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 Schemes (Scotland) Regulations 2011 ("the Regulations").

Chamber Ref: FTS/HPC/PR/25/5042

Re: Property at 101 Hillfoot, Houston, Renfrewshire, PA6 7NR ("the Property")

Parties:

MR JAMES O'DONNELL, 23 LOCHER GARDENS, HOUSTON, RENFREWSHIRE, PA6 7NL ("the Applicant")

Mr William Neil McIntosh, Mr John Galloway, Huthead, Kibbleston Road, Kilbarchan, PA10 2PH; Mid Lugtonridge Barmill, Beith, KA15 1LD ("the Respondent")

Tribunal Members:

Julie McKinlay (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 ONE THOUSAND POUNDS (£1000) STERLING should be made in favour of the Applicant.

Background

1. The Applicant seeks an order in terms of Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations ("the 2011 Regulations") in respect of an alleged failure on the part of the Respondent to comply with these Regulations.

2. The application was accepted by the Tribunal on 2 December 2025.

3. A Case Management Discussion ('CMD") took place at 2pm on 6 October 2026 by teleconference. The Applicant attended the CMD. The Respondent was represented by Ms Hughes of Kilglen Property Management.

Summary of the discussion at CMD

4. The Respondent conceded that the deposit had not been paid into an approved scheme on time. The lease commenced on 7 October 2022. The Lease ended on 28 August 2025. The deposit, paid prior to the commencement of the Lease, was protected from 6 January 2023 which is outwith the required 30 working day period. The Respondent's representative explained that the delay in placing the deposit in a scheme was as a result of a failing by a former employee to submit the deposit timeously. The Respondent's representative provided an email dated 13 October 2022 which was an instruction to the employee to submit the deposit in respect of the Property to the scheme. The issue came to light when the employee left their job. The situation was rectified as soon as the issue came to light. The deposit remained lodged in the scheme until the end of the tenancy when it was returned to the Applicant.

Findings in Fact

5. The Applicant was the tenants of the Property.

6. The Respondent was the landlord of the Property.

7. The tenancy started on 7 October 2022.

8. The deposit was lodged in an approved scheme on 6 January 2023.

9. The tenancy ended on 28 August 2025 and the deposit was returned to the Applicant.

The Relevant Regulations

10. 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) (Scotland0 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."

11. Regulation 9 of the 2011 Regulations states that:

"(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."

12. 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".**

Reasons for Decision

13. The Tribunal is satisfied that the Applicant paid a deposit of £525 at the start of the lease. That deposit was not lodged in an approved scheme until 6 January 2023. The Applicant has therefore established (and the Respondent accepts) that the Respondent failed to comply with the 2011 Regulations in failing to comply with the requirement to pay the deposit into a scheme within 30 working days of the beginning of the tenancy. The deposit was late by a period of approximately 35 working days.

14. In terms of Regulation 10 an award **must** be made where there has been a failure by the landlord to comply with the Regulations.

15. Accordingly in this case the Tribunal is required to make an order for payment. The only matter then to be determined by the Tribunal is the amount of any such payment. In this case the Tribunal carefully considered all the evidence presented.

16. The Regulations were introduced to safeguard deposits paid by tenants. They were introduced against a background of landlords abusing their position as the holder of deposit moneys. Parliament decided that it should be compulsory to put the deposit outwith the reach of both the landlord and the tenant to ensure that there was a dispute resolution process accessible to both landlord and tenant at the end of the tenancy and which placed them on an equal footing.

The Regulations make it clear that the orders to be made by Tribunals for failure to comply with the Regulations are a sanction or penalty.

17. The Tribunal notes that in the Upper Tribunal case of Ahmed v Russell (2023 SLT (Tr) 33) Sheriff Cruikshank 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 relevant factors as may be present*". The amount awarded should represent *"a fair and proportionate sanction when all relevant factors have been appropriately balanced*".

18. The sanction to be imposed is intended to mark the gravity of the breach which has occurred. It should reflect the level of overall culpability in each case measured against the nature and extent of the breach of the 2011 Regulations. The Tribunal is required to determine a fair and proportionate sanction based on the facts.

19. Having considered the information provided by the parties and taking into account the guidance from the Upper Tribunal, the Tribunal has decided that the appropriate award should be £1000.

20. The maximum amount which the Tribunal can award in terms of Regulation 10 is three times the amount of the deposit, namely £1575. In considering the level of culpability, the Tribunal do not consider that there was anything wilful in the conduct of the Respondent in failing to comply with the 2011 Regulations. The failure was as a result of the conduct of one employee and it was rectified when discovered. The period in respect of which the deposit was not covered was relatively short. These may be considered to be mitigating factors. On that basis the Tribunal has decided not to award the maximum amount. In the view of the Tribunal the breach is not at the most serious end of the range of breaches of the regulations that come before the Tribunal.

21. Nevertheless, there has been a clear breach of the 2011 Regulations, and an award must be made. The Tribunal awards £1000.

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.

Julie McKinlay **6 October 2026**

Legal Member/Chair **Date**

*Insert or Delete as required