

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/26/2438

Property at Flat 108, Castle Court, 10 Kings Drive, Newton Mearns, Glasgow, G77 5JA (“the Property”)

Parties:

Mr Alan Konopate, 12 Fauldsvie, Fenwick, Kilmarnock, KA3 6EF (“the Applicant”)

Mr Victor Coats, Flat 108, Castle Court, 10 Kings Drive, Newton Mearns, Glasgow, G77 5JA (“the Respondent”)

Tribunal Members:

Josephine Bonnar (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 £650 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 within the time limit stipulated in the Regulations. The Applicant lodged a tenancy agreement and an email from Safe Deposit Scotland which confirms that the deposit was lodged on 6 February 2025. The Applicant also lodged a Council Tax reminder for his new tenanted property which confirms that the new tenancy started on 1 April 2026.
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 6 October

2026 at 2pm by telephone conference call.

3. Prior to the CMD, the Respondent lodged a written submission. He conceded that the tenancy had started in 2012 and that the deposit had not been lodged in a scheme until 2025. He also said that he suffers from bipolar disorder and struggles to deal with things. He said that he lodged the deposit as soon as he became aware that he was breaking the law.
4. The CMD took place on 6 October 2026. Both parties participated.

Summary of discussion at CMD

5. Both parties confirmed that the tenancy started on 8 June 2012. A deposit of £500 was paid at the start of the tenancy and was not lodged in an approved scheme until February 2025. The tenancy ended on 30 March 2026.
6. Mr Coats told the Tribunal that he moved back into the property when the tenancy came to an end. It had been his only rental property, and he had not let it out before Mr Konopate became the tenant. He said that he had not been aware of the requirement to lodge the deposit in a scheme and did so as soon as he became aware. He also said that he suffers from acute bipolar disorder. In response to questions from the Legal Member, Mr Coats said that he can't remember how he became aware of the Regulations. A friend may have told him, but he has no recollection. He always had the money put aside. At the end of the tenancy, he was in touch with SDS. They said that Mr Konopate had not responded to them in relation to repayment of the deposit and they arranged to transfer it back to him. However, when he received it, he arranged to repay £200 to Mr Konopate. He retained £300 as there were arrears of rent.
7. Mr Konopate told the Legal Member that he had contacted SDS and told them that he had withheld some rent because he was certain that he was not going to get his deposit back. He said that Mr Coats had been an unregistered landlord. He said also that the property was not Mr Coats only rental property. He had one in Stirling. There is also another property in Paisley Road West. He opened a letter to Mr Coats by accident about a year ago and it related to that property. He also told the Tribunal that he believes that Mr Coats knew about the Regulations and chose not to lodge the deposit.
8. Mr Coats told the Legal Member that he had a rental property in Stirling at one time but had sold it a long time ago. It had been occupied by tenants for a period of time. When asked how long ago, Mr Coats said that he wasn't sure. But at least 10 years, maybe more. The property in Paisley Road West is a commercial unit and not a residential property. There are no other properties.
9. In response to further questions from the Legal Member, Mr Konopate said that he had never discussed the lodging of the deposit with Mr Coats. He was aware of the Regulations but only started to think about it when the eviction proceedings started. He said that Mr Coats has broken the law and should be required to pay a penalty. He has been told that this can be up to three times

the deposit. The deposit was unsecured for a long time.

10. Mr Coats told the Legal Member that he had no final submissions to make and would await the decision.
11. The Legal Member noted that there were two factual matters potentially in dispute. Firstly, Mr Konopate had said that he did not believe that Mr Coats was unaware of the Regulations. The second issue was the number of properties owned by Mr Coats and his experience as a landlord. Mr Konopate said that he could not provide any evidence to support his statements in relation to both matters. He was content for a decision to be made on the available information and evidence. Mr Coats also indicated that he was happy for a decision to be made following the CMD.

Findings in Fact

12. The Applicant is the former tenant of the property.
13. The Respondent is the owner and former landlord of the property.
14. The tenancy started on 8 June 2012 and ended on 30 March 2026.
15. At the start of the tenancy the Applicant paid a deposit of £500
16. The deposit was not lodged in an approved scheme until 6 February 2025.
17. At the end of the tenancy the deposit was repaid to Respondent by the deposit scheme.
18. Following receipt of the deposit, the Respondent paid the sum of £200 to the Applicant and retained the rest to cover rent arrears.
19. The Applicant was the only tenant who occupied the property. The Respondent has returned to reside there.
20. The Respondent previously owned one other residential rental property. It was occupied by tenants for a period of time and then sold.

Reasons for Decision

21. 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.

22. 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

23. 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.**”

24. The Legal Member notes that the application was submitted within the time limit specified in the Regulations. It is also noted that the Respondent does not dispute that he failed to comply with the Regulations and that the deposit was not secured between 2012 and February 2025.

25. 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) There is no evidence that the Respondent deliberately chose to disregard his obligations as a landlord. Although the Applicant states that he does not believe that it is true, he could not provide any evidence. He said that he did not speak to the Respondent about the deposit during the tenancy although he started to wonder about it when the eviction process started in 2025. It is perhaps significant that the deposit was lodged around that time. As this was only a year or so ago, it is also surprising that the Respondent was unable to explain how he found out that he was in breach of the regulations.

(b) The Legal Member is not persuaded that the Respondent’s health issues should be considered as a mitigating factor. A landlord can appoint a letting agent if they have difficulties managing the rental property. Had he taken advice or appointed an agent, the deposit might have been lodged earlier, and he might have also complied with the requirement to register as a landlord. His failure to investigate his obligations suggests a somewhat casual attitude to the situation.

(c) The Legal Member noted that the Respondent was less than candid when asked about his experience as a landlord. He stated that the property had been his only rental and only conceded that this was not the case when it was challenged by the Applicant. Although he states that the Stirling property was sold some time ago (precise date unknown), this demonstrates that he was not

an accidental landlord who only rented out a former home when his circumstances changed. He also has another rental property, although he said that it is a commercial unit and the Applicant was not able to dispute this. As he states that he was unaware of the Regulations until 2025, it is assumed that if the Stirling property was still owned and rented out after 2011, the deposit paid by those tenants was also not secured.

- (d) The deposit was unsecured for a significant period of time. However, it was lodged in a scheme more than a year before the tenancy came to an end and the Applicant had the opportunity to use the scheme's adjudication process. It appears that he did not do so, and the reason for this is unclear. Tenancy deposit schemes only return the deposit in full to the landlord in certain circumstances. If there is a dispute about the deposit but the tenant does not want to use the scheme adjudication process, it is returned to the landlord, and the tenant can apply to the Tribunal. It is also returned in full if the tenant concedes that the landlord is entitled to it for rent arrears or damage. Lastly, it is returned in full to the landlord if the adjudicator is satisfied that it is due to be paid to them. In the present case, the Applicant appears to have failed to respond to the scheme when they contacted him or his response persuaded the adjudicator that the deposit should be transferred to the landlord. This is a strange outcome when the Respondent accepts that the Applicant was entitled to get some of the deposit back.
- (e) There was no financial loss to the Applicant. Although the deposit was returned in full to the Respondent, he only retained the sum due for arrears of rent and transferred the remainder to the Applicant.

26. 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."

27. In the present case, none of the aggravating factors listed by Sheriff Ross apply. Having regard to the factors outlined in paragraph 25, and in particular the length of time involved and the fact that the Respondent had some previous experience as a landlord, Legal Member is satisfied that this is not a minor or technical breach of the Regulations. However, having noted the lack of financial loss or evidence of deliberate intention on the part of the Respondent, an award in the middle of the scale appears to be warranted. The Tribunal awards £650.

Decision

28. The Tribunal determines that an order for payment of the sum of £650 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.

Josephine Bonnar, Legal Member

14 October 2026