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 Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations

Chamber Ref: FTS/HPC/PR/23/4254

Re: Property at 23 Victoria Terrace, Kilmarnock, Ayrshire, KA1 3JR ("the Property")

Parties:

Miss Christine Gibson, Mr John Shaine Hope, 1 Mount House, Dundonald Road, KILMARNOCK, KA2 0AA ("the Applicant")

Mr Stephen MacDonald, The Alton 2929 Oak Lawn Avenue , Dallas, Texas, 75219, USA ("the Respondent")

Tribunal Members:

Petra Hennig-McFatridge (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to grant an order against the Respondent for payment to the Applicant of the sum of £525 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

A: BACKGROUND:

1. This is an application under Rule 103 of the Procedural Rules and Regulations 9 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations). The application was made by the Applicants on 27 November 2023 and accepted as valid by the Tribunal on 13 December 2023.
2. The following documents were lodged in support of the application:

a) Tenancy agreement commencing 13 May 2022.
b) End of tenancy correspondence showing the end of the tenancy on 21 September 2023.
c) Evidence of payment of the deposit to the then letting agent Mr Pattison of the amount of £1053.16 on 13 May 2022 representing the first month's rent, deposit

and transaction fee and receipt of the deposit by the then letting agent Mr Pattison.

d) Correspondence from all three deposit schemes confirming that they did not hold the deposit.
e) Various documents relating to the tenancy and correspondence following the tenancy end with the new letting agents all contained within the two case bundles of 244 pages (bundle 1 (B1) application to 5 December 2025 and 150 pages (bundle 2 (B2) 8 January 2026 to 5 June 2026).

3. Case Management Discussions took place for this case and the conjoined case under reference CV/23/4214 on 17 May 2024, 4 October 2024 and directions were issued on both occasions. The CMD notes and directions are referred to for their terms and held to be incorporated herein brevitatis causa. A hearing then took place on 21 March 2025 when the Respondent did not attend and was adjourned to a further date. A second hearing took place 13 May 2025 but had to be adjourned part heard to a further date on 1 October 2025 when the Applicants did not attend due to confusion about whether the hearing would be further adjourned. A further hearing was scheduled and took place on 18 February 2026. Unfortunately due to the subsequent resignation of the Legal Member who had conducted the hearings and the fact that no written decision had been issued in either case, the Chamber President advised both parties that both cases would require to be re-heard by a differently constituted Tribunal.

4. Both parties attended the hearing by videoconference on 24 September 2026.

B: The Hearing

1. The legal member explained the purpose and process of the hearing and the background of the case. The Respondent confirmed that his address was correctly entered into the Landlord Register for Scotland. The parties both advised that at the hearing on 18 February 2026 the Tribunal had indicated that the outcome of this case would be a penalty of one time the deposit value due to a breach of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) and both parties agreed that this was a fair outcome of that case.
2. Both parties agreed that in light of the documentary evidence lodged by the Applicants the deposit of £525 had been paid on 13 May 2022 to the letting agent Mr Pattison of Ayrshire Lettings, who had acknowledged receipt in the text message of 13 May 2022 (page 167/244 B1) and that the deposit had not been lodged as confirmed by the three deposit schemes.
3. The Respondent stated, as he had done in his representations before, that Mr Pattison had then closed his Letting Agent business and passed on his files to the second Letting Agent acting on behalf of Mr MacDonald, Ayr Estate and Letting Agents and that the second Letting Agents had no record of the deposit or where it would be held. After the death of Mr Pattison he had contacted the Executrix and was advised that there was no trace of said deposit within the estate.
4. The Applicants position was that they had paid the funds to the appointed Letting Agent and it should have been lodged.

5. The deposit has not been returned and is being claimed under the conjoined CV case.
6. Both parties stated that they were in agreement with an order being granted for the breach of the Regulations of one times the amount of the deposit, being £525.

C: THE LEGAL TEST

1. In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) an application under that Regulation must be made within 3 months of the end of the tenancy.

2. In terms of Regulation 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."

3. In terms of Regulation 3 "(1) A landlord who had received a tenancy deposit in connection with a relevant tenancy must, within 30 days of the beginning of the tenancy (a) pay the deposit to the scheme administrator of an approved scheme; (b)provide the tenant with the information required under regulation 42.

D: FINDINGS IN FACT

Based on the documents and the discussion with the parties on 24 September 2026 the Tribunal makes the following findings in facts:

1. The parties entered into a Private Residential Tenancy over the property which commenced on 13 May 2022.
2. The parties are landlord and tenant to a relevant tenancy to which the Regulations apply.
3. The deposit of £525 was paid by the Applicant to the Respondent's Letting Agent into the account of PMB Ayrshire Limited on 13 May 2022.
4. In terms of Clause 11 the landlord is obliged to lodge the deposit with a registered scheme within 30 days of the start of the tenancy. The tenancy agreement does not specify which of the deposit scheme providers will be used.
5. The deposit is £525.
6. The tenancy ended on 21 September 2023.
7. The deposit was not lodged with a tenancy deposit scheme at the start of the tenancy and remained unprotected for the entire duration of the tenancy.
8. The deposit has not been returned and there are separate proceedings regarding the deposit return between the parties in the conjoined case CV/23/4214.

9. None of the information required in terms of Regulation 42 was provided to the Applicant by the Respondent.
10. The dispute resolution service of a deposit scheme has not been available to the Applicants at the end of the tenancy.
11. The Respondent did not himself receive the deposit from the Letting Agent and was not aware that the deposit had not been lodged.
12. He had not specifically checked the details of the deposit arrangement in this case with the Letting Agent.

E: REASONS FOR DECISION:

1. The Tribunal did not consider that there was any need for a re-hearing of the case as both parties agreed that the relevant facts of the case are not in dispute.

2. The decision indicated to the parties after the hearing had not been formally recorded for the case and no written decision and order had been issued.

3. The Tribunal thus makes the decision on the basis of the documents lodged by the Applicant and the information provided by the Applicants and the Respondent at the hearing on 24 September 2026.

4. Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the regulations. The non-compliance with the Regulations is not disputed by the landlord.

5. In terms of Regulation 10 (a) if satisfied that the landlord did not comply with any duty in regulation 3 the Tribunal must make a payment order between £0.01 and three times the deposit. The maximum amount in this case with a deposit amount of £525 would thus be £1,575.

6. Ultimately the Regulations were put in place to ensure compliance with the Scheme and the benefits of dispute resolution in cases of disputed deposit cases, which the Schemes provide.

7. The Tribunal considers that the discretion of the tribunal requires to be exercised in the manner set out in the case Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015 by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal has a discretion in the matter and must consider the facts of each case appropriately. In that case the Sheriff set out some of the relevant considerations and stated that the case was not one of "repeated and flagrant non participation in, or non-compliance with the regulations, by a large professional commercial letting undertaking, which would warrant severe sanction at the top end of the scale". It was held that "Judicial discretion is not exercised at random, in an arbitrary, automatic or capricious manner. It is a rational act and the reasons supporting it must be sound and articulated in the particular judgement. The result produced must not be disproportionate in the sense that trivial noncompliance cannot result in

maximum sanction. There must be a judicial assay of the nature of the noncompliance in the circumstances..."

8. The approach the Tribunal has to take in making a decision was further clarified in the decision UTS/AP/0006 by Sheriff Jamieson, which set out that the Tribunal first has to identify the relevant matters to be taken into account and then in a second step apply weight to these individual relevant factors.

9. In the case before the Tribunal there is a clear breach of the Regulations. The deposit was not lodged within 30 working days as required by Regulation 3 and the information in terms of Regulation 42 had not been provided to the Applicant.

10. Matters identified by the Tribunal as relevant aggravating factors were the duration of the period of the deposit not being protected, the fact that the landlord was clearly aware of the requirement to lodge the deposit as this was specified in the tenancy agreement and the fact that the deposit was not protected for the duration of the tenancy and thus the Applicant did not have access to the dispute resolution mechanism.

11. Matters identified as relevant mitigating factors were that the landlord had engaged a Letting Agent to act on his behalf and had relied on the Letting Agent to deal with the deposit collection and lodging on his behalf. He had not himself received the funds and retained them and does not know where the funds ultimately are retained as the Letting Agent is deceased and the funds were not specifically accounted for in the estate or in the file given to the next Letting Agent.

12. The Tribunal did not consider it relevant whether or not the deposit would have been returned in this case depending on the state of the property. The issue the Tribunal has to consider is the compliance with the obligations of a landlord with the Regulations and the landlord has these duties at the time the deposit is paid and when the state of the property at the time the tenant leaves the property is not known. Determining the issue of the return is precisely why the dispute resolution process in the Regulations was created.

13. The Tribunal considers that the failure to comply with the Regulations in this case appears to be a matter of an oversight or deliberate retention of funds by the former Letting Agent rather than deliberate flouting of the landlord's obligations and a deliberate deprivation of the tenant of the benefits of the deposit protection mechanism by the Respondent. However, the Applicant did not have access to the dispute resolution process and the funds were unprotected for the duration of the tenancy. This is exactly the situation the Regulations seek to avoid. Given the terms of clause 11 in the tenancy agreement, at the very least any mechanism of the landlord to ensure that the obligation was complied with was insufficient to ensure compliance with these obligations.

14. This is clearly not a case at the lower end or the high end of the available disposal for the Tribunal.

15. In all the circumstances the tribunal considered it fair, proportionate and just to make a payment order for the sum of £ 525. This does reflect the length of time the deposit was unprotected. It reflects the seriousness of the breach and constitutes a meaningful sanction for non-compliance of the Regulations. It is also a figure both parties accepted explicitly as a fair outcome in this case.

F: DECISION:

The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondents for payment to the Applicants of the sum of £525 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011

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.

Petra Hennig McFatridge
Legal Member/Chair **Date 24 September 2026**