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 Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Deposit Regulations")

Chamber Ref: FTS/HPC/PR/25/4376

Re: Property at 33 Montgomery Road, Paisley, PA3 4PP ("the Property")

Parties:

Miss Clare Jaconelli, 43 Cochrane Mill Road, Johnstone, PA5 8PX ("the Applicant")

Mr Andrew Coll, Monkreddan Fram, Kilwinning, KA13 7QL ("the Respondent")

Tribunal Members:

Fiona Stephen (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined (1) to grant an order for payment in the sum of One Thousand Five Hundred Pounds (£1,500.00) Sterling and (2) to grant an order requiring the Respondent to pay the tenancy deposit (£500.00) to an approved tenancy deposit scheme.

Background

1. By application dated 7 October 2025 the Applicant seeks an award under the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") in respect of an alleged failure by the Respondent to comply with those regulations.

2. The application was accepted by the Tribunal on 20 October 2025 and referred for determination by the Tribunal.

3. The application is conjoined with application FTS/HPC/CV/25/5488 in which the Applicant seeks return of her deposit from the Respondent.

4. The Respondent submitted a letter dated 11 February 2026 making written representations and photographs of the Property taken after the tenancy ended.

5. A Case Management Discussion took place via teleconference on 24 March 2026. The Applicant and Respondent both attended. The Respondent accepted that a deposit had been received at the commencement of the tenancy which had not been placed in an approved tenancy deposit scheme. The Tribunal fixed an evidential hearing to consider the level of any sanction to be awarded. The Tribunal stated in the CMD Note (which related to this and the conjoined case) that in terms of dealing with the failure to lodge the tenancy deposit, it would not be appropriate or relevant to include detailed evidence about the condition of the Property at the end of the tenancy. It went on to say that it would not allow detailed evidence about the cleanliness of bedrooms and bathrooms etc in the Property to be led. The Tribunal fixed an evidential Hearing in respect of FTS/HPC/CV/25/5488 to take place at the same time. Unfortunately, it was not made clear in the CMD Note that parties could lead detailed evidence about the condition of the Property at the hearing in relation to that case. The Applicant had lodged video evidence prior to the CMD showing the condition of the Property at the end of the tenancy. She was informed by the administration team that the issue of whether this could be used at any Hearing would be discussed at the CMD. There is no reference to any such discussion in the CMD Note.

6. Following the Case Management Discussion, the Tribunal issued a Direction to both parties requiring them to submit any further documentation or representations to be relied upon at the Hearing by 24 April 2026. The Respondent was also directed to submit written representations explaining how it came to be that the deposit was not registered and identifying any relevant mitigating factors by 24 April 2026. Both parties were sent the Note of the Case Management Discussion and subsequent Direction, in the case of the Applicant by email on 9 April 2026 and in the case of the Respondent, by letter dated 9 April 2026. Neither party has lodged any further information or written representations. The Tribunal is concerned that additional evidence may have been lodged relevant to application FTS/HPC/CV/25/5488 but was not due to the comments made in the CMD Note.

7. The Tribunal had before it:

(i) The Application Form G;
(ii) A Tenancy Agreement between the Applicant and the Respondent dated 3 January 2014;
(iii) Confirmation from the Scottish Landlord Register that the Property is registered in the name of the Respondent;
(iv) Confirmation that no deposit was lodged with any of the three deposit protection schemes;
(v) The representations lodged by the Respondent on 11 February 2026 with accompanying documents; and

(vi) Case Papers

Evidential Hearing – teleconference – 28 July 2026

8. The Applicant and Respondent were in attendance. The Respondent was accompanied by his wife although it was not intended that she take any part in the proceedings.

9. It was not disputed that a deposit of £500 had been paid at the commencement of the tenancy and that this had not been placed into a tenancy deposit scheme.

10. The Tribunal heard evidence from both parties.

11. The Applicant confirmed that she had moved out of the Property on 27 September 2025 as the Respondent intended to sell the Property. She was sure that the Respondent knew he had to pay the deposit into a tenancy deposit scheme as he had other rental properties and he had had 11 years to pay the deposit into a scheme. It had been stressful and expensive to move house. The Applicant had to borrow money to move as the Respondent had not repaid her deposit. She had to borrow £800.00.

12. The Applicant said she had cleaned the house from top to bottom before moving out of the Property. It did need a "lick of paint" after 11 years but there was no damage to the Property. She had provided the Tribunal with a video taken of the Property when she moved out. The Tribunal explained that they did not have access to this video unfortunately. The Applicant said that the removal van came in the morning and the Applicant and her daughter spent the afternoon cleaning. The Applicant said she had not been using the oven for about one year as it was not working but, on questioning, admitted she had not reported that to the Respondent. In relation to the garden, the Applicant said she had missed the last month's cut. Someone usually came to cut the grass every fortnight. Her position was that the Respondent gave the garden an overhaul as he was selling the Property.

13. The Respondent admitted that he had not paid the deposit of £500.00 into one of the deposit schemes. The Tribunal asked why the Respondent had not lodged any written representations as directed by the Tribunal explaining how it came to be that the deposit was not registered and identifying any relevant mitigating factors on. The Respondent said he had explained this to the Tribunal at the Case Management Discussion. Given that is not noted in the Note of the Case Management Discussion, the Tribunal asked him to say what his position was. The Respondent said that, given the Applicant was a friend of his daughter, he would give her the money back when she left the Property. He thought he could trust her. As it turned out, she was a month behind in her rent and had left the place in a state. On questioning by the Tribunal, the Respondent confirmed he had two other properties which he rented out to family members. He had not taken a deposit for them. He said

he was well aware of the obligations to lodge a deposit in a scheme under the 2011 Regulations. He said again that the Applicant was a month behind on her rent. She thought she did not need to pay it (during Covid), but this was wrong.

14. The Applicant explained that she was self-employed and runs a tattoo studio. She had only missed one month's rent (during Covid) as she had no income.

15. The Tribunal noted that the tenancy agreement provided to the Applicant stated it was a Scottish Secure Tenancy under the Housing (Scotland) Act 2001. The Tribunal asked the Respondent if he had taken any legal advice on the tenancy. He could not recall. The Tribunal noted that such a tenancy was relevant to local authorities/social landlords and not to tenancy agreements between an individual landlord and tenant. Whatever tenancy it was, it was a tenancy agreement in terms of the 2011 Regulations requiring the deposit to be lodged with a scheme. The Respondent said that it had taken him and his wife nearly a week to clean the Property. The oven had bits of food in it, which, if it had not been used for a year, had been there for that time. He needed to replace it. In the garden, some of the hedges were 10-12 feet high. The grass was 2-3 feet high and there was dog dirt everywhere. He thought the garden had not been touched for a year. There was broken furniture in the garden and tables and chairs had been left around the side of the house. Seven bags of rubbish had been filled. The Respondent thought, with his time, it had cost around £1500 to tidy up the garden. The Tribunal noted that, whilst the Respondent had lodged some photographs of some windows, the oven and garden, the Respondent had not lodged any evidence to confirm the costs incurred. The Respondent said it was that long ago that he could not really remember the exact costs. He was going to wait and see what the outcome of these applications were and might lodge his own application to recover money from the Applicant. He confirmed he was getting the house ready for sale.

16. The Tribunal asked the Respondent if he could point to any clause in the tenancy agreement which permitted him to deduct monies from the deposit. He could not. He said only rent could be deducted and the Applicant had to keep the garden tidy.

17. The Respondent was asked if he had any evidence to confirm what condition the Property was in at the start of the tenancy. He did not other than to say that the house was in a brand-new state at the start. The kitchen had been replaced. He did not have any photographs. The Applicant confirmed that the house was lovely and the kitchen brand new. She had left it in the same condition other than general wear and tear.

Findings in Fact

18. The parties entered into tenancy agreement in respect of the Property commencing on 3 January 2014.

19. The tenancy agreement purported to be a Scottish Secure Tenancy under the Housing (Scotland) Act 2001.

20. The Respondent is not a local authority or social landlord.

21. The tenancy is likely an assured tenancy under the Housing (Scotland) Act 1988.

22. A deposit of £500.00 was paid at commencement of the tenancy by the Applicant to the Respondent.

23. The rent for the Property was £500.00 per calendar month at commencement of the tenancy agreement.

24. The Respondent did not lodge the tenancy deposit with a tenancy deposit scheme throughout the duration of the tenancy.

25. The tenancy ended on 27 September 2025 when the Applicant moved out of the Property.

26. The Respondent refused to return the deposit to the Applicant after the end of the tenancy and continues to retain the deposit.

27. The Respondent claims that the Applicant left the Property and garden in a poor state and she was one month in rent arrears.

28. The Respondent rents out two other properties to family members but has not taken a deposit in respect of those.

29. The Respondent is aware of his obligations under The Tenancy Deposit Schemes (Scotland) Regulations 2011 and the requirement to lodge a tenancy deposit with one of the approved tenancy deposit schemes.

30. The Applicant had to borrow £800.00 when she removed from the Property as the Respondent refused to return her deposit.

Reasons for Decision

31. This application relates to the failure of the Respondent to place a tenancy deposit within an approved tenancy deposit scheme. Landlords have been required since the introduction of the 2011 Regulations to pay tenancy deposits into an approved scheme within 30 working days of the commencement of the tenancy and to advise a tenant of details of the scheme into which it has been paid.

32. Regulation 3 of the 2011 Regulations provides inter alia:

(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.

33. Regulation 9 of the 2011 Regulations provides:

(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.
(ii) An application under paragraph (1) must be made [...] no later than 3 months after the tenancy has ended.

34. Regulation 10 of the 2011 Regulations provides inter alia:

If satisfied that the landlord did not comply with any duty in regulation 3 the [First-tier Tribunal][1] —
(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 First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to –

(i) pay the deposit into an approved scheme; or
(ii) provide the tenant with the information required under Regulation 42.

35. The Respondent failed to place the deposit in an appropriate scheme and has breached Regulation 3 of the 2011 Regulations. The duties are two-fold. There is a requirement to pay the deposit to a scheme administrator and the requirement to provide a Tenant with the specified information required under Regulation 42. The Respondent failed in both duties.

36. The present application has been made timeously in terms of Regulation 9. The Tribunal is required to make an order for payment in terms of Regulation 10. The only matter to be determined by the Tribunal is the amount of the sanction.

37. The legal test to be applied in determining an appropriate level of sanction is set out in *Jenson v Fappiano 2015 GWD 04-89* and subsequent case law. Those authorities are reviewed by Sheriff Cruickshank in *Ahmed v Russell 2023 SLT (Tr 33).* He 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 factors as may be present." At para [39] he states that *"The sanction which is imposed is to mark the gravity of the breach which has occurred. The purpose is not to compensate the tenant"*. The amount awarded should represent a "*fair and proportionate sanction when all relevant factors have been appropriately balanced.*" para [44].

38. The Tribunal also had regard to the decision of the Upper Tribunal in *Rollett v Mackie [2019] UT 45* (also cited as UTS/AP/19/0020) in which Sheriff Ross states at para [13] *"In assessing the level of a penalty charge, the question is one of culpability and the level of culpability requires to reflect that culpability… The finding that a breach was not intentional is...rational on the facts and tends to lessen culpability"* At paragraph [14], he goes on "*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 or other hypotheticals*".

39. In reaching a determination, the Tribunal took into account that the Respondent is in clear breach of the 2011 Regulations.

40. The Tribunal took into account that the deposit was £500.00 and had been left unprotected for the entire duration of the tenancy i.e. 11 years and 9 months. At the date of the hearing the deposit had still not been returned. It goes without saying that this is an inordinate length of time. These were aggravating factors. The Tribunal gave weight to the fact that the Respondent was well aware of the obligations contained in the 2011 Regulations, as he admitted at the Hearing. The Respondent provided no adequate explanation for failing to comply with the Regulations. The explanation, such as it was, that the Applicant was a friend of his daughter and that she would get the money back if she left was wholly unsatisfactory. It was clear to the Tribunal that the Respondent had taken it upon himself to decide if the deposit should be repaid. This was an aggravating factor. The Tribunal took into account that the Applicant had been entitled to expect that the deposit would be placed in an appropriate scheme and had been inconvenienced at the breach of the regulations.

41. The Tribunal also gave weight to the negative financial impact on the applicant as the deposit had not been returned to her at a time when she was moving to a new Property. She had to borrow money to assist her in doing so.

42. The Respondent sought to raise the condition of that the Property was left in as a mitigating factor. He stated this was the reason why the deposit had not been returned, together with there being arrears of rent. The Applicant disputed that the Property had been left in a condition that justified retaining the deposit. The fact that the issue was disputed was a clear indication of the importance of placing the deposit in a scheme in the first place.

43. The Tribunal considers that it would be appropriate in this case to order that the Respondent pay the deposit into an approved scheme under Regulation

10 (b)(i) of the Deposit Regulations so that the dispute arising from that can be dealt with. As set out in paragraphs 5 and 6 above, the Tribunal is concerned that parties may not have lodged evidence that they otherwise might have done in connection with application FTS/HPC/CV/25/5488 in light of what was set out in the CMD Note. A separate decision will be issued in that case.

44. Having regard to all the facts and circumstances, the Tribunal determined that there had been a breach of Regulation 3 which was very significant in nature and which merited a penalty at the maximum of the available range. The Tribunal determined that an award of 3 times the deposit of £500.00 i.e. £1, 500.00 was fair and proportionate in the circumstances.

Decision

The Tribunal granted (i) an Order for payment of £1,500.00 in terms of Regulation 10 (a) of the Deposit Regulations and (ii) and Order requiring the Respondent to pay the tenancy deposit (£500.00) to an approved tenancy deposit scheme in terms of Regulation 10 (b)(i) of the Deposit Regulations.

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.

F.Stephen

Legal Member/Chair **28 July 2026**
Date