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/26/1576

Re: Property at 1 North Glastullich Farm Cottages, Scotsburn Road, Tain, IV19 1PU ("the Property")

Parties:

Mr Jonathan Bennett, 1 North Glastullich Farm Cottages, Scotsburn Road, Tain, IV19 1PU ("the Applicant")

Mrs Lesley Hooper, Paul Hooper, North Glastullich Farm House, Scotsburn Road, Tain, IV19 1PU ("the Respondent")

Tribunal Members:

Evan Crainie (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondents failed to comply with the duties under Regulation 3 of the Regulations and ordered the Respondents to pay the sum of £900 to the Applicant.

The Tribunal also makes an order in terms of Regulation 10(b)(i) of the Regulations, requiring the Respondents to pay the Applicants' tenancy deposit into an approved scheme within 30 days of the date this decision is sent to the parties.

Background

1. An application was received from the Applicant on 10 April 2026 seeking orders under Rule 103 of Schedule 1 to the First-Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the Rules"). The Applicant sought an order for payment in respect of the Respondents' alleged failure to lodge the tenancy deposit paid by the Applicant with an approved tenancy deposit scheme within 30 working days of the beginning of

their tenancy, as required by Regulation 3 of the Regulations. The Applicant also sought an order requiring the Respondents to pay the Applicant's tenancy deposit into an approved scheme.

2. Attached to the application form were:

    a. Copy short assured tenancy agreement between the parties, which commenced on 1 June 2012.
    b. Copy emails from all three approved tenancy deposit schemes dated in April 2026, confirming that they did not hold the Applicants' deposit.
    c. Copy letter exchange between the Applicant and Respondents dated March 2026 regarding the tenancy deposit.

3. The application was accepted on 14 April 2026. Notice of the Case Management Discussion ("CMD") scheduled for 7 September 2026, together with the application papers and guidance notes, were served on the Respondents by sheriff officers on behalf of the Tribunal on 30 July 2026.

4. The Respondent was invited to make written representations in response to the application by 19 August 2026. No further written representations were received from either party prior to the CMD.

The CMD

5. The Application called for a CMD by teleconference on 7 September 2026. The Applicant was present and supported by his wife Mrs Laura Bennett. The Respondents were both present, with the second named Respondent, Paul Hooper speaking on behalf of the Respondents.

6. The Tribunal asked various questions of the Applicant and the Respondents with regard to the application.

7. The Applicant confirmed that the tenancy was still in existence, and he wished to continue to seek the orders sought in his Form G. The Applicant had paid a deposit of £450 to the Respondents in April 2012. Despite the Applicant previously asking for the deposit to be paid into a deposit scheme, the Respondents had not done so and the deposit remains unprotected. The deposit has remained unprotected for 14 years.

8. The Respondents accepted that the deposit had not been paid into an approved tenancy deposit scheme at the start of the tenancy in June 2012. The deposit had instead been paid into a bank account nominated by the Respondents, in line with the wording of the deposit clause in the tenancy agreement. They also accepted that the deposit remained unprotected and had never been paid into an approved scheme. The Respondents confirmed that they still had access to the deposit.

9. The Respondents were not aware at the time that the tenancy deposit scheme was in place. The Tribunal explained that because the deposit was paid after the Regulations were in force but before the first day on which the approved schemes became operational, Regulation 48 of the Regulations was applicable. This meant that the Respondent had until 30 working days after the expiry of the period of three months from the date that an approved scheme became operational. The schemes became operational on 2 July 2012, and accordingly the deposit required to be paid to an approved scheme administrator by 13 November 2012.

10. The Respondent confirmed that they became aware of the requirements of the Regulations at the time of placing a deposit for the other property they let out into an approved scheme. In respect of the Property that is the subject of this application, the Respondents believed that they have complied with the requirements of the tenancy agreement.

11. The Respondent lets out 2 properties, the one subject to this application and another. Solicitors were used to draw up the tenancy agreements but beyond this the Respondents manage all aspects of the tenancy agreements i.e. rent payments, deposit payments etc.

12. When parties were asked as to their views on the appropriate amount of sanction, should the Tribunal find a breach, the Applicant stated that he believed the maximum amount should apply as he had asked for the deposit to be placed in an approved scheme and because the deposit had remained unprotected for the duration of the tenancy (14 years). The Respondents stated that they believed it to be entirely fair for there to be sanction if they had breached the Regulations. The Respondents suggested sanction should be determined by adding on the interest that would have been gained from the tenancy deposit scheme, had the tenancy deposit been placed in the approved scheme at the appropriate time.

13. Having explored all the issues and heard the parties' submissions in detail, the Tribunal asked for views on whether an evidential hearing was required. The parties both agreed that no evidential hearing was required and they were content with the Tribunal determining the application on the basis of the documents, written and oral submissions. Rule 17 of the Rules provides that the Tribunal may do anything at a CMD which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.

14. The Tribunal explained that given the Respondents' admission that the deposit had not been placed in an approved scheme, along with the submissions and documents from the Applicant, the Tribunal was satisfied that the Respondents did not comply with their duties under Regulation 3 of the Regulations. Therefore, the Tribunal explained in those circumstances, Regulation 10(a) of the Regulations states that the Tribunal, *"…**must** order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit…*" Having explained that an award must be made, the Tribunal concluded the CMD to allow it to consider the appropriate sanction, taking into account any aggravating or mitigating factors. The Tribunal explained that it's decision and order would follow in writing.

Findings in Fact & Law

15. The parties entered into a short assured tenancy in respect of the Property with effect from 1 June 2012 and this continues by way of tacit relocation on a month-to-month basis. The tenancy remains in existence.

16. The tenancy is a relevant tenancy in terms of the Regulations.

17. The Applicant paid a deposit to the Respondents of £450 on 24 April 2012.

18. The approved schemes were not operational at the time that the tenancy commenced but the Regulations were in force.

19. Regulation 48 applied to this tenancy. The deposit was paid after the Regulations came into force but prior to any approved scheme coming into operation. The approved schemes became operational on 2 July 2012. As such, the Respondent's duty under Regulation 3 did not come into effect until 13 November 2012. By that date, on the Respondents' own admission, the Respondents had not complied with the requirements of Regulation 3.

20. The Respondents retained, and continue to retain, the deposit in a separate bank account and have not paid the deposit into an approved scheme.

21. The Respondents have two rental properties. The other property rented out had a tenancy commencing later than that of the Applicant. The tenancy deposit in respect of this later tenancy was lodged with an approved tenancy deposit scheme.

22. The Respondents had knowledge of the duties required in the Regulations.

23. The Applicant contacted the Respondents notifying them that the Applicants' tenancy deposit had not been paid into a scheme.

24. The Respondents did not pay the Applicants' tenancy deposit into an approved scheme after receiving this notification.

The relevant law

25. Regulation 3(1) of the Regulations provides that:

"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."

26. Regulations 9 & 10 of the Regulations state:

"*First-tier Tribunal orders*

9.— (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.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal—

(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 First-tier Tribunal 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."

27. Regulation 48 of the Regulations states:

"Where the tenancy deposit was paid to the landlord on or after the day on which these Regulations come into force and before the first day on which an approved scheme becomes operational, regulation 3 applies with the modification that the tenancy deposit must be paid and the information provided within 30 working days of the date which falls three months after the first day on which such a scheme becomes operational."

Reasons for Decision

28. In light of all the evidence before it, and having regard to the overriding objective, the Tribunal considered that it was able to make sufficient findings

to determine the case without the need for a hearing, and that to do so would not be contrary to the interests of the parties.

29. The Tribunal noted that the tenancy deposit was paid by the Applicants to the Respondent on or around 24 April 2012. At that time, the approved schemes were not operational, but the Regulations were in force. The approved schemes became operational on 2 July 2012.

30. In terms of Regulation 48, the Respondent had a duty to pay the tenancy deposit into an approved scheme within 30 working days of the date which falls three months after the first day on which the approved schemes became operational. The duty therefore arose within 30 working days of 2 October 2012 i.e. the deposit should have been paid into a scheme no later than 13 November 2012.

31. The Respondents admitted that they had failed to comply with the duty under Regulation 3(1) of the Regulations to pay the Applicant's deposit into an approved tenancy deposit scheme by the date determined in accordance with Regulation 48. The Legal Member explained to the parties that the Tribunal was therefore obliged to make an order requiring the Respondents to make payment to the Applicants, in terms of Regulation 10 of the Regulations.

32. The Tribunal is required to consider the sum which the Respondents should be ordered to pay to the Applicant, which could be any amount up to three times the amount of the tenancy deposit. The amount of any award is the subject of judicial discretion after careful consideration of the circumstances of the case, as per the decision of the Inner House of the Court of Session in the case of *Tenzin v Russell 2015 Hous. LR. 11.*

33. In considering the appropriate level of payment order to be made in the circumstances, the Tribunal considered the need to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach (Sheriff Welsh in *Jenson v Fappiano 2015 GWD 4-89*).

34. The Tribunal noted the view expressed by Sheriff Ross in *Rollet v Mackie* [2019] UT 45 that the level of penalty should reflect the level of culpability involved. It did not consider that most of the aggravating factors which might result in an award at the most serious end of the scale were present in this case. The Respondents were aware of their duty to pay the Applicants' deposit into an approved scheme and had admitted that they had failed to do so. As Sheriff Ross noted, at para 13 of his decision: "*The admission of failure tends to lessen fault: a denial would increase culpability*".

35. The Tribunal considered the various factors to be taken into account as set out in Rollet v Mackie. It did not consider that there had been fraudulent intention on the part of the Respondents or a deliberate failure to observe their responsibilities at the time when the approved schemes became operational. While they should have been aware of their responsibilities once

the approved schemes became operational, the Applicants had by then already moved into the Property and the tenancy had commenced. Because the tenancy agreement renewed itself every month by tacit relocation after the original six-month term, there was no obvious trigger to alert the Respondents to the obligation to pay the deposit into an approved scheme by the required date. The Tribunal therefore accepted the Respondents' submission that they had overlooked the requirement to do so and had believed themselves to be compliant in terms of the tenancy agreement.

36. The Tribunal notes, however, that the Respondent was later made aware of their responsibilities under the Regulations by the Applicants. They should also have been aware of this given that they were landlords of another rented property in respect of which a tenancy deposit had been lodged with a scheme. They should therefore have paid the deposit in when they became aware of their responsibilities. Not to have done so involved a deliberate or reckless failure to observe their responsibilities.

37. There was, on the other hand, no evidence of repeated breaches against other tenants. The financial sum involved (£450) is not high and there has not as yet been any actual loss to the Applicant as a result of the Respondents' failure to lodge the deposit with an approved scheme.

38. The Applicant's tenancy deposit has been unprotected for all their tenancy, over a period of more than 14 years to date. It was the Respondents' responsibility to ensure that it was so protected.

39. The purpose behind the Regulations is to ensure that tenancy deposits are protected, and the schemes also facilitate the resolution of any dispute between landlord and tenant over what should happen to the deposit money at the end of the tenancy. Should the tenancy deposit remain unprotected at the end of the Applicant's tenancy, there is a potential for dispute over what should happen to it. At that point, the Applicant could potentially suffer financial loss and would have no opportunity to dispute any claim made on the deposit by the Respondents.

40. Taking all of the above considerations into account, the Tribunal considered that an award at the middle to upper level of the possible penalty scale would be appropriate. It therefore determined that an order for £900, representing twice the amount of the tenancy deposit paid, would be fair, proportionate and just, having regard to the seriousness of the breach.

41. The Tribunal considers that it would be in the interests of both parties if it were to order the Respondents to pay their tenancy deposit into an approved scheme. This would provide protection for both parties in the event of any dispute over the deposit at the end of the tenancy.

Decision

42. The Tribunal determines that the Respondents have failed to comply with the duty in terms of Regulation 3 of the Regulations to pay a tenancy deposit to the scheme administrator of an approved scheme within the prescribed timescale. The Tribunal therefore makes an order requiring the Respondents to pay to the Applicant the sum of £900.

43. The Tribunal also makes an order in terms of Regulation 10 (b) of the Regulations requiring the Respondents to pay the Applicant's tenancy deposit into an approved scheme within 30 days of the date this decision is sent to the parties.

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.

[redacted]

Evan Crainie	**8.9.26**
Legal Member/Chair	**Date**