



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/24/5517

Re: Property at 18 Falcon Brae, Livingston, EH54 6UW (“the Property”)

Parties:

Mr Lester Little, 15 Wester Bankton, Livingston, EH54 9DX (“the Applicant”)

Mr Robert Waterson, 18 Falcon Brae, Livingston, EH54 6UW (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having determined that it did not have jurisdiction to consider the claim made by the Applicant, dismissed the application.

Background

- 1 This is an application under Rule 111 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant sought the return of his tenancy deposit from the Respondent in relation to a private residential tenancy.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 3 July 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Both parties were invited to make written representations.
- 3 On 15 January 2025, the Tribunal received written representations from the Applicant.
- 4 On 24 June 2025 the Tribunal received written submissions from the Respondent. The Respondent indicated that he may have difficulties attending

the CMD as he would be at work. The Tribunal responded to ask if he was requesting a postponement but received no response.

- 5 On 30 June 2025 the Tribunal received an email from the Applicant advising that he had just started a new job and would be in training on 3 July 2025. He asked if the CMD would proceed in his absence. On 2 July 2025, the Tribunal responded to the Applicant to advise that if he failed to attend the Tribunal may make a decision based on the written submissions, or they could adjourn the CMD to another date. The Tribunal clerk then contacted the Applicant by telephone to confirm he was requesting a postponement of the CMD. The Applicant advised that he would prefer for the application to be determined in his absence. Following the telephone call, the Tribunal received emails from the Applicant confirming his position. The Applicant provided further written submissions, most of which were documents that had been previously submitted by him in support of the application.

The CMD

- 6 The CMD took place on 3 July 2025 by teleconference at 10am. The Applicant did not join the call. The Respondent was in attendance.
- 7 The Tribunal had the following documents before it:-
 - (i) Form F application form and supporting documents;
 - (ii) Title sheet confirming the Respondent's ownership of the property;
 - (iii) Excerpt from the online landlord register confirming that the property was not on the landlord register;
 - (iv) The Applicant's written representations dated 15 January 2025;
 - (v) The Respondent's written representations dated 24 June 2025; and
 - (vi) The Applicant's written representations dated 2 July 2025.
- 8 The Tribunal explained the purpose of the CMD to the Respondent. As a preliminary matter, the Tribunal noted that there was a suggestion in the written submissions from the parties that the Respondent may have been residing in the property during the tenancy, despite the fact that a template private residential tenancy agreement had been signed by the parties. The Tribunal asked the Respondent to clarify the position regarding his occupation. The Respondent confirmed that the property was his only and principal home. He had found the Applicant and his partner on SpareRoom.com. The Applicant and his partner has occupied a room in the Respondent's four bedroom home. The Respondent had lived there throughout the Applicant's occupation, which was for a period of around four months from 26 June 2024. The Respondent had eventually asked the Applicant and his partner to leave due to issues they were causing in his property.
- 9 The Tribunal adjourned the CMD to deliberate before resuming the CMD and confirming the outcome.

Findings in fact

- 10 The Respondent is the owner of the property. The property is the Respondent's main residence.
- 11 The Respondent let a room in the property to the Applicant on or around 26 June 2024.
- 12 The Respondent resided in the property with the Applicant during the Applicant's occupation. The Applicant left the property after around 4 months.
- 13 The Respondent was a resident landlord.

Reasons for decision

- 14 The Tribunal took into account the application paperwork, written submissions from the parties, and the Respondent's submissions at the CMD in reaching a decision on the application. The Tribunal considered that it could proceed to a decision in the absence of a hearing under Rule 17(2) and 18 of the Rules. The Applicant had made it clear that he was content for the Tribunal to do so despite his absence at the CMD.
- 15 This is an application under Rule 111 of the Rules. Applications under Rule 111 are for civil proceedings arising from private residential tenancies. The Tribunal therefore considered whether the tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 16 Schedule 1 of the 2016 Act defines tenancies which cannot be private residential tenancies. Paragraphs 7 and 8 of Schedule 1 provide as follows:-

"Resident landlord

7 A tenancy cannot be a private residential tenancy if paragraph 8 or 9 applies to it.

8 This paragraph applies to a tenancy if—

(a) the let property would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the tenant to use property in common with another person ("shared accommodation"), and

(b) from the time the tenancy was granted, the person (or one of the persons) in common with whom the tenant has a right to use the shared accommodation is a person who—

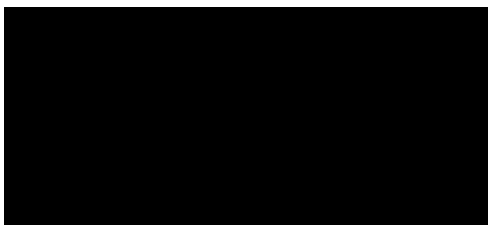
(i) has the interest of the landlord under the tenancy, and

(ii) has a right to use the shared accommodation in the course of occupying that person's home."

- 17 The Tribunal was satisfied that the Respondent, as the owner of the property, had the interest of the landlord under the tenancy, and that the property was his main home. The Tribunal accepted that the Respondent had resided with the Applicant in the property throughout the term of his tenancy. The relationship between the parties was therefore that of a resident landlord and lodger. The Tribunal accepted the submissions from the Respondent on this point at the CMD, which were supported by the written representations from the parties. Of particular note was a text message the Applicant had submitted from the Respondent to the Applicant, in which the Respondent states “*It is with regret that I wish to terminate the lodger agreement. I therefore give you notice that I require you to vacate the room, premises and facilities you share with me and my home on or before 21/11/24*”. The Tribunal further noted that the property was not on the landlord register, which would be a statutory requirement were the Respondent not a resident landlord.
- 18 Whilst the Applicant had highlighted the fact that a private residential tenancy agreement between the parties had been signed, that does not in itself create a private residential tenancy. Private residential tenancies are a creature of statute. Accordingly the Tribunal has to look to the relevant provisions of the 2016 Act when defining whether a tenancy is in fact a private residential tenancy.
- 19 The Tribunal therefore concluded that paragraph 7 of Schedule 1 of the 2016 applied, and the tenancy between the parties was not a private residential tenancy. The Tribunal did not therefore have jurisdiction to consider the application under Rule 111 and the application was dismissed.
- 20 The decision of the Tribunal was unanimous.

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.



Ruth O'Hare

Legal Member/Chair

3 July 2025

Date