a draft lease from the internet. When asked if he was aware of the provisions of the lease in respect of the deposit, he said he was not.

6. The Applicant is still in occupation of the Property. The Respondent has served two notices to leave but has not yet brought an application for eviction before the Tribunal.

7. The Applicant confirmed that the deposit had been paid in instalments of £50 per month for a period of 12 months with the last instalment being paid in December 2021 or January 2022. The Applicant also confirmed that she had received two notices to leave, one by registered post at the beginning of April 2026.

8. When the Applicant became aware that the deposit had not been paid into a scheme, she contacted the Respondent by text message to advise him, before making the application to the Tribunal. The Respondent advised the Tribunal that this was when he first became aware that the deposit ought to have been deposited in a scheme. By that stage he was seeking possession of the Property in order to sell it as it is subject to a mortgage. The Respondent advised the Tribunal that the mortgage was such that there will be no profit made on the sale of the Property.

Findings in Fact

9. The Applicant is the tenant of the Property.

10. The Respondent is the landlord of the Property.

11. The tenancy started on 1 February 2021.

12. Over a period of approximately 12 months the Applicant paid the deposit of £600 in instalments.

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

14. The Property is the only let property of the Respondent and was previously his principal home.

15. The Applicant is the first tenant to occupy the Property.

16. The deposit is not as at the date of the CMD lodged in an approved scheme.

The Relevant Regulations

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) (Scotland0 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:

    "(1) 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) <u>must</u>**

order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit".

Reasons for Decision

20. From the documents lodged with the application, the Respondent's written response and the information provided by both parties at the CMD, the Tribunal is satisfied that the Applicant paid a deposit of £600 by instalments in the first year of the lease (2021). That deposit was not lodged in an approved scheme. The Applicant has therefore established (and the Respondent accepts) that the Respondent failed to comply with the 2011 Regulations.

21. In terms of Regulation 10 an award <u>**must**</u> be made where there has been a failure by the landlord to comply with the Regulations.

22. Accordingly in this case the Tribunal is required to make an order for payment. The only matter then to be determined by the Tribunal is the amount of any such payment.

23. In this case the Tribunal carefully considered all the evidence presented. In assessing the award, the Tribunal had regard to the following factors:

    a) There was clear evidence that the Respondent failed to pay the tenancy deposit into an appropriate scheme from the point at which he was in receipt of the entire sum at the end of 2021.
    b) The Respondent accepts that he did not do so and has not done so from the point at which he was alerted of the requirement to do so by the Applicant in early 2026. The Respondent has accordingly failed to rectify the situation after having become aware of the issue.
    c) The Respondent maintains that he has the deposit in a bank account. Whether or not that is so, as matters stand at the CMD the purpose of the 2011 Regulations has been defeated.
    d) The Respondent is an inexperienced landlord. The Applicant is the first and only tenant for the Property which had previously been the Respondent's home.
    e) The Respondent's position is that he was unaware of the requirement under the Regulations. He did not engage the services of a letting agent or seek any advice on the requirements of being a landlord.
    f) The requirements as regards the deposit were set out in the lease which the Respondent invited the Applicant to sign but took no cognisance of its terms, at least as regards the deposit.

24. The Regulations were introduced to safeguard deposits paid by tenants. They were introduced against a background of landlords abusing their position as the holder of deposit moneys. Parliament decided that it should be compulsory to out the deposit outwith the reach of both the landlord and the tenant to ensure that there was a dispute resolution process accessible to both landlord and tenant at the end of the tenancy and which placed them on an equal footing. The Regulations make it clear that the orders to be made by Tribunals for failure to comply with the Regulations are a sanction or penalty.

25. The Tribunal notes that in the Upper Tribunal case of Ahmed v Russell (2023 SLT (Tr) 33) Sheriff Cruikshank 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 relevant factors as may be present*". The amount awarded should represent *"a fair and proportionate sanction when all relevant factors have been appropriately balanced*".

26. The sanction to be imposed is intended to mark the gravity of the breach which has occurred. It should reflect the level of overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations. The Tribunal is required to determine a fair and proportionate sanction based on the facts.

27. Having considered the information provided by the parties and taking into account the guidance from the Upper Tribunal, the Tribunal has decided that the appropriate award should be £1000.

28. The maximum amount which the Tribunal can award in terms of Regulation 10 is three times the amount of the deposit, namely £1800. In considering the level of culpability, the Tribunal do not consider that there was anything wilful in the conduct of the Respondent in failing to comply with the 2011 Regulations. Only one tenant has experienced a breach of the 2011 Regulations by this Respondent. The Respondent is not a commercial landlord and entered into a lease in respect of the Property which had been his principal home for 40 years. These may be considered to be mitigating factors. On that basis the Tribunal has decided not to award the maximum amount.

29. Nevertheless, there has been a clear breach of the 2011 Regulations. The Tribunal accept that the Respondent may have been unaware of the 2011 Regulations. However, the Respondent made no effort to take advice on what was required before embarking on his role as landlord. The deposit has remained unprotected since 2021. Since becoming aware of the 2011 Regulations the Respondent has taken no steps to rectify the situation. Breach of the 2011 Regulations is a serious matter and given the length of time involved and that the situation is ongoing, the Tribunal is satisfied that the penalty ought to be significant. An award of £1000 is made.

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.

Julie McKinlay

06 August 2026

Legal Member/Chair **Date**