



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the 2017 Rules)

Chamber Ref: FTS/HPC/PR/25/2001

Re: Property at 27 Kilruskin Drive, West Kilbride, Ayrshire, KA23 9JA (the Property)

Ms Lynne Roach and Mr Kevin Roach, 18 Imperial Drive, Airdrie (the Applicants)

Mr Walter Foster, Hollybank, Crichan Road, Dunoon, PA23 7LW (the Respondent)

Tribunal Members:

**Ms. Susanne L. M. Tanner K.C., Legal Member and Chair
Mr Gerard Darroch, Ordinary Member**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal): (i) determined that the Respondent did not comply with the duty in Regulation 3 of the 2011 Regulations to pay the Applicant's deposit into an approved scheme within the stipulated time; (ii) it must order the Respondent to pay the Applicant an amount not exceeding three times the amount of the tenancy deposit in terms of Regulation 10 of the 2011 Regulations; and (iii) made an order requiring the Respondent to pay to the Applicant the sum of THREE THOUSAND AND NINETY POUNDS (£3090.00) Sterling

Statement of Reasons

Procedural background

1. On 7 May 2025, the Applicant made an application to the tribunal against the Respondent in terms of Rule 103 of the 2017 Rules and Regulation 9 of the 2011 Regulations, namely an application for an order for payment where the landlord has failed to carry out duties in relation to a tenancy deposit (the Application).
2. The Applicant produced the following with the Application:
 - 2.1. Copy Private Residential Tenancy agreement (PRT);
 - 2.2. Evidence of the date of the end of the tenancy;
 - 2.3. Paper apart detailing the claim with attached Appendices of supporting evidence.
3. The tribunal's administration checked the Scottish Landlord Register and found that the Respondent is the registered landlord.
4. On 16 May 2025, the Application was considered by a legal member acting under the delegated powers of the President. The Application was accepted for determination by the tribunal.
5. A Case Management Discussion (CMD) teleconference was fixed for 24 September 2025 at 1400h by teleconference. By letter of 18 August 2025, parties were notified of the date, time and details of the CMD, which both parties were required to attend. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application. Parties were advised that if they did not attend the CMD, this would not stop a decision or order from being made by the tribunal if the tribunal considered that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit any written representations he wished by 8 September 2025. The Application paperwork and notification of the hearing was served on the Respondent by Sheriff Officers.
6. The Respondent did not lodge any written representations prior to the CMD.
7. The CMD took place on 24 September 2025 and was chaired by Mr McAllister, Legal Member. Both Applicants attended. The Respondent attended from Spain. Mr McAllister produced Notes on the Case Management Discussion which are referred to for their full terms. An evidential hearing was fixed as there were disputed matters of fact.\
8. A hearing was fixed for 5 March 2026 at 1000h and both parties were notified.

Hearing: 5 March 2026 at 1000h by teleconference

9. The First Applicant attended the hearing on behalf of herself and the second Applicant.
10. The Respondent attended the hearing and was supported by his wife, Mrs Janis Foster.
11. The tribunal chair explained the purpose of the hearing and the procedure to be followed to the parties.

Facts agreed

12. The tribunal confirmed with the Respondent that the following facts are agreed:
 - 12.1. A tenancy deposit part payment of £700.00 was made by the Applicants to the Respondent's bank account on 26 February 2024.
 - 12.2. A second tenancy deposit part payment of £845 was made by the Applicants to the Respondent's bank account on 2 April 2024.
 - 12.3. The Applicants' deposit was not lodged in a deposit protection scheme at any time during the tenancy.
 - 12.4. The Applicants' deposit of £1545.00 less agreed deductions of £445.00 was repaid to the Applicants in or around June 2025.
13. After two changes of position by the Respondent, and the production of late documents by the Applicant, the Respondent confirmed that the end date of the tenancy is agreed as 11 May 2025 (see below).

Late Documents

14. The First Applicant sought leave to lodge late documents relating to the end of tenancy date. She stated that the Respondent had not disputed the end date at the CMD and she did not realise that this was in dispute.
15. She produced an email chain giving notice to end the tenancy on 11 May 2025. It starts with an email from her email address on 15 April 2025, which says: *Hi Walter please find attached copies of correspondence sent on 12 April 2025*. It was acknowledged by Respondent on 15 April 2025.
16. The late documents were sent to the Respondent. The Respondent then agreed that the end date of the tenancy was 11 May 2025.

17. The tribunal considered the 2017 Rules, including the overriding objective to deal with the proceedings justly and allowed the Applicant's late documents to be lodged at the hearing.

Document bundle

18. The Respondent stated that he was having difficulties navigating the original PDFcasefile which had been sent to him on 15 January 2026, which his wife was accessing on a mobile telephone.

19. The tribunal chair adjourned to allow the clerk to send a new bundle to the Respondent (158 pages) and to ensure that he was able to access the whole document, which the Respondent confirmed that he was.

Evidence

20. Both parties confirmed that the only witnesses giving oral evidence were themselves and that there are no other witnesses they wished to call.

The First Applicant's evidence – Ms Roach

21. Ms Roach gave the following evidence in chief:

21.1. She is 57 and employed as an HR Manager.

21.2. They paid the tenancy deposit as discussed. She referred to the private residential tenancy agreement (PRT) (PDF, p.50ff.). The tenancy deposit scheme is included in the PRT (PDF, p.74), Clause 11. It notes that the landlord must lodge any deposit within 30 working days of the start date of the tenancy. Instalments must be lodged within 30 working days of receipt. They paid in two instalments. £700 was the original deposit lodged with the letting agent which was returned to them after they ceased acting for the Respondent and the parties entered into a new tenancy. Reference was made to an email on 26 February from her to the Respondent confirming that the original deposit had been returned to them (PDF, p. 22): *'Hi we have secured the release of the deposit of £700 from 247'*; and that email was acknowledged by the Respondent.

21.3. The Applicants requested details of the tenancy deposit scheme from the landlord. They understood that that would have been placed in a deposit scheme. They attempted to contact the scheme referred to in the PRT and

they had no account. PDF, page 132 is an email on 21 April 2025. She referred to the fact that the Respondent has now accepted that the tenancy deposit was not placed in a tenancy deposit scheme.

21.4. She referred to a reply from the Respondent (PDF, p.131/132) in which he said – *‘the deposit is safe’*.

21.5. Subsequently the deposit was returned in around June 2025, subject to some deductions which were agreed (PDF p128 to 129). £1100.00 was returned directly from the landlord.

21.6. Their deposit was unprotected from 30 working days from 26 February 2024 until the end of June 2025. For the duration of the tenancy agreement it was held directly by Mr Foster

22. Ms Roach was cross examined by Mr Foster and provided the following evidence:

22.1. The Applicants and the Respondent originally corresponded about the proposed end date of the tenancy and Ms Roach asked for the tenancy to continue to the end of my son’s schooling. But the Applicants then served notice and 11 May 2025 is exactly when the tenancy ended. There were discussion about whether in June 2024 the Applicants were in a position to vacate the property. They were not served with notice at that point. Their son had a further year to go at school. Ms Roach asked if they could remain in the property until her son finished school. She does not see how this is relevant to the landlord’s failure to lodge their tenancy deposit.

23. There were no matters arising in cross-examination that Ms Roach wished to give further evidence about.

24. Mr Foster gave the following evidence in chief”

24.1. He is a retired engineer, aged 67.

24.2. He referred to the PRT (PDF, p. 76) and said that the tenancy deposit scheme named was Safe Deposits Scotland Limited (SDS). He phoned SDS three times; the conversations were between 26 February 2024 and 2 April 2024. He thinks that he spoke to the same person. They said to him that they could not accept the deposit money as there was money already deposited for that address. This comes back to 247. They had the initial deposit that Mrs Roach deposited. Up until September there were emails from 247 to him saying that the money was lodged. Then 247 cut off correspondence. He has not lodged any emails between himself and 247 or himself and SDS. 247 were

released from managing the property in around January 2024 when Ms Roach took the new tenancy. 247 cut off correspondence with him in September 2024.

- 24.3. He was in contact with the letting agent about the deposit. The letting agent led them to believe that they still had the money up until September 2024.
- 24.4. He received the email from Lynne (Mrs Roach) in February 2024 that they had received return of the money from 247.
- 24.5. His conversations with SDS is that the monies had not been uplifted from them by 247 and that he could not lodge any money until the money was uplifted from SDS.
- 24.6. When the correspondence stopped with 247 in September 2024, he took on board that the tenant would be leaving early anyway. In September 2024 he decided that we would just hold onto the money that the Applicants had given him, on the basis that Lynne and Kevin would know that he was not going to run away with the money. That was the wrong thing to do.
- 24.7. He is an engineer. He is not a lawyer or a letting agent. He brought up his kids at the Property. He met his new wife and moved to Argyll. He let the house. That is why he employed a letting agent. The relationship broke down with the letting agent in September 2024.
- 24.8. He does not think that he contacted SDS again after 2 Aril 2024.
- 24.9. He told Lynne by email that he was holding onto the deposit money. Many times. Latterly when they were giving up the lease there were four or five emails in a chain from the February to May 2025.
- 24.10. He has never had a rental property bar his former marital home.
- 24.11. On 27 June 2025, 14.20, he sent an email to the tribunal's administration outlining his position about the case (PDF, p126) and he wanted to adopt everything said in that.
- 24.12. At this point in his evidence, the hearing adjourned as discussed above, to ensure that Mr Foster had access to the correct casefile, which was facilitated by and confirmed to the clerk.
- 24.13. He referred to a letter he received from the Applicants which said '*we have no wish to take formal action to secure the return of our deposit. We*

would much prefer that our funds are returned by agreement.' He said that that was 27 June 2025 and the monies were put in a couple of days later in June 2025. Mrs Roach had said that she wanted payment by 4 July 2025.

24.14. He is a bit put out as to why we are sitting here. [At this point the chair provided further explanation about the nature of the case being brought by the Applicant in relation to his failure to lodge their tenancy deposit, rather than an action for return of deposit money. Mr Foster confirmed that he understands the case that he is involved in.]

24.15. He referred again to his submissions (PDF, pages 121 to 122) which he said explains it all.

24.16. He said that the deposit money was held in a current account with TSB; it is one account dedicated to the house lease; the monies was always protected in the account.

24.17. He said: *'I tried to make the deposit in good faith. I tried to give a family a good turn. I am a wee guy and I am quite ignorant. In the twilight of my years, I have been made to look stupid. I put it together and I thought I had explained it all. It was protected through the TSB. I do not know why Ms Roach is pushing for this either. All I did, we were great landlords. Now I am being made to suffer.* [At this point Mr Roach was emotional and was shouting. The chair asked him if he wished to take a moment and asked him not to shout during the hearing.] Mr Foster said that he was fine to continue. He said: *'I am rather irate. My honesty and my understanding of things. I try to live a good life. There is nothing that I wish to say further. I have tried to be a nice person.'*

25. Ms Roach had no cross-examination for Mr Foster.

Applicant's submissions

26. Ms Roach stated that there is no specific case law that she wants to refer to. She understands that it is at the discretion of the tribunal. She asked the tribunal to take into account:

26.1. Mr Foster had the deposit paid in two tranches, the first in February 2024, the amount paid should have been put in a tenancy deposit scheme by 8 April 2024. Mr Foster failed to do that. Mr Foster was advised by email dated February 2024 that that money had been returned to us by the letting agent and was passed on to him. It should have been deposited by 8 April. Second instalment should have been deposited within 30 working days of 2 April 2024.

- 26.2. The deposit was unprotected from 8 April 2024 until the end of June 2025 when the agreed amount of the deposit was returned to them.
- 26.3. She submitted that this was a conscious decision on Mr Foster's part not to protect the tenancy deposit because he was well aware that should have been done. It was in the tenancy agreement. She thinks that it has been a serious breach not to do that.
- 26.4. She said that they initially rented the property through 247. They first saw it advertised through 247. They leased it through the letting agent. Mr Foster and 247 parted ways towards the end of 2023, or start of 2024. So that they did not have to move out, they entered into a tenancy agreement directly with Mr Foster. The deposit of £700.00 was returned to them by the letting agent and forwarded to Mr Foster as part of the increased deposit he asked for. They had to secure the rest from a savings account with a 30 day notice period. Therefore the remainder of the deposit was paid 30 days later. She does not know why it was done in that way by 247 returning the original deposit but that is the way that it was done. The Applicants just passed the £700.00 straight on to the Respondent.
- 26.5. She said that Mr Foster did not tell them at any point that their deposit could not be lodged. The first they heard of SDS saying it could not be lodged was at the CMD. That was never said to them directly.

The Respondent's submissions

27. The Respondent made the following submissions:

- 27.1. *"The breakdown with 247 has resulted in this and that if there was no breakdown the money would still be in situ as it was". The breakdown led to "muddied waters, non-disclosure of quite a lot of things and hence the reason we are sitting here today".*
- 27.2. He said that he is only a landlord of one property.
- 27.3. He said that he previously had an agent until the end of 2023. In September 2024 the relationship broke down.
- 27.4. He said he had an ignorance of the requirements of letting.
- 27.5. He said he will never let a property again.
- 27.6. He said that the deposit was returned in full other than agreed deductions in June 2025.
- 27.7. He said that he agreed with Lynne and Kevin (Mr and Mrs Roach) what the new deposit would be and that 247 then agreed that the original deposit would be returned to them.
- 27.8. He said that through the three telephone calls he made to SDS (between 26 February and 2 April) they told him that they could not accept money because there was still money deposited. He said the deposit was returned to the Respondent.

deposit was 247 and that he did not know whether he could let that money sit and top up. He said that SDS would not allow him to do anything.

27.9. He said that he did not go back to the Roachs to say he could not lodge the deposit with SDS.

27.10. He said that *'it was a total mess'*.

27.11. He said that he never had any email confirmation from SDS that the former deposit was still lodged there. He was only told during telephone calls.

28. Having heard the evidence and submissions from both parties, the tribunal adjourned to deliberate.

Findings in Fact

29. The Respondent is the owner of the Property.

30. On or about 16 January 2016 the Respondent, through his letting agent '24/7', entered into a tenancy of the Property with the Applicants.

31. The Applicants paid a tenancy deposit of £700.00 to the Respondent, through his letting agents.

32. The Applicants' £700.00 tenancy deposit was lodged in Safe Deposits Scotland by 24/7 letting agents on behalf of the Respondent.

33. The Applicant's tenancy deposit was protected with Safe Deposits Scotland until in or about February 2024.

34. Towards the end of 2023, the Respondent's relationship with his letting agent broke down and they withdrew from acting on behalf of the Respondent in relation to the Applicants' tenancy in or around January 2024.

35. The Applicants entered into a new private residential tenancy agreement (PRT) with the Respondent for the Property which began on 26 January 2024.

36. The Respondent requested payment of a tenancy deposit from the Applicants of £1545.00.

37. On 13 February 2024, the Respondent asked the Applicants to request return of their previous deposit from 247 and requested a new tenancy deposit from the Applicants.

38. The PRT (clause 11) stated that the tenancy deposit would be protected by being lodged by the Respondent with Safe Deposits Scotland.
39. The Applicants paid the new tenancy deposit in two tranches: £700 on 26 February 2024 and £845 on 2 April 2024.
40. In correspondence in or about February 2024, the Applicants sought confirmation from the Respondent that their deposit of £1545.00 would be lodged in a statutory deposit protection scheme.
41. The Respondent first told the Applicants in correspondence on 13 February 2024 that the deposit would reside with them.
42. The Applicants told the Respondent in correspondence on 13 February 2024 that the tenancy deposit scheme was compulsory for all landlords including the Respondent and provided a link to Scottish Government guidance.
43. The Respondent told the Applicants later on 13 February 2024 that he intends to use a scheme “where applicable” and asked them for payment direct to him to deposit or lodge.
44. The Applicants received return of their full tenancy deposit of £700.00 from 247 on or about 26 February 2024.
45. The Applicants told the Respondent on 26 February 2024 that their tenancy deposit of £700.00 had been returned to them in full via 247 and the email was acknowledged by the Respondent.
46. The Respondent told the Applicants on 26 February 2024 that once in place they would send over the company where the deposit will be held.
47. In or around September 2024, the Respondent made a decision not to lodge the tenancy deposit but this decision was not communicated to the Applicants.
48. The Respondent did not lodge the Applicants’ tenancy deposit of £1545.00 in a statutory deposit protection scheme at any time.
49. The Respondent kept the Applicants’ deposit in a current account with TSB which was used for revenue purposes in relation to the Property income and expenses.
50. The Respondent did not tell the Applicants during the tenancy that their tenancy deposit had not been lodged in a statutory deposit protection scheme or that there were any problems lodging their deposit.

51. The Applicants' tenancy ended on 11 May 2025, following service of notice by the Applicants on the Respondent.
52. At around the same time as service of the Applicants' notice to end the tenancy, the Applicants requested details of the deposit protection scheme from the Respondent.
53. The Respondent did not provide details as the Applicants' deposit had not been lodged.
54. Safe Deposits Scotland confirmed that no deposit for the Applicants' tenancy was lodged with them.
55. Letting Protection Scotland confirmed that no deposit for the Applicants' tenancy was lodged with them.
56. MyDeposits Scotland confirmed that no deposit for the Applicants' tenancy was lodged with them.
57. Following the end of the tenancy, the Applicants and the Respondent negotiated agreed deductions £445.00 from the Applicants' tenancy deposit.
58. The Applicants received repayment of the balance of £1100.00 from their deposit directly from the Respondent.
59. The Respondent has one rental property which is the Property.

Discussion

60. The Respondent accepted that there had been a failure on his part to comply with Regulation 3 of the 2011 Regulations.
61. Regulation 3 provides that the tribunal must make an order for payment, to a maximum of three times the tenancy deposit of £1545.00, which is £4635.00.
62. The first deposit part payment of £700.00 should have been lodged within 30 working days of 26 February 2024, which is by 9 April 2024. The second deposit part payment of £845.00 should have been lodged within 30 working days of 2 April 2024, which is by 14 May 2024. The deposit was not lodged at any time prior to the end of the Applicants' tenancy of the Property.

63. The tribunal did not accept the Respondent's evidence that he was unable to lodge the Applicants' deposit as credible or reliable. His evidence that he was unable to lodge the deposit with SDS for a period between 26 February 2024 and 2 April 2024, because he was told that the previous tenancy deposit was still lodged with them, was not supported by any independent documentary, or other evidence to support it. To the contrary, there is written contemporaneous evidence that (i) the Respondent asked the Applicants to request their previous deposit back from 247; and (ii) the Applicants told the Respondent on 26 February 2024 that their previous tenancy deposit had been returned, which was acknowledged by the Respondent. The Respondent did not produce any evidence from SDS, to support his position that he had been told that there was any difficulty with lodging the new tenancy deposit. The Respondent did not inform the Applicants that there was any problem with lodging their deposit. In any event, contemporaneous correspondence from 13 February 2024 shows that the Respondent was first intending to hold the deposit himself; and by 26 February 2024 was intending to lodge the deposit. However, the Respondent's evidence was that he made a conscious decision in or before September 2024 not to lodge the Applicants' deposit in a deposit protection scheme giving the reason in evidence that it was a short tenancy. Again, his intentional decision was not communicated to the Applicants.

64. The maximum amount of any payment order for failure to lodge a tenancy deposit in the statutory timescale is three times the amount of the deposit.

65. The tribunal took into account the agreed facts, its findings in fact on the evidence and both parties' submissions.

66. Neither party referred to any legal authorities.

67. The tribunal had regard to Upper Tribunal authorities *Rollett v Mackie [2019] UT 45* and *Ahmed v Russell [2023] UT 7*.

68. In *Rollett*, above, Sheriff Ross said [at para 9] that:

'Each case has to be examined on its own facts, upon which a discretionary decision requires to be made by the FtT. Assessment of what amounts to a "serious" breach will vary from case to case – it is the factual matrix, not the description, which is relevant. Comparison with other cases is therefore of minimal assistance in the present case. The general principles of the law apply and these include that for a discretionary decision to be overturned it must be one which no reasonable tribunal could make.'

69. And further [at para 13]:

'In assessing the level of a penalty charge, the question is one of culpability and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree and these two points cannot help on that question. The admission of failure tends to lessen fault; a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. The finding that the breach was not intentional is therefore rational on the fact and tends to lessen culpability'.

70. In *Ahmed*, above, Sheriff Cruickshank outlined the purpose and policy objectives of the Regulations [at para. 19] and referred to Sheriff Ross's *'helpful summary'* Rollett, above [at para. 29], stating:

'Furthermore, in Rollett, Sheriff Ross considered that in assessing the level of sanction the question was one of culpability. When it came to the level of sanction the question was one of degree and provided examples of the factors which could lessen or increase the level of culpability' [at para. 30].

71. In the present case, the tribunal took the approach of establishing the facts and then considering any aggravating and mitigating factors to determine culpability of the Respondent and decide on the appropriate level of sanction.

72. The tribunal considers that the fact that the deposit was unprotected for the entire tenancy from January 2024 to the end of the tenancy on 11 May 2025 is an aggravating factor. The tribunal considers the fact that an intentional decision was made (at least by September 2024) not to lodge the deposit is an aggravating factor.

73. The tribunal considers that the fact that the Respondent has now accepted that he breached the Regulations is a mitigating factor. The tribunal also considers that the Respondent has only one rental property which was previously managed by an agent is a mitigating factor but did not afford this factor much weight given that his obligation to lodge the deposit was known to him at the time the deposit was taken by him from the Applicants and discussed in correspondence at the time. The tribunal considers that it is a mitigating factor that the Applicants' deposit was returned to them by end June 2025, less agreed deductions. However, this was not given significant weight in the assessment of culpability, as had there been a dispute about proposed deductions, the Applicants would have been deprived of the protection afforded by a deposit protection scheme.

74. For the reasons outlined, the tribunal considered that the breach was at the higher end of the scale of seriousness and decided to make an order for payment by the Respondent to the Applicant of the sum of £3090.00, which is two times the

tenancy deposit. That sum was considered by the tribunal to be reasonable in all the circumstances.

75. The tribunal told the parties its decision and reasons orally at the hearing and explained that a written decision with statement of reasons would be produced and sent to both parties.

Permission to Appeal

76. 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.

Susanne Tanner

5 March 2026

**Ms. Susanne L. M. Tanner K.C.
Legal Member/Chair**