



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/4214

Re: Property at 23 Victoria Terrace, Kilmarnock, Ayrshire, KA1 3JR (“the Property”)

Parties:

Miss Christine Gibson, Mr John Shaine Hope, 1 Mount House, Dundonald Road, Kilmarnock, KA2 0AA (“the Applicant”)

Mr Stephen MacDonald, The Alton 2929 Oak Lawn Avenue , Dallas, Texas, 75219, USA (“the Respondent”)

Tribunal Members:

Petra Hennig-McFtridge (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order against the Respondent for payment to the Applicants of the sum of £262.50.

A: BACKGROUND:

1. This is an application under Rule 111 of the Procedural Rules and S 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The application was made by the Applicants on 24 November 2023 and accepted as valid by the Tribunal on 22 December 2023.
2. The following documents were lodged in support of the application:
 - a) Tenancy agreement commencing 13 May 2022.
 - b) End of tenancy correspondence showing the end of the tenancy on 21 September 2023.
 - c) Evidence of payment of the deposit to the then letting agent Mr Pattison of the amount of £1053.16 on 13 May 2022 representing the first month’s rent, deposit

and transaction fee and receipt of the deposit by the then letting agent Mr Pattison.

- d) Photographs from both parties regarding the state of the property at the moving in and moving out time.
 - e) Various documents relating to the tenancy and correspondence following the tenancy end with the new letting agents all contained within the two case bundles of 276 pages (bundle 1 (B1) application to 5 December 2025 and 153 pages (bundle 2 (B2) 8 January 2026 to 5 June 2026).
3. Case Management Discussions took place for this case and the conjoined case under reference PR/23/4254 on 17 May 2024, 4 October 2024 and directions were issued on both occasions. The CMD notes and directions are referred to for their terms and held to be incorporated herein brevity causa. A hearing then took place on 21 March 2025 when the Respondent did not attend and was adjourned to a further date. A second hearing took place 13 May 2025 but had to be adjourned part heard to a further date on 1 October 2025 when the Applicants did not attend due to confusion about whether the hearing would be further adjourned. A further hearing was scheduled and took place on 18 February 2026. Unfortunately due to the subsequent resignation of the Legal Member who had conducted the hearings and the fact that no written decision had been issued in either case, the Chamber President advised both parties that both cases would require to be re-heard by a differently constituted Tribunal.
4. Both parties attended the hearing by videoconference on 24 September 2026.

B: THE HEARING

1. The legal member explained the purpose and process of the hearing and the background of the case. The parties both advised that at the hearing on 18 February 2026 the Tribunal had indicated that the outcome of the PR/23/4254 case would be a penalty of one time the deposit value due to a breach of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) and both parties agreed that this was a fair outcome of that case. They also advised that the CV case was still contested and that at previous hearings witnesses on behalf of the Applicants had been giving evidence regarding the state of the property when the Applicants moved in. The Respondent confirmed that his address was correctly entered into the Landlord Register for Scotland.
2. Both parties agreed that in light of the documentary evidence lodged by the Applicants the deposit of £525 had been paid on 13 May 2022 to the letting agent Mr Pattison of Ayrshire Lettings, who had acknowledged receipt in the text message of 13 May 2022 (page 197/276 B1) and that the deposit had not been lodged as confirmed by the three deposit schemes.
3. The Respondent stated, as he had done in his representations before, that Mr Pattison had then closed his Letting Agent business and passed on his files to the second Letting Agent acting on behalf of Mr MacDonald, Ayr Estate and Letting Agents and that the second Letting Agents had no record of the deposit or where it would be held. After the death of Mr Pattison he had contacted the

Executrix and was advised that there was no trace of said deposit within the estate.

4. The Applicants position was that they had paid the funds to the appointed Letting Agent and it should be returned.
5. Both parties expressed intense frustration at the length it had taken to deal with the two cases and stated they wished matters dealt with at this hearing. The Applicants advised that their witnesses would not be in attendance.
6. The legal member explained to the parties that none of the evidence given at previous hearings could be used as a basis for a decision as it had not been heard by the Tribunal members. There were also no detailed evidence notes available for either hearing as these were with the legal member who had resigned and obviously no decision had been made by the Tribunal following the hearing on 18 February 2026. The only option if an evidential hearing was required to resolve the dispute would then be to re-hear the case and either do so without the witnesses today or to fix another date. Both parties were very clear that they did not wish for a further date to be fixed. The legal member also explained that although a direction had been made for the Respondent to submit the moving out report he had referred to in his previous submissions, no such report had been submitted and no sum had been specified regarding retention of the deposit. He stated he had overlooked that direction. Whilst he could make the report available, he would not wish to have the decision delayed to another date through this.
7. Both parties at the hearing then explicitly agreed that in order to resolve the matter they would "meet in the middle" and agree that half the deposit should be returned by the Respondent to the Applicants in settlement of this application. This reflected considerations of the case in the round, for example that neither party was actually present when the photographs of the moving in state of the property were taken and the witnesses to speak to these productions were not available to give evidence, the letting agent who had taken photographs at the tenancy end time was also not available as a witness today and the landlord had not been present when the tenants moved out. The Respondent had submitted receipts for the total amount of £232.72 for cleaning and painting materials but no specific invoices for cleaning or painting work undertaken or for the replacement of a carpet he had stated was required. The Tribunal members considered that in light of the proposed settlement between the parties no hearing was required.

C: FINDINGS IN FACT

Based on the documents and the discussion with the parties on 24 September 2026 the Tribunal makes the following findings in facts:

1. The parties entered into a Private Residential Tenancy over the property which commenced on 13 May 2022.
2. The parties are landlord and tenant to a relevant tenancy to which the Regulations apply.
3. The deposit of £525 was paid by the Applicant to the Respondent's Letting Agent into the account of PMB Ayrshire Limited on 13 May 2022.
4. The deposit is £525.

5. The tenancy ended on 21 September 2023.
6. The deposit has not been returned.
7. A fair deduction of the deposit would be 50% of the deposit to settle the matter in light of the outcome of the conjoined PR case and the specific circumstances of the case.

D: REASONS FOR DECISION:

The parties agreed to settle the dispute by a payment from the Respondent to the Applicants for the sum of half the deposit sum and thus a payment order of £262.50 is to be made by the Tribunal. The outcome of the case was agreed by both parties as a fair resolution of the dispute.

E: DECISION:

Of consent the First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondent for payment to the Applicants of the sum of £262.50.

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.

Petra Hennig McFatridge
Legal Member/Chair

Date 24 September 2026