



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Regulations”) and The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/25/3150

Re: Property at 1 Garrockhill Cottage, Coalhall, KA6 6NA (“the Property”)

Parties:

Ms Anne Gilchrist, 1 Garrockhill Cottage, Coalhall, KA6 6NA (“the Applicant”)

Mr John Campbell McCubbin, Garrockhill Farm, Coalhall, KA6 6NA (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £1,500 should be made by the Respondent to the Applicant.

Background

1. By application received on 22 July 2025, the Applicant applied to the Tribunal for an order for payment against the Respondent in respect of his failure to carry out his duties as landlord in relation to a tenancy deposit. The failure alleged was a failure to lodge the deposit within an approved scheme within the required time limit (30 working days) in terms of the 2011 Regulations. He had been paid the deposit of £2,000 on 10 January 2024 at the outset of the tenancy and it was not placed into a tenancy deposit scheme until 29 July 2025, around 17 months late. Supporting documentation was lodged in respect of the application, including proof of the payment of the deposit to the Respondent and proof as to when it had been lodged in the scheme. The Private Residential Tenancy had commenced around 15 January 2024 and was ongoing. The

Applicant sought the imposition of the maximum penalty on the Respondent, being three times the amount of the deposit, amounting to £6,000.

2. Following initial procedure, on 5 August 2025, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 21 October 2025, a copy of the application papers and details of the Case Management Discussion (“CMD”) to take place were served on the Respondent by Sheriff Officer. Written representations were invited from the Respondent but no representations were lodged by him prior to the CMD.
4. On various dates, namely 20 and 31 October, 6 November and 8 December 2025, the Applicant lodged further supporting paperwork and representations, mainly concerning some confusion with the Tribunal paperwork in respect of this application and a second application that the Applicant had lodged but subsequently withdrawn.
5. On 3 December 2025, a solicitor instructed by the Respondent, enquired about representing him at the CMD, without a written mandate having been produced and it was confirmed to him that a solicitor does not require such a mandate.

Case Management Discussion

6. The CMD took place by telephone conference call on 9 December 2025 at 2pm. The Applicant, Ms Anne Gilchrist, was in attendance and the Respondent was represented by his solicitor, Mr Kelvin Walker of Kilpatrick & Walker, solicitors.
7. After introductions and introductory remarks by the Legal Member, there were discussions regarding the application.
8. Mr Walker confirmed that the Respondent admitted the breach of the tenancy deposit regulations as he accepts that the deposit had only been lodged on 29 July 2025. It was explained that this failure had been due to the Respondent’s ignorance of the rules. However, he had been given advice in relation to the matter and, on being made aware of his obligations, paid the deposit into the SDS scheme. It was further explained that the Respondent is a farmer and this Property is the only one he lets out. He is therefore more of an ‘amateur’ landlord than a ‘professional’ one. He also had no letting agent acting for him in relation to matters. He had, however, been keeping the deposit safely in his bank account. Although the deposit was lodged too late, Mr Walker stated that it is relevant that the deposit is now lodged in a scheme as any risk to the deposit has been removed and the scheme’s dispute resolution procedures will be available to the parties at the end of the tenancy, this being one of the main purposes of the tenancy deposit regulations. In Mr Walker’s submission, the Applicant has therefore not been prejudiced by the breach as there has been no financial loss to her.

9. Ms Gilchrist disagreed with what Mr Walker had said on behalf of the Respondent. She stated that, from the beginning of the tenancy, there were no legal documents produced by the Respondent and he has not dealt with things properly. Initially, the deposit was only to be £1,000, with two months' rent payable in advance but the Respondent had subsequently changed his mind and made it a £2,000 deposit, with one month's rent paid in advance. Ms Gilchrist had also had dealings with the Respondent's mother, who appeared to assist him with matters. Ms Gilchrist had consulted East Ayrshire Council (Private Rented Sector) about various matters and they had guided her through all of this. They had asked her about her tenancy deposit and when she told them that she did not know what had happened to it, they had contacted the Respondent direct and told him he must lodge the deposit in a scheme. Ms Gilchrist said that this was the only reason he had paid the £2,000 into the scheme on 25 July 2025. She explained that the week prior to this, the Respondent had been in the Property shouting at her and stated that the deposit was not going to be put in a scheme. In her view, he had been well aware of his obligations. She mentioned that the Respondent had not had a Landlord Registration either, until around April 2025. Ms Gilchrist had been told that, as the Respondent had lodged the deposit 17 months late, she would be due the maximum penalty. She mentioned the other disputes with the Respondent, mostly due to the heating costs she has incurred and his lack of repairs, safety and energy efficiency checks. The other application she had lodged with the Tribunal regarding these issues, which had caused the confusion with the paperwork, was subsequently withdrawn by her as she was dealing with caring for her dad and his subsequent death at the time and could not deal with the application too. The Legal Member explained that these other issues could not be taken into account in relation to this application and also that it was for the Tribunal to assess the appropriate penalty, which had a maximum possible penalty of three times the deposit, but that this was not automatic. Ms Gilchrist still considered that a high penalty should be due, given that the deposit was lodged 17 months late, that the Respondent would never have lodged it if East Ayrshire Council had not told him he must and the way he has treated her in relation to the deposit and other matters. Ms Gilchrist stated that she has already given notice that she is moving out of the Property and that she is due to vacate on 14 December 2025. She said that she had no choice but to do so, given all the problems with the Respondent and the Property itself. It was explained by the Legal Member that any dispute arising over the return of the deposit to Ms Gilchrist at the end of the tenancy would be adjudicated on, free of charge, by the tenancy deposit scheme, now that the deposit is lodged there.
10. Mr Walker further responded on behalf of the Respondent. He said that he had discussed with him the allegation as to the discussion which Ms Gilchrist had stated took place the week before the deposit was placed in a scheme. This is not accepted by the Respondent but it is appreciated that this is a case of one person's word against the other. Mr Walker maintained, however, that the Respondent had admitted the breach and rectified the situation by lodging the deposit in a scheme. The purpose of the scheme is not to compensate a tenant but rather to protect the deposit so that it can be returned to the tenant or retained by the landlord at the end of the tenancy, depending on what the

scheme administrators decide. Mr Walker reiterated that the Applicant has not been subject to any financial loss as a result of the late lodging of the deposit and requested a minimal penalty be imposed.

11. Following parties' submissions, the Legal Member indicated that as there had been a clear breach of the 2011 Regulations, which had been admitted by the Respondent, a penalty would be imposed. She indicated that she wished to fully consider the representations made by the parties and the circumstances of the case in further detail before determining the appropriate sanction but would issue a written decision shortly, specifying the amount of the sanction and explaining the reasons for same. It was explained that the decision would be issued to both parties and that there was a 30-day appeal period following that, during which either party could appeal if they considered the Legal Member to have erred in law.
12. The parties were thanked for their attendance and the CMD concluded.

Findings in Fact

1. The Respondent is the landlord of the Property and managed the tenancy himself.
2. The Applicant is the tenant of the Property by virtue of a Private Residential Tenancy commencing on or around 15 January 2024 which is currently ongoing but is due to terminate on or around 14 December 2025, the Applicant having given notice.
3. The Applicant paid a tenancy deposit of £2,000 to the Respondent on or around 10 January 2024, at the outset of the tenancy.
4. The tenancy deposit was lodged in a tenancy deposit scheme with Safe Deposits Scotland on 29 July 2025 around seventeen months late in terms of the 2011 Regulations.
5. Disputes had arisen during the tenancy and the Applicant had raised the issue of her tenancy deposit with the Respondent prior to him placing the deposit in the scheme.
6. The Applicant had sought advice regarding tenancy-related matters from East Ayrshire Council and they had contacted the Respondent directly on behalf of the Applicant regarding the tenancy deposit.
7. The tenancy deposit currently remains in the tenancy deposit scheme, pending the tenancy ending.
8. The Respondent admits the breach of the 2011 Regulations.

Reasons for Decision

1. The application was in order and had been submitted timeously to the Tribunal in terms of Regulation 9(2) of the 2011 Regulations [as amended to bring these matters within the jurisdiction of the Tribunal], the relevant sections of which are as follows:-

“9.—(1) A tenant who has paid a tenancy deposit may apply to the sheriff 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 by summary application and must be made no later than 3 months after the tenancy has ended.

10. *If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

(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 sheriff 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.”

Regulation 3 [duties] referred to above, is as follows:-

“3.—(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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.”

2. The Tribunal was satisfied from the documentation before it and the oral representations made by the parties at the CMD that the Respondent was under the duties outlined in Regulation 3 above and had failed to ensure that the deposit paid by the Applicant was paid into an approved tenancy deposit scheme within 30 working days of the start of the tenancy, contrary to Regulation 3 of the 2011 Regulations. The Respondent had lodged the deposit in a scheme on 29 July 2025, over 18 months after the start of the tenancy and it was therefore lodged around 17 months late in terms of the Regulations. The Tribunal considered the explanation put forward at the CMD on behalf of the Respondent which was that he had been ignorant of the rules, that this is the only property that he rents out, that he is not a ‘professional’ landlord and was managing the tenancy himself. However, the Tribunal also had regard to the Applicant’s stated version of events, against the background paperwork submitted in support of the application and considered that her position in matters had been consistent throughout. It was clear that tenancy-related disputes had arisen between the parties, primarily surrounding the heating costs being incurred by the Applicant which she alleged was due to failures by the Respondent to carry out repairs and deal with matters as a responsible landlord. The Tribunal believed, on balance, that the Applicant had raised the issue of the tenancy deposit with the Respondent and that his response had confirmed her concerns that the deposit may not have been placed in a scheme. The Applicant maintained that it was only after she sought advice on matters from the local authority, and they had contacted the Respondent directly, that the Respondent had paid the deposit into a scheme. Although the Respondent claimed not to have been aware of his obligations before seeking legal advice and disputed the discussion which the Applicant had stated had taken place between them regarding the deposit, he did not deny having been contacted by East Ayrshire Council on behalf of the Applicant.
3. The Tribunal considers this background to events to be an aggravating factor in the assessment of the appropriate penalty, as well as the lengthy period of time the deposit was ‘unprotected’. The Tribunal was also satisfied that, although there had been no actual financial loss to the Applicant established, it accepted her position as to the anxiety and stress caused to her as a result of finding out that the Respondent had not placed her deposit in a scheme. The Respondent had taken a relatively large deposit at the outset of the tenancy (double the monthly rent) and, as disputes had already arisen between the parties in respect of financial aspects of the tenancy, the Tribunal understood the Applicant’s concerns that the Respondent had retained control of the deposit and that there was a risk of him refusing to return it to her in due course or dealing with the matter in a reasonable way.
4. However, the Tribunal also accepted as mitigating factors, in terms of the appropriate penalty to be imposed, the fact that the Respondent was not a landlord by profession and had tried to manage the tenancy himself. He had also taken the responsible steps of seeking legal advice after the local authority had contacted him on behalf of the Applicant and then, on the basis of that

advice, had lodged the deposit in the tenancy deposit scheme, albeit rather late and admitted his failures in respect of the tenancy deposit regulations. As had been stated by the Respondent's solicitor on his behalf, the consequence of lodging the deposit in the scheme is that the tenancy is now 'protected' and parties will be able to take advantage of the scheme's free dispute resolution procedures in the event that a dispute arises regarding return of the deposit to the Applicant at the end of the tenancy, which is now imminent.

5. In determining the appropriate amount of the sanction to be imposed, the Tribunal considered carefully the background circumstances and the information provided and submissions made by both the Applicant and on behalf of the Respondent in respect of the matter. The Tribunal considered that the amount of the sanction should reflect the gravity of the breach and took into account the factors it considered to be aggravating and mitigating, as narrated above. The Tribunal took no account, in assessing the sanction, of the other disputes which had arisen between the parties, other than in the context of the additional stress and anxiety that the Tribunal was persuaded had been caused to the Applicant by the Respondent's failures in providing her with the required information in respect of the tenancy deposit and his failure and delay in lodging it in a scheme. The Applicant considered that the maximum sanction should be payable. As the deposit here was £2,000, in terms of Regulation 10(a) above, the maximum possible sanction was therefore £6,000. There is no minimum sanction stipulated in the 2011 Regulations. Leniency had been requested on behalf of the Respondent.
6. Weighing all of these factors, the Tribunal determined that this was neither a breach which should attract the maximum or a very high sanction, nor a minimal sanction. The Tribunal did not consider this failure of the Respondent to comply with the Regulations to have been due to simple error or inadvertence. The tenancy deposit regulations had been in place since 2011 and the Respondent ought to have been aware of them and the obligations he was under in respect of them when operating as a landlord. In the circumstances, the Tribunal determined that the sum of £1,500 was the appropriate sanction. Accordingly, a payment order against the Respondent in the sum of £1,500 would be 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.

Nicola Weir

Legal Member/Chair

9 December 2025
Date

