



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Deposit Regulations”)

Chamber Ref: FTS/HPC/PR/26/2165

Re: Property at 4 Marquis Drive, Aboyne, AB34 5FD (“the Property”)

Parties:

Miss Kirsty Gordon, Elm Lodge, Tarland, AB34 4UU (“the Applicant”)

Mr Keith Lawson, 4 Marquis Drive, Aboyne, AB34 5FD (“the Respondent”)

Tribunal Members:

Fiona Stephen (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of Three Thousand Pounds (£3000.00) Sterling.

Background

1. By application dated 12 May 2026 the Applicant seeks an order under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Deposit Regulations”) in respect of alleged failures by the Respondent to comply with those regulations. The application is also brought under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Rules”). The application was heard alongside conjoined application no FTS/HPS/CV/26/2574 in which the Applicant sought an order for payment of a deposit of £2000.00. That application was subsequently dismissed as the Respondent repaid the deposit to the Applicant.
2. The Application was accepted by the Tribunal on 8 June 2026 and referred for determination by the Tribunal.

3. The Respondent was served with the papers in this case by Sheriff Officers on 18 August 2026 conform to Execution of Service of the same date. The parties were aware that a Case Management Discussion ("CMD") was fixed for 13 October 2026 at 10am by teleconference call. The Respondent was required to lodge any written representations with the Tribunal by 5 September 2026. No written representations were lodged by the Respondent.
4. The Tribunal had before it:
 - (i) The Application Form G;
 - (ii) A copy of the Tenancy Agreement between the Applicant and the Respondent;
 - (iii) Proof of payment of the deposit by the Applicant;
 - (iv) Confirmation that no deposit was lodged with any of the three approved deposit protection schemes;
 - (v) Screenshots of text messages between the Applicant and Respondent;
 - (vi) Photographs of the Property;
 - (vii) Screenshots of payments made to the Applicant by the Respondent of £1000.00 on 27 August and 8 September 2026 headed "deposit rebate"; and
 - (viii) Case Papers

The Case Management Discussion

5. Prior to the CMD commencing, the Tribunal was provided with an email from the Applicant which had been sent to the Tribunal on 25 September 2026. In that email, the Applicant confirmed she had received payment of £2000.00 from the Respondent and provided some other papers relating to payment of the deposit. The Applicant and Respondent both appeared and represented themselves. The CMD proceeded in connection with this application whilst the application FTS/HPC/CV/26/2574 was dismissed.
6. The Tribunal explained the purpose of the CMD and the powers of the Tribunal to determine matters. The Tribunal asked various questions of both parties' representatives with regard to the application.
7. The Tribunal explained the orders which could be made in terms of the Deposit Regulations and the requirement that an award must be made if the Tribunal finds that there has been a breach of the Regulations.
8. The Applicant relied on the information provided to the Tribunal and set out in the application. The parties accepted they had entered into a tenancy agreement for the period from 22 October 2017 until 30 April 2026 in respect of the Property. The Tribunal noted that the Applicant had paid the deposit of £2000.00 in cash to the Respondent on 23 October 2017. This was accepted by the Respondent. The Respondent accepted that he had not lodged the deposit with any of the three approved deposit schemes.

9. The Tribunal asked the Respondent if he could explain why he had not lodged the deposit money with a deposit scheme. The Respondent said his father was ill at the time and died around a week after the tenancy had started. He then went away to live abroad which he had done for 14 years in total. He lives in Scotland now as his mother has a health condition. The Respondent said he was unaware of the Deposit Regulations, or that they had been in place since 2011. He did not obtain legal advice when he entered the tenancy agreement with the Applicant.
10. The Tribunal asked the Respondent why he had delayed in repaying the deposit to the Applicant once the tenancy ended in April. He said this was because when the Applicant had moved into the Property it was all painted magnolia but now the rooms are all different colours or have been wallpapered. The fence had blown down in the garden and had not been repaired. He had spent around £700.00 sorting things out. He would also like to know the electrician that had been used by the Applicant as some of the sockets had been replaced with USB sockets. The Respondent said he had to replace everything so that the Property was the way it was before. The Tribunal reminded the Respondent that this application concerned the tenancy deposit only and if he had other matters to raise regarding the tenancy then he might wish to raise those elsewhere. The Respondent said he had sent the Applicant a message to say that if she put the house and garden back to how it was then she would get her deposit back. The Respondent said he was now aware that he had an obligation to pay the deposit money into a deposit scheme.
11. The Tribunal referred to the Deposit Regulations and that the Tribunal must order a landlord to pay to the tenant an amount not exceeding three times the amount of the tenancy deposit if it found that the landlord had failed to comply with the Deposit Regulations. That depended on the circumstances of the case. The Tribunal asked the Respondent if he had anything to say about the level of sanction the Tribunal should make. He said the level of sanction was ridiculous. The Tribunal should take account of the damage done to the house and the money it has cost him to put it back to what it was. The Tribunal referred to what it had previously said about what it could do in these proceedings.
12. The Tribunal asked the Applicant to explain the circumstances giving rise to the application. The Applicant said that she found out that the deposit had not been lodged in a deposit scheme after she had sent her letter terminating the contract in February 2026. The Respondent had contacted her in 2024/2025 to say that he intended to sell the Property. You had some discussions about whether or not you might buy the Property but these did not progress and you decided that you needed to move.
13. The Applicant said she had contacted the deposit schemes in the absence of a response from the Respondent about return of her deposit. They told her that no deposit had been lodged. The Applicant said she was panicking. The deposit schemes suggested she might consider raising an application in the Tribunal. She messaged a friend of the Respondent asking him to get the

Respondent to answer her texts about the deposit. On 30 April 2026 (the end date of the tenancy) the Respondent was nowhere to be seen so she texted the Respondent's friend again and asked him to take the keys. Between the date of giving notice in February and the end of the tenancy on 30 April 2026, the Respondent never visited the Property. He had been in the Property numerous times over the 8 years of the tenancy and had no issue with the condition of it at all. The Applicant spoke to the Respondent's friend a couple of weeks later and asked that the Respondent contact her. The Respondent texted and said if the Applicant got the house back to magnolia and sorted the garden then you would get the deposit back., The Applicant was out of the Property by then. The house is now on the market and the sales particulars show that the house has not changed since the Applicant left it. The house has not been repainted. The Applicant said she did remove the plants which she had purchased and planted so she could replant those in her new garden.

14. The Tribunal asked the Applicant if she had anything to say about the level of sanction that the Tribunal should consider. The Applicant said it was not right that the Landlord had not visited the Property before she left and then withheld the deposit. She had lived in the Property a long time. The Applicant said the Respondent should not be allowed to do that to someone else. The Applicant did not like the thought of a high sanction being imposed and she was hurt that it had come to this. She would prefer to leave it to the Tribunal to consider the appropriate sanction.
15. The fact that the Applicant did not receive her deposit back until after she had raised these and the conjoined proceedings was difficult. She thought that there was a possibility that the money might be lost to her. She could not use the money towards her mortgage or for the costs involved in moving to her new house. That added to the inconvenience. She did not want to raise these proceedings.
16. The Tribunal asked the Respondent why he had not said anything to the Applicant about the colours in the Property when he visited. The Respondent said that was the colour the Applicant wanted whilst she was living there. She could have repainted before she left. There were 100 holes in the walls in almost every room which had to be filled in. The Respondent confirmed the house was now on the market and the colours in the rooms had not been changed. He had repaired the fence and sorted out the walls with holes in them and painted about 5 walls. The Tribunal asked the Respondent why he was not on the Landlord Register. The Respondent said he had provided all of the required information for that and had no explanation for that.
17. The Applicant said that she accepted there had been holes in the walls. This was because for TV's and other furniture, these had to be fixed to the walls for safety reasons. She had young twins as well as two other children in the house. The Applicant said these were filled in before she left but she could not get the same colour of paint to paint over them. She left the Property in a reasonable state and cleaned the house from top to bottom before she left.

18. The Tribunal thanked both parties for their submissions and advised that a written decision would be issued as soon as possible.

Findings in Fact

19. The Applicant and the Respondent entered into a Short Assured Tenancy agreement on 14 October 2017 which commenced on 22 October 2017 in respect of the Property.
20. The Applicant paid a tenancy deposit of £2000.00 in cash to the Respondent around 23 October 2017.
21. The Respondent did not lodge the tenancy deposit with an approved tenancy deposit scheme throughout the duration of the tenancy.
22. The Applicant gave notice to quit the Property on 20 February 2026.
23. The tenancy ended on 30 April 2026.
24. The Respondent refused to return the deposit to the Applicant after the end of the tenancy.
25. The Respondent repaid the tenancy deposit to the Applicant on 27 August and 8 September 2026 in two tranches of £1000.00.
26. The Applicant was concerned that she would not be repaid the tenancy deposit money. She was put to inconvenience as a result, did not have access to these funds whilst moving house and required to raise the payment proceedings FTS/HPC/CV/26/2574.

Reasons for Decision

27. The Tribunal was satisfied that it was able to make a determination and that it was not contrary to parties' interest to do so at the CMD without the need for a hearing all in terms of Rules 17 and 18 of the procedure rules.
28. This application relates to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy and to advise a tenant of details of the scheme into which it has been paid.
29. 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.*

30. Regulation 9 of the 2011 Regulations provides:

*“(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.”*

31. 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; and*
- (b) *may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to —*
 - (i) *pay the deposit into an approved scheme; or*
 - (ii) *provide the tenant with the information required under Regulation 42.*

30. The Respondent failed to place the deposit in an appropriate scheme and has breached Regulation 3 of the 2011 Regulations. The duties are two-fold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with the specified information required under Regulation 42. The Respondent failed in both duties.

31. The present application has been made timeously in terms of Regulation 9. The Tribunal is required to make an order for payment in terms of Regulation 10. The only matter to be determined by the Tribunal is the amount of the sanction.

32. The legal test to be applied in determining an appropriate level of sanction is set out in *Jenson v Fappiano* 2015 GWD 04-89 and subsequent case law. Those authorities are reviewed by Sheriff Cruickshank in *Ahmed v Russell* 2023 SLT (Tr 33). He 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 factors as may be present.”* At para [39] he states that *“The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose is not to compensate the tenant”*. The amount awarded should represent a *“fair and proportionate sanction when all relevant factors have been appropriately balanced.”* para [44].

33. The Tribunal also had regard to the decision of the Upper Tribunal in *Rollett v Mackie* [2019] UT 45 (also cited as UTS/AP/19/0020) in which Sheriff Ross states at para [13] *"In assessing the level of a penalty charge, the question is one of culpability and the level of culpability requires to reflect that culpability... The finding that a breach was not intentional is...rational on the facts and tends to lessen culpability"* At paragraph [14], he goes on *"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"*.
34. In reaching a determination, the Tribunal took into account that the Respondent is in clear breach of the 2011 Regulations.
35. The Tribunal took into account that the deposit was £2000.00 and had been left unprotected for the entire duration of the tenancy i.e. 8 years and 4 months (taking account of the 30 working day lodging time). The deposit was only returned after the Applicant raised the proceedings FTS/HPC/CV/26/2574 and was returned in two tranches in August and September 2026, some 5-6 months after the tenancy ended. This is an unreasonable length of time. These were aggravating factors. The Respondent stated that he was not aware of his obligations under the Deposit Regulations. The Tribunal took into account that the Respondent was dealing with an ill parent who subsequently died around the time the tenancy was created. That said, the Respondent ought to have taken greater care to find out what his responsibilities were regarding the deposit. The Tribunal considers this was a reckless but not deliberate failure to observe his responsibilities. The Tribunal noted that the Property was on the market so it is unlikely that a similar situation will recur. The Tribunal took into account that the Applicant had been entitled to expect that the deposit would be placed in an appropriate scheme. The Applicant sought to find out information from the Respondent about her deposit but was ignored other than to be told that she would get it back if she dealt with issues at the Property on the Respondent's terms. The Applicant has been put to unnecessary inconvenience as a result of the Respondent's actions.
36. The Respondent sought to raise the condition that the Property was left in as a mitigating factor. He indicated this was the reason why the deposit had not been returned. The Applicant's position is that the Property was left in a reasonable condition and produced photographs which, on the face of them, confirm this. The fact that the issue was disputed was a clear indication of the importance of placing the deposit in a scheme in the first place.
37. Having regard to all the facts and circumstances, the Tribunal considered that it would be fair and proportionate to make an order at the mid-range of the sanction available. The Tribunal determined that an award of 1.15 times the deposit of £2000.00 i.e. £3, 000.00 was fair and proportionate in the circumstances.

Decision

The Tribunal granted an Order for payment of £3,000.00 in terms of Regulation 10 (a) of the Deposit 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.

**Fiona Stephen
Legal Member/Chair**

**13 October 2026
Date**