Housing and Property Chamber
First-tier Tribunal for Scotland

Decision 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 Regulations") and Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules").

Case reference: FTS/HPC/PR/26/2723

Property: Rose Cottage, Chance Inn, Cupar, Fife, KY15 5QJ

Parties

Mrs Jennifer Magaisa and Mr Farai Magaisa both residing at The Old Smiddy Pitlessie, Cupar, Fife, KY15 7SU ("the Applicants")

Mr Grant Kirkhope residing at Earlsdale, Cupar, Chance Inn, KY15 5QJ (" the Respondent")

Tribunal Member:

Karen Moore (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal"), having found that the Respondent did not comply with Regulation 3 of the Regulations, determined that an Order for Payment in the sum of TWO THOUSAND POUNDS (£2,000.00) Sterling be granted.

Background

1. By application received between 15 June 2026 and 9 July 2026, ("the Application"), the Applicants applied to the Tribunal for an Order in terms of

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

2. The Application comprised a copy of a tenancy agreement between the Parties with an entry date of 22 October 2025, evidence of payment of a deposit of £2,000.00 paid by the Applicants to the Respondent and lodged by him on 31 March 2026 and copy emails between the Parties.

3. The Application was accepted by the Tribunal and a Case Management Discussion (the "CMD") was fixed for 30 October 2026 at 14.00 by telephone conference and intimated to the Parties.

4. Prior to the CMD, the Respondent submitted written representations accepting that the deposit had not been lodged as required by the Regulations and explaining that, as a first time landlord, his failure to comply with the Regulations had been a genuine oversight. The written submissions explained that the deposit had been lodged with SafeDeposits Scotland on the day on which the Applicants contacted him regarding the whereabouts of the deposit. Examples of disposals in similar cases accompanied the written submissions.

CMD

5. The CMD took place on 30 October 2026 at 14.00 by telephone conference. Both Applicants took part, with Mrs. Maigasa speaking on their behalf. The Respondent, Mr. Kirkhope, also took part.

6. The Tribunal noted that Mr. Kirkhope accepted a breach of the Regulations and explained that, in terms of the Regulations, the Tribunal was bound to make an Order. Therefore, the only issue for the Tribunal was the amount of the Order to be made. The Tribunal explained that Order is a penalty on the landlord and that loss need not be evidenced.

7. On behalf of the Applicants, Mrs. Maigasa explained that they only became aware that the deposit had not been lodged with an approved scheme when they came to terminate their tenancy. She stated that the tenancy agreement provided that the deposit would be lodged with SafeDeposits Scotland but on contacting them, she learned that it had not been lodged. Mrs. Maigasa stated further that she then contacted Mr. Kirkhope who did not apologise or explain why the deposit had not been lodged but replied that the deposit had now been lodged. In answer to the Tribunal's question, Mrs. Magaisa stated that she found this to be disingenuous on the part of Mr. Kirkhope as she thought that he had been trying to evade his liability.

8. Mr. Kirkhope's position was as set out in his written submissions and that failing to lodge the deposit was a genuine oversight with no malice intended. He was firm that he had not intended to be disingenuous when contacting Mrs. Maigasa and had intended to advise that the deposit had now been lodged. He stated that he was a first time landlord and not so familiar with the rules.

Findings in Fact

9. From the Application and the CMD, the Tribunal made the following findings in fact: -
    i) There had been a tenancy of the Property between the Parties from 22 October 2026 to March 2026;
    ii) A tenancy deposit of £2,000.00 was paid by the Applicants to the Respondent;
    iii) The tenancy deposit was not lodged with an approved scheme within the statutory period and no information on the deposit was provided to the Applicants by the Respondent;
    iv) The deposit was lodged with an approved scheme on 31 March 2026 and the Applicants advised of this on that date.
    v) The deposit has since been returned to the Applicants.

The relevant law

10. Rule 3 of the Regulations provides : *"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."* . Rule 10 provides: *" If satisfied that the landlord did not comply with any duty in regulation 3 the tribunal (a)must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit."*

Decision

11. Having made the Findings in Fact, the Tribunal had regard to Regulation 10(a) of the Regulations which states that, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

12. In this case, the Respondent, Mr. Kirkhope, accepted that the Regulations had been breached. Therefore, the Tribunal was obliged to make an Order.

13. The Tribunal is then required to consider the amount of the Order. The amount of any award is the subject of judicial discretion after careful consideration of the circumstances of the case as set out in the decision of the Inner House of the Court of Session in Tenzin v Russell 2015 Hous. LR.

14. 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).

15. The Tribunal had regard to the view expressed by Sheriff Ross in Rollet v Mackie ([2019] UT 45) that the level of penalty should reflect the level of culpability, stating *"The admission of failure tends to lessen fault: a denial would increase culpability".* As stated above, Mr. Kirkhope accepted that the

Regulations had been breached and did so at the outset. He explained that the breaches occurred because he was a first time landlord and was inexperienced. However, the tenancy agreement offered by him to the Applicants clearly states that the deposit will be lodge with SafeDeposits Scotland and provides their full contact details.

16. The purpose of the Regulations and the requirement to pay a tenancy deposit into an approved scheme is intended to protect the deposit, which is the tenant's funds and not the landlord's, and offers protection for both parties in the event of any dispute at the end of the tenancy. Regulation 10 is in place to penalise landlords who fail to ensure that their tenant's deposit is protected and is not subject to misuse. In this case, the tenancy deposit paid by Mr. and Mrs. Magaisa should have been protected in terms of both the Regulations and the contractual terms of the tenancy agreement but it was not.

17. Taking all of the above considerations in respect of the Regulations into account, the Tribunal considered that an award around the low to mid-level of the penalty scale would be appropriate. Whilst the Tribunal is not bound by a multiplier of the amount of the deposit paid, the Tribunal considers that the fact that the Regulations relate the penalty to amount of the deposit paid to be a significant factor by which to benchmark the amount of any Order. The Tribunal, therefore, determined that an order for £2,000.00, representing the amount of the tenancy deposit paid, would be fair, proportionate and just, having regard to the seriousness of the breach

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.

_____ ____	**30 October 2026**
Legal Member/Chair	**Date**