



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

Chamber Ref: FTS/HPC/PR/26/0783

Re: 0/1 15 Crossflat Crescent, Paisley PA1 1PN (“the Property”)

Parties:

Steven Donald, 2/3 Weighclose Place, Paisley PA1 1AG (“Applicant”)

Anthony Thorburn, 36 Brodick Avenue, Kilwinning KA13 6RL (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Decision :

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant the sum of £450 .

Background

1. The Applicant sought an order for payment of £1080 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("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 Applicant lodged Form G along with a private residential tenancy agreement (“PRT”) between the Applicant, the Respondent which commenced on 1 May 2019 and copy text messages dated 1 May 2019 referring to payment of a deposit. The Application was served on the Respondent by sheriff officer on 14 July 2026.

Case Management Discussion (“CMD”)

2. A CMD took place on 17 August 2026 by conference call. The Applicant and the Respondent were both in attendance.

3. The Tribunal explained to the Parties the relevant provisions of the 2011 Regulations.
4. The Tribunal noted that the papers indicated that the tenancy commenced on 1 May 2019 and ended on 27 December 2025; that a deposit of £360 was paid by the Applicant to the Respondent on or about 1 May 2019; that the deposit had not been returned to the Applicant following the tenancy ending; that the deposit had not been lodged in an approved scheme and that the Applicant did not pay the rent due for December 2025. The Parties confirmed that all of those points were agreed.
5. Mr Donald told the Tribunal that he did not pay the rent due in December 2025 as there was a problem with the boiler. He said the problem arose at the end of November 2025 and the boiler was still not working when he left the Property. He said the shower was electric but the boiler was required for heating and hot water. He said that he had told Mr Thorburn that he was not going to pay the rent on 2 December 2025 due to the boiler issue and he gave notice that he was moving out on 23 December 2025. He said that he gave notice by texting Gillian Harp.
6. Mr Thorburn said that the Property was let furnished. He told the Tribunal that that Mr Donald kept a pet in the Property without permission. He said that when Mr Donald vacated the Property appeared to never have been cleaned. He said there was cat vomit on the carpet in the bedroom and faeces in the living room. He said there were maggots on the sofa. He said the kitchen table had been destroyed and the kitchen chairs were damaged or missing. He said he had to instruct Junk-it to remove rubbish and personal items such as clothing belonging to the Applicant at a cost of £630. He said that after Mr Donald vacated, he cleared the Property and sold it at auction.
7. Mr Donald said that Mr Thorburn's description of the state of the Property was exaggerated. He said that Mr Thorburn was aware that he kept a pet.
8. Mr Thorburn told the Tribunal that communications between the Parties broke down due to the boiler issue. He said that they had been friends and he had let the Property to Mr Donald at a rent that simply covered the mortgage. Mr Thorburn told the Tribunal that the Property had been his home and that he left the Property to live with his partner. He then let the Property to Mr Donald. He said that Mr Donald was the only tenant and that he had never let a property before. He said he does not own any other rental properties. He said he was unaware of the 2011 Regulations.

9. The Tribunal expressed the view that there appeared to be no factual matters in dispute between the Parties. The tribunal indicated that it was in a position to proceed to make a decision. Both Parties indicated they were content for the Tribunal to proceed to do that.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a tenancy agreement which commenced on 1 May 2019.
2. The tenancy came to an end on 27 December 2025.
3. The Applicant paid to the Respondent a deposit of £360 on or about 1 May 2019.
4. The deposit was not paid to the administrator of an approved scheme in compliance with the 2011 Regulations.

Findings in Fact and Law

5. The Respondent breached Regulation 3 of the 2011 Regulations.

Reasons for Decision

3. Regulation 3 of the 2011 Regulations provides *inter alia* :

"(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.....

4. Regulation 9 of the 2011 Regulations provides:

"(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.

(ii) *An Application under paragraph 1 must be made no later than three months after the tenancy has ended."*

5. Regulation 10 of the 2011 Regulations provides *inter alia* :

"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"

6. 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.
7. The amount to be awarded is a matter for the discretion of the Tribunal having regard 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 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, or other hypotheticals. None of these aggravating factors is present."

8. The Respondent did not lodge the deposit in an approved scheme as they were unaware of the need to do so. Ignorance of the law is not an excuse for non-compliance. The admission of failure lessens fault. However, as the deposit was not lodged in an approved scheme, the Applicant was deprived of the opportunity to approach the scheme administrator regarding return of the deposit and for any dispute in that regard to be resolved by the scheme. In

these circumstances the purpose of the 2011 Regulations was defeated and the Applicant required to apply to the Tribunal to seek recovery of the deposit. There was however nothing before the Tribunal which suggested repeated breaches of the 2011 Regulations or fraudulent intent. There was no denial of fault.

9. Taking into account all of the facts and circumstances the Tribunal considered that this is not a case at the higher end of the scale. The 2011 Regulations had however been breached. The Tribunal determined that the sanction should be £450 in the particular facts and circumstances of this case.

Decision

The Tribunal granted an Order for payment of £450 in terms of Regulation 10(a) of the 2011 Regulations.

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.

**Joan Devine
Legal Member**

Date: 17 August 2026