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/26/2171

Re: Property at Flat 0/2, 14 Durward Court, Glasgow, G41 3RZ ("the Property")

Parties:

Mr Hugh Alam, Flat 1/1, 2 Blaeloch Avenue, Glasgow, G45 9QA ("the Applicant")

Dr Wan H Cheah, 19 Glenpark Avenue, Glasgow, G46 7JE ("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 FOUR HUNDRED AND NINETY-FOUR POUNDS (£1494) 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 29 May 2026.

3. A Case Management Discussion (‘CMD”) took place at 10am on 23 October 2026 by teleconference. The Applicant and the Respondent attended the CMD. The Applicant was represented by Judith Stevenson of Castlemilk Law Centre.

Summary of the discussion at CMD

4. The Applicant’s representative explained that the sum of £498 had been paid as a deposit along with the first rental payment. A receipt was produced within the bundle. The deposit had not been placed in any of the registered schemes at any time during the currency of the lease.

5. The Respondent conceded that the deposit had not been paid into an approved scheme. The deposit of £498 had been paid by the Applicant and placed in an envelope for safe keeping. The Respondent had been a landlord for 40 years. The Respondent explained to the Tribunal that he had been unaware of the need to pay the deposit into a scheme until this application was made and he spoke to the Council. Since then, he has now placed the deposits for his other properties in a scheme. The lease with this applicant is at an end so the deposit had not been lodged in a scheme

6. Before this application the Respondent had 12 properties. None of the deposits paid in respect of those properties had been placed in a scheme. This has now been rectified. The respondent explained that no tenant had ever complained about the process of placing the deposit in an envelope in a safe.

7. The Applicant’s representative invited the Tribunal to award three times the deposit to the Applicant. The Respondent is a registered landlord and has been a landlord for 40 years. The despot scheme has been in place for some time, and he ought to have been aware of it. By his own admission none of the tenants renting a property from the Respondent have had their deposits protected.

Findings in Fact

8. The Applicant was the tenant of the Property.

9. The Respondent was the landlord of the Property.

10. The tenancy commenced on 3 January 2018. The Respondent was evicted on 6 May 2026.

11. The Applicant paid a deposit of £498 on 30 December 2017.

12. The deposit was not lodged in an approved scheme at any time during the currency of the lease.

13. The Property was one of 12 properties let by the Respondent.

14. The Respondent has been a landlord for 40 years and is a registered landlord.

15. Prior to this application no deposit in respect of any of the Respondent's let properties had been placed in a tenancy deposit scheme.

16. The Respondent was unaware of the tenancy deposit scheme until advised by the council following this making of this application to the Tribunal.

The Relevant Regulations

17. 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."

18. 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."

19. 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

20. From the documents lodged with the application, the Respondent's written response and the information provided by both parties at the CMD, the Tribunal is satisfied that the Applicant paid a deposit of £498. That deposit was not lodged in an approved scheme. The Applicant has therefore established (and the Respondent accepts) that the Respondent failed to comply with the 2011 Regulations.

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

22. 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.

23. In this case the Tribunal carefully considered all the evidence presented. In assessing the award, the Tribunal had regard to the following factors:

a) There was clear evidence that the Respondent failed to pay the tenancy deposit into an appropriate scheme from the point at which he was in receipt of the deposit in 2017.
b) The Respondent accepts that he did not do so at any time during the course of the lease.
c) The Respondent has been a landlord for 40 years and has a number of properties. The Respondent failed to comply with the schemes in respect of any of his properties until he was advised of the need to do so by the Council following this application.
d) The Respondent maintains that he placed in the deposit in an envelope in a safe. Whether or not that is so, as matters stand at the CMD the purpose of the 2011 Regulations has been defeated.
e) The Respondent is an experienced landlord.
f) The Respondent's position is that he was unaware of the requirement under the Regulations.

24. 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 out 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. The 2011 Regulations have been in force since March 2011.

25. 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*".

26. 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.

27. 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 £1494.

28. The maximum amount which the Tribunal can award in terms of Regulation 10 is three times the amount of the deposit, namely £1494. 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. However, the Regulations have been in force for many years. The Respondent has been a landlord for 40 years. He is a registered landlord. The Respondent has a responsibility to ensure that he complies with the law. He has let out many properties and confirmed to the Tribunal that until this application was made, he had never used the scheme. In this particular case the deposit remained unprotected for the entire duration of the lease. There has been a clear breach of the 2011 Regulations. Breach of the 2011 Regulations is a serious matter and given the circumstances the Tribunal is satisfied that the penalty ought to be significant. An award of £1494 is made.

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

23 October 2026

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Legal Member/Chair **Date**