



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014.

Chamber Ref: FTS/HPC/CV/25/5488

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”) dismissed the application.

Background

1. By application dated 19 December 2025 the Applicant sought an order for payment of £500.00 in respect of a deposit paid by the Applicant to the Respondent. The application was erroneously made in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) and should have proceeded under Rule 70. The Tribunal accepts that the application proceeds under that rule (see paragraph 28 below).
2. The application was accepted by the Tribunal on 22 January 2026 and referred for determination by the Tribunal.
3. The application is conjoined with application FTS/HPC/PR/25/4376 in which the Applicant seeks an award under the Tenancy Deposit Schemes

(Scotland) Regulations 2011 (“the Deposit Regulations”) in respect of an alleged failure by the Respondent to comply with those regulations.

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 Tribunal stated in the CMD Note which related to the conjoined application FTS/HPC/PR/25/4376 and this 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 this case 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 this 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. 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 this application, but it 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) The representations lodged by the Respondent on 11 February 2026 with accompanying documents; and
 - (v) 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 commencement of the tenancy in January 2014 by the Applicant to the Respondent, that this had not been placed into a tenancy deposit scheme and had not been returned to the Applicant by the Respondent following the end of the tenancy.
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. 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. The Applicant gave evidence in a straightforward manner and the Tribunal found her credible and reliable.
13. The Respondent admitted that he had not paid the deposit of £500.00 into one of the deposit schemes. 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. She thought she did not need to pay it (during Covid), but this was wrong. The Applicant had left the place in a state.
14. The Applicant explained that she was self-employed and runs a tattoo studio. She had missed one month's rent (at the start of Covid) as she had no income.
15. The Tribunal noted that the tenancy agreement provided to the Applicant by the Respondent 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.

16. 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. In his written representations the Respondent had stated that he had spent £249.00 on a new cooker and £300.00 to get the rubbish taken away. The Tribunal noted that, whilst the Respondent had lodged 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 had been getting the house ready for sale.
17. 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 (but could not say what clause was breached) and the Applicant had to keep the garden tidy.
18. 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 at the start of the tenancy. She had left it in the same condition other than general wear and tear.

Findings in Fact

19. The parties entered into a tenancy agreement in respect of the Property commencing on 3 January 2014.
20. The tenancy agreement purported to be a Scottish Secure Tenancy under the Housing (Scotland) Act 2001.
21. The Respondent is not a local authority or social landlord.
22. The tenancy is likely an assured tenancy under the Housing (Scotland) Act 1988.
23. A deposit of £500.00 was paid at commencement of the tenancy by the Applicant to the Respondent.
24. The rent for the Property was £500.00 per calendar month at commencement of the tenancy agreement.

25. The Respondent did not lodge the tenancy deposit with a tenancy deposit scheme throughout the duration of the tenancy.
26. The tenancy ended on 27 September 2025 when the Applicant moved out of the Property.
27. The Respondent refused to return the deposit to the Applicant after the end of the tenancy and continues to retain the deposit.
28. The Applicant had to borrow £800.00 when she removed from the Property as the Respondent refused to return her deposit.
29. The Respondent renovated the Property prior to renting it out to the Applicant.
30. The Property was in good condition at commencement of the tenancy.
31. The Respondent did not take any photographs of the condition of the Property at commencement of the tenancy.
32. The Applicant lived in the Property for 11 years and 9 months.
33. The Applicant cleaned the house with her daughter on the day she left the Property in September 2025.
34. The oven had not been working for a year before the Applicant left the Property but the Applicant did not report this to the Respondent.
35. The Property required repainting.
36. The Applicant organised for the grass to be cut, ordinarily every fortnight.
37. The Applicant missed the last month's cut of the grass in September 2025 due to moving out of the Property.
38. The Respondent intended to sell the Property.
39. The Respondent has produced photographs which show: some windows with mould; a dirty oven and the garden area looking untidy.
40. The Respondent replaced the oven and tidied the garden after the Applicant left the Property.
41. The Respondent claims that it cost £249.00 to replace the oven and £300.00 to remove the garden rubbish but has provided no invoices which evidence the costs incurred.

42. The Respondent was unable to confirm what clauses of the tenancy agreement permitted him to retain the deposit monies.

Reasons for Decision

43. The Applicant brought this application because she considered the Respondent was not entitled to retain the deposit of £500.00. This application would not have been necessary if the Respondent had lodged the deposit in one of the tenancy deposit schemes. The Respondent's failure to lodge the deposit under one of the tenancy deposit schemes has been dealt with in the decision issued by the Tribunal under FTS/HPC/PR/25/4376. The Tribunal has, as part of that case, ordered that the Respondent lodge the deposit money with an approved scheme so that the dispute about the return of the deposit can be dealt with in that forum. 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 this application in light of what was set out in the CMD Note. In addition, the Applicant's video evidence was not available to the Tribunal.
44. The Tribunal has considered whether it is able to adjudicate on the parties' claims. The Tribunal has had regard to the Upper Tribunal case of *Zhu v Chaudhary* 2026 UT 4. That case was similar to this in that the landlord had failed to lodge a deposit with one of the deposit schemes and failed to return the deposit to the tenant. The First-tier Tribunal imposed a penalty on the landlord and ordered her to return the full deposit to the tenant without any deduction. In allowing the landlord's appeal against the decision to return the full deposit, the Upper Tribunal stated that the First-tier Tribunal had erred in law in ordering return of the deposit without adjudicating on the landlord's claims [para 11 and 12]. It went on, "The only mechanism to recover the deposit is by an ordinary claim under contract, which is subject to any deductions that the contract (the lease) permits" [para 13]. The Upper Tribunal remitted the case back to the First-tier Tribunal. If it was to be reconvened with the same members then they had to determine whether it was appropriate to proceed to a decision on the evidence and submissions already heard [para 17].
45. The Tribunal does not consider it has sufficient information to adjudicate on the claims in circumstances where it considers the parties may have, quite reasonably, thought that evidence about the condition of the Property would not be taken into account in light of what was stated in the CMD Note. The Tribunal had no access to the video evidence lodged by the Applicant which she says showed the condition of the Property when she left it. That is important. Having regard to all of these factors, the Tribunal has decided in FTS/HPC/PR/25/4376 to order that the Respondent lodge the deposit with an approved scheme. On that basis, this application falls to be dismissed.

46. For completeness, the Tribunal notes that the Applicant was incorrectly advised by the Tribunal that if she wished to proceed with this application, it would be under Rule 111 which applies to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016. The Respondent could not explain why he had used a tenancy agreement which stated it was a Scottish Secure Tenancy under the Housing (Scotland) Act 2001 which is not appropriate for tenancies between private individuals. The tenancy agreement is, as a matter of law, an assured tenancy under the Housing (Scotland) Act 1988. It could not have been a Scottish Secure Tenancy under the Housing (Scotland) Act 2001 as the Respondent is neither a local authority nor social landlord (see section 11 (1) of the Housing (Scotland) Act 2001. This application for repayment of deposit therefore proceeds under section 16 of the Housing (Scotland) Act 2014 and Rule 70 of the Rules.

Decision

The Tribunal dismisses the application.

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