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

Chamber Ref: FTS/HPC/PR/24/3159

Re: Property at 10 Harbour View, Invergordon, IV18 0EY ("the Property")

Parties:

Mr Alistair Sutherland, 5 High Street, Alness, Ross-Shire, IV17 0QB ("the Applicant")

Mr Wayne Bowern, 2 Balvonie Green, Inverness, IV2 6GE ("the Respondent")

Tribunal Members:

Sarah O'Neill (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent failed to comply with his duties under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Tribunal therefore makes an order requiring the Respondent to pay to the Applicant the sum of £1170.

Background

1. An application was received from the Applicant on 10 July 2024 seeking a payment order under Rule 103 of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 rules"). The Applicant sought an order for payment in respect of the Respondent's alleged failure to lodge the tenancy deposit paid by the Applicant and his co-tenant with an approved tenancy deposit scheme within 30 working days of the beginning of their tenancy, as required by Regulation 3 of the 2011 Regulations. He stated in the application that he sought an order for £2340, being three times the tenancy deposit.

2. Attached to the application form were:
   (i) Copy tenancy agreement between the Applicant and Ms Ashleigh Newlands and the Respondent, which commenced on 27 May 2023.
   (ii) Copy letter from the Respondent to the Applicant and Ms Newlands dated 27 May 2024 purporting to be a notice to leave.

3. The application was accepted on 12 July 2024.

4. A case management discussion (CMD) was held on 21 November 2024. The previous Tribunal refused the application as the Applicant did not attend the CMD. The Applicant applied for a recall of the decision, which was granted by the previous Tribunal on 23 December 2024.

5. A second CMD was held on 9 April 2025. Both parties were in attendance. The Respondent accepted that he had not paid the deposit into an approved scheme. He said that, at the end of the tenancy, he had paid the deposit back to the Applicant less a shortfall of rent in the sum of £390. The Respondent made reference to having dyslexia and to not understanding the 2011 Regulations. The previous Tribunal decided to adjourn the application to an evidential hearing for evidence to be heard and a final decision to be made.

6. The previous Tribunal issued a direction to the parties on 9 April 2025. The Respondent was directed to submit in writing any mitigation or any defence to the application to be relied on. Both parties were directed to submit any documentation to be relied on at the hearing, together with the details of any witnesses, by 9 July 2025.

7. A response to the direction was received from the Respondent on 3 June 2025. A further submission was received from the Applicant on 30 June 2025.

8. The present Tribunal issued a direction to the Applicant on 26 August 2025, requiring him to submit further information in advance of the hearing. A response was received from the Applicant on 3 September 2025.

The hearing

9. A hearing was held by remote teleconference call on 8 May 2025. The Applicant was present on the teleconference call and was represented by Mr Martin Rattray of Alness Citizens Advice Bureau. He was accompanied by his partner, Ms Amy Cochrane, as a supporter.

10. The Respondent was not present or represented on the teleconference call. The Tribunal delayed the start of the hearing by 10 minutes, in case the Respondent had been detained. He did not join the teleconference call, however, and no telephone calls, messages or emails had been received from

him.

11. The Tribunal was satisfied that the requirements of rule 24 of the 2017 rules regarding the giving of reasonable notice of the date and time of a hearing had been duly complied with. It therefore proceeded with the CMD in the absence of the Respondent.

The Applicant's submissions

12. Mr Rattray said that the Respondent had informed the Applicant and Ms Newlands at the start of the tenancy that their tenancy deposit would be paid into a tenancy deposit scheme. The Respondent had not done so, however.

13. The Tribunal noted that there was another joint tenant named in the tenancy agreement. Mr Rattray confirmed that the joint tenant, Ms Ashleigh Newlands, who is the Applicant's sister, was aware of the application. She did not want to participate in the application because she had found the whole experience so stressful. It was the Applicant's intention to share any sum awarded by the Tribunal with Ms Newlands.

14. The Respondent had admitted that he failed to secure the tenancy deposit. He had admitted that he became aware of the requirement to secure it not long after the commencement of the tenancy. The Applicant denied that he had agreed with the Respondent that he would keep the deposit in a bank account.

15. The Respondent is a registered landlord, and the Applicant believed that he had previously rented out the property to other tenants. The Applicant also believed that the Respondent rented out other properties. He had seen other rental properties advertised by the Respondent, although he had been unable to obtain evidence of this. In any case, the Applicant believed that the Respondent was an experienced commercial landlord. He should therefore have been aware of his legal obligations.

16. The Respondent also appeared to be unaware of current tenancy legislation. He had provided an incorrect form of tenancy agreement to the Applicant and Ms Newlands. The agreement purported to be a short assured tenancy agreement with an end date of 27 May 2024, but was in fact a private residential tenancy agreement. The Respondent had also sent the Applicant and Ms Newlands an invalid form of notice to end the tenancy agreement. This notice, in the form of a letter dated 27 May 2024, stated that the tenancy agreement had terminated and purported to give the tenants "the required 12 weeks notice to vacate the property".

17. The Applicant said that he had left the property in December 2023, and had given the Respondent notice of his intention to leave, which had been

accepted. The Applicant considered that his tenancy ended on 27 May 2024, and said that he had paid his rent until that date. Ms Newlands had stayed for a further month after that date.

18. The Respondent had not paid the Applicant back "his half share" of the deposit when he moved out, because he said he had not paid his share of the final month's rent. This was not true, but because the Applicant had not paid his deposit into an approved scheme, he had been unable to challenge this.

19. The remaining half of the deposit (£390) had been paid to Ms Newlands when she moved out of the property.

20. The Applicant said that he was seeking an award of the maximum sum of three times the tenancy deposit, but accepted that the amount to be awarded was a decision for the Tribunal.

The Respondent's submissions

21. In the absence of any appearance by the Respondent at the hearing, the Tribunal considered what he had said both at the previous CMD and in his written submissions.

22. The Respondent had said at the CMD on 9 April 2025 that he accepted that he had not paid the deposit into an approved scheme. In his response of 3 June 2025 to the original Tribunal's direction**,** he said that due to his dyslexia, he had misunderstood the legal requirements for lodging the tenancy deposit with an approved scheme. He said that his interpretation was that this was optional. He said that after seeking advice, he realised that the 30 day time limit had passed. He spoke to the Applicant and Ms Newlands at that time and explained this and assured them the money was safe in his savings account. He said that at the time they were very understanding and were not concerned.

23. The Respondent stated in his submission of 3 June 2025 that the Applicant and Ms Newlands were jointly and individually responsible for both the rent and the tenancy deposit. He said that the Applicant had notified him of his intention to leave the property, and that he had informed the Applicant that unless both tenants left at the same time, they would both continue to be individually and jointly responsible for the rent. The Applicant did not pay his share of the final month's rent, and that he had therefore kept the Applicant's share of the deposit to cover this.

24. He alleged that after the tenants had left the property, he found that the king size mattress from the bed in the main bedroom was gone, and had to buy a new one. He also said that he had to spend time cleaning up the area outside the property after the tenants had left.

25. The Respondent queried the Applicant's motives in making the application, suggesting that he was being opportunistic. He said that he had been fair with the Respondent and Ms Newlands, and was always there if they needed him. He had not been intentionally deceptive. He had simply interpreted the law incorrectly, and the tenants' deposit was safe.

Findings in fact

26. The Tribunal made the following findings in fact:

- The Applicant and his sister, Ms Ashleigh Newlands, entered into a private residential tenancy agreement with the Respondent, which commenced on 27 May 2023.
- The tenancy agreement stated that a tenancy deposit of £780 was to be paid by the Applicant and Ms Newlands to the Respondent.
- The tenancy agreement stated that the tenancy deposit would be lodged with a tenancy deposit scheme within the timescales laid out in the 2011 Regulations.
- The tenancy was a 'relevant tenancy' in terms of the 2011 regulations.
- The Applicant and Ms Newlands paid a tenancy deposit of £780 to the Respondent at the start of the tenancy.
- The Respondent did not pay the Applicants' tenancy deposit into an approved tenancy deposit scheme within 30 working days of the beginning of the tenancy, or at any later date during their tenancy.
- The Applicant vacated the property on or around 27 May 2024.
- The tenancy ended at or around the end of June 2024.
- The Respondent repaid one half of the deposit (£390) to Ms Newlands after she moved out.
- The Respondent did not repay the remainder of the deposit to the Applicant because he considered that the Applicant owed his share of the last month's rent.

The relevant law

27. Rule 3(1) of the 2011 Regulations provides that: *"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.*

Reasons for decision

28. In making its decision, the Tribunal carefully considered all of the evidence before it as at the date of the hearing. This included all of the written evidence which the parties had submitted, the notes of the two CMDs and, the oral submissions of the Applicant and Mr Rattray at the hearing. In doing so, the Tribunal applied the civil burden of proof, which is the balance of probabilities.

29. The Tribunal notes firstly that the tenancy of the property was a joint tenancy, under which the Applicant and Ms Newlands were joint tenants. The Respondent was correct in stating that they were jointly and severally liable for the rent under the tenancy agreement, until the termination of the tenancy. The Respondent did not give the tenants a valid notice to leave, however, and the Applicant considered that his tenancy ended on 27 May 2024, his notice having been accepted by the Respondent.

30. A notice to leave given by only one joint tenant is not valid, however, and does not terminate the tenancy. It is therefore arguable that the joint tenancy actually ended when Ms Newlands left the property. The tenancy deposit was also paid jointly by the Applicant and Miss Newlands. Had the deposit been paid into an approved scheme, it would not have been released until the tenancy ended.

31. While the Applicant and Ms Newlands were joint tenants, it was open to the Applicant to make an application in his sole name under rule 103 of the 2017 Rules with regard to the entire deposit which they paid between them. The Applicant had done so.

32. The Respondent had admitted that he had failed to comply with the duty under Regulation 3(1) of the 2011 Regulations to pay the tenancy deposit into an approved tenancy deposit scheme within 30 working days of the start of the tenancy. The Tribunal was therefore obliged to make an order requiring the Respondent to make payment to the Applicant, in terms of rule 10 of the 2011 Regulations.

33. The Tribunal is then required to consider the sum which the Respondent should be ordered to pay to the Applicant, which could be any amount up to three times the amount of the tenancy deposit. The amount of any award is the subject of judicial discretion after careful consideration of the circumstances of the case, as per the decision of the Inner House of the Court of Session in the case of *Tenzin v Russell 2015 Hous. LR. 11*.

34. In considering the appropriate level of payment order to be made in the circumstances, the Tribunal considered the need to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach (Sheriff Welsh *in Jenson v Fappiano* 2015 GWD 4-89).

35. The Tribunal noted the view expressed by Sheriff Ross in *Rollet v Mackie* ([2019] UT 45) that the level of penalty should reflect the level of culpability involved. It did not consider that most of the aggravating factors which might result in an award at the most serious end of the scale were present in this case. The Respondent had admitted that he had failed to pay the Applicants' deposit into an approved scheme within 30 working days of the start of the tenancy, and. As Sheriff Ross noted, at para 13 of his decision: *"The admission of failure tends to lessen fault: a denial would increase culpability".*

36. The Tribunal considered the various factors to be taken into account as set out in *Rollet v Mackie.* While the Applicant submitted that the Respondent was an experienced landlord, there was no clear evidence of this. There was no evidence of any repeated breaches against other tenants. The available evidence did not support a finding that there had been fraudulent intention by the Respondent, or a deliberate failure to observe his responsibilities as a landlord.

37. Regardless of whether he was a "commercial landlord", however, the duty under Regulation 3 of the 2011 Regulations is an absolute duty on the landlord. It was the Respondent's responsibility to ensure that he complied with his legal obligations. He should have made sure that he did so. While the Respondent may suffer from dyslexia, he still has the same responsibilities as any other landlord.

38. If he was unsure as to what the law required of him, he should have sought appropriate legal advice. This was perhaps even more important given his dyslexia, to ensure that he was complying with the law. His failure to take advice on this matter, taken together with his failure to provide the correct form of tenancy agreement and notice to leave in line with current tenancy legislation, suggests a reckless failure to comply with his responsibilities as a landlord.

39. The tenancy agreement which he provided stated that the tenancy deposit would be paid into an approved scheme. This also suggests that he was, or at least should have been, aware of his legal responsibilities to do so. He said, however, that he only became aware of the requirement more than 30 days after the start of the tenancy. He seems to have then assumed at that point that it was too late to pay it into a scheme, when in fact he could -and should- have still done so at that time.

40. In his written submissions of 3 June 2025, the Respondent had queried the Applicant's motives in making the application, suggesting that he was being opportunistic. The Respondent was, however, at fault in having failed

to pay the tenancy deposit into a scheme and had admitted doing so. The Applicant had a legal right to make an application to the Tribunal under the 2011 Regulations. His motivations in doing so were irrelevant.

41. The tenancy deposit paid by the Applicant and Ms Newlands should have been protected throughout their tenancy, but it was not protected during the year or so that they were living in the property. It was the Respondent's responsibility to ensure that it was so protected. The whole matter had caused the Applicant (and also Ms Newlands) some distress and inconvenience.

42. The requirement to pay a tenancy deposit into an approved scheme is intended to protect the deposit, and offers protection for both parties in the event of any dispute at the end of the tenancy. The Respondent only paid half of the deposit back to Ms Newlands, saying that the Applicant had not paid his share of the last month's rent. Given that this was a joint tenancy and both tenants were jointly and severally liable to pay the rent until the end of the tenancy, that may have been the case. Because the deposit was not appropriately protected, however, the Applicant was denied the opportunity to dispute this through an approved tenancy deposit scheme. Had the deposit been paid into an approved scheme, the entire deposit would have been registered in the name of both tenants. Any dispute over the alleged missing mattress and issues with the area outside the property could also have been dealt with through the scheme.

43. Taking all of the above considerations into account, the Tribunal considered that an award at the mid-level of the possible penalty scale would be appropriate. It therefore determined that an order for £1170, representing one and a half times the amount of the tenancy deposit paid, would be fair, proportionate and just, having regard to the seriousness of the breach.

Decision

44. The Tribunal determines that the Respondent has failed to comply with the duty in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 to pay a tenancy deposit to the scheme administrator of an approved scheme within the prescribed timescale. The Tribunal therefore makes an order requiring the Respondent to pay to the Applicant the sum of £1170.

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.

7 October 2025

Sarah O'Neill

Legal Member/Chair **Date**