



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”)

Chamber Ref: FTS/HPC/PR/24/5264

Property at 8 Inglis Avenue, Prestonpans, EH32 0AB (“the Property”)

Parties:

Ms Eleanor Williams, 8 Inglis Avenue, Prestonpans, EH32 0AB (“the Applicant”)

Mr Gordon Sutherland, 30 Forth Court, Prestonpans, EH32 0TN (“the Respondent”)

Tribunal Members:

Josephine Bonnar (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 £950 should be made in favour of the Applicants.

Background

- 1.** The Applicant seeks a payment order in relation to a failure by the Respondent to lodge a tenancy deposit in an approved scheme. A tenancy agreement and emails from the three approved schemes were lodged with the application.
- 2.** A copy of the application was served on the Respondent, and both parties were notified that a case management discussion (“CMD”) would take place on 16 June 2025 at 11.30am and that they were required to participate. The Applicant’s notification was sent to her legal representative.
- 3.** Prior to the CMD, both parties lodged submissions. As the Respondent’s submission contained sensitive information, he was notified that all submissions require to be crossed over if they are to be considered. He submitted a replacement submission which was sent to the Applicant. The Applicant lodged a submission which she said was not to be crossed over to the Respondent. She was notified that it would not be considered by the

Tribunal. She did not submit a replacement or confirm that the submission could be given to the Respondent. Prior to the CMD, her legal representative withdrew from acting.

4. The CMD took place on 16 June at 11.30am. The Respondent participated. The Applicant did not join the call. The Tribunal clerk contacted her by telephone. She advised that she had not received the notification with the date, time and dial in details and that she could not join the call at short notice. She also said that she had sent an email to the Tribunal on 12 June 2025 and that she has been in touch with the CAB, but they had not yet confirmed if they are able to deal with the matter.
5. The Legal Member noted that the CMD notification had been sent to the former representative. However, the Applicant should have made enquires with the Tribunal after they had withdrawn from acting to ensure that she knew when and how to participate in the CMD. In the circumstances, the Legal Member determined that the CMD should be continued to another date to allow the Applicant a further opportunity to attend or be represented. The Legal member also determined that a direction should be issued to the parties.
6. The parties were notified that a further CMD would take place on 2 December 2025 at 10am. Both parties lodged further submissions.
7. The CMD took place at 10am on 2 December 2025. The Applicant and the Respondent participated.

Summary of discussion at CMD

8. The Legal Member noted that the following facts are not disputed: -
 - (a) The tenancy started in September 2022.
 - (b) A deposit of £800 was paid by the Applicant to the Respondent at the start of the tenancy
 - (c) The deposit was not lodged in an approved scheme until 3 April 2025.
9. In response to questions from the Legal Member, Mr Sutherland stated that he had not been a landlord before September 2022. He had not intended to become a landlord and had purchased the property for his disabled son. The Applicant was a friend of his wife and was desperate to find somewhere to live. At his wife's suggestion, he offered her the property. The tenancy is continuing but he has no other rental properties. The Legal Member noted that the Applicant had lodged messages to the Respondent from September 2022 and May 2023, reminding him to lodge the deposit in a scheme. Mr Sutherland initially said he was not sure that he could recall receiving these but then stated that he had received messages but had too many other things to deal with at the time as his wife was ill. He said that he recognised that this was not an excuse but was the reason he did not prioritise the matter. He also said that Ms

Williams had told him that she had sometimes had difficulty in getting her deposit back in the past and naively, he thought that it would be better if he kept it as it could be returned more quickly. Ms Williams raised no objection when he told her this. He had not been fully aware of his obligations regarding the deposit and although he knew that they were generally lodged in schemes, he did not know it was a legal requirement. Mr Sutherland said that no malice had been intended. The deposit was in the bank the whole time and he had not intended to withhold it. He said that he had been foolish and let his heart rule his head. If he could turn back time, he would do things differently.

10. Ms Williams denied that she had agreed to him holding onto the deposit. She accepted that he had not been a landlord before and that his wife had been ill. However, she had nudged him a few times about lodging the deposit and he said to her that it was not a legal requirement. She had told him it was. She said that his refusal to lodge the deposit was a form of control. It gave him power over the return of the deposit in the future. She had thought about moving out but could not face having to do so.

Findings in Fact

11. The Applicant is the tenant of the property.
12. The Respondent is the landlord of the property.
13. The tenancy started in September 2022.
14. At the start of the tenancy the Applicant paid a deposit of £800.
15. The deposit was not lodged in an approved scheme until 3 April 2025.
16. Prior to the start of this tenancy the Respondent had not been a landlord and had not intended to become a landlord when he purchased the property.
17. The Applicant notified the Respondent that the deposit should be placed in an approved scheme in September 2022 and May 2023.

Reasons for Decision

18. 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) (Scotland) 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.

19. Regulation 9 of the 2011 Regulations states that (i) 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

20. 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.**”

21. Although there were one or two facts upon which the parties did not agree, the essential facts were not in dispute. The Legal Member was satisfied that a decision could be made on the application without further procedure or a hearing. The parties’ submissions included references to other tenancy related matters which are in dispute. The Legal Member is satisfied that the issues of access to the property, alleged breach of tenancy and repairs are not relevant to the present application.

22. From the documents lodged with the application, the parties’ written submissions, and the information provided by both parties at the CMD, the Legal Member is satisfied that the Applicant paid a deposit of £800 at the start of the tenancy in September 2022, which was not lodged in an approved scheme until 3 April 2025. The Applicant has therefore established that the Respondent failed to comply with the 2011 Regulations.

23. In terms of Regulation 10, an award **must** be made where there has been a failure by a landlord to comply with the Regulations. In assessing the award, the Legal Member had regard to the following factors: -

- (a) The deposit was not secured for a period of two years and seven months and was only lodged in an approved scheme after the application had been served on the Respondent, on 25 March 2025. It seems likely that the deposit would have not been lodged if the application had not been made.
- (b) The Respondent had no previous experience of being a landlord and had not purchased the property with the intention of becoming a landlord.
- (c) The Respondent accepts that he was aware that deposits are generally lodged in schemes, but states that he was not aware that it was a legal requirement. However, he was informed of his obligations by the Applicant and chose to

disregard them.

- (d) On at least two occasions, the Applicant told the Respondent that the deposit should be placed in a scheme. The Applicant wanted the deposit to be lodged in a scheme and has been anxious about the Respondent's refusal to do so.
- (e) Although the Applicant does not dispute the Respondents' claim that there were mitigating personal circumstances, the Legal Member is not persuaded that these carry much weight. The Respondent did not fail to lodge the deposit for almost three years because he was dealing with personal issues. These may have contributed to the delay but were not the principal cause. He failed to do so because he chose not to do so. He thought it was better to put the deposit in his bank account. He became a landlord without investigating what was involved or ensuring that he was complying with the law. He may have been a reluctant landlord, but this is not an excuse. When the Respondent offered the property to the Applicant it was on the basis that she would pay rent and a deposit. Both parties signed a standard model private residential tenancy agreement. This specifically states that the deposit will be lodged with Safe Deposit Scotland. In the covering notes attached to the agreement it is stated that landlords are required by law to lodge deposits in approved schemes.
- (f) As the deposit has now been lodged, there is little likelihood of financial loss. In the event of a dispute over the deposit, the Applicant will be able to have the matter adjudicated by the scheme.

24. In the case of *Rollett v Mackie* (2019 UT 45), the Upper Tribunal refused the appeal by the Applicant who argued that the maximum penalty ought to have been imposed. Sheriff Ross commented that the "level of penalty requires to reflect the level of culpability" and that "the finding that the breach was not intentional...tends to lessen culpability" (13). He goes on to say, "Cases at the most serious end of the scale might involve repeated breaches against a number of tenants, fraudulent intention, deliberate or reckless failure to observe responsibilities, denial of fault, very high financial sums involved, actual losses caused to the tenant."

25. In the present case, most of the aggravating factors listed by Sheriff Ross have not been established. The only one which appears to apply is that the decision to retain the deposit was deliberate. However, the Respondent now fully acknowledges his failure and regrets his actions. In the circumstances, an award at the higher end of the scale is not warranted. However, the breach is not a minor or technical breach, the result of oversight. The Legal Member is satisfied that an award in the middle of the scale is appropriate and that the penalty should be £950.

Decision

26. The Tribunal determines that an order for payment of the sum of £950 should be made in favour of the Applicant.

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.

Josephine Bonnar, Legal Member

Date: 11 December 2025

