

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 Section 71 (1) of the Private Housing (Tenancies) Scotland Act 2016

Chamber Ref: FTS/HPC/CV/24/2962

Re: Property at Eastmost Top Floor Flat, 7 Irvine Place, Aberdeen, AB10 6HA ("the Property")

Parties:

Miss Yvette MacAulay, Flat B, 254 Holburn Street, Aberdeen, AB10 6DD ("the Applicant")

Mr David Daniel, Westmost Top Floor Flat, 7 Irvine Place, Aberdeen, AB10 6HA ("the Respondent")

And

Chamber Ref: FTS/HPC/CV/25/1689

Re: Property at Eastmost top floor flat, 7 Irvine Place, Aberdeen, AB10 6HA ("the Property")

Parties:

Mr David Daniel, Westmost top floor flat, 7 Irvine Place, Aberdeen, AB10 6HA ("the Applicant")

Miss Yvette MacAulay, 254B Holburn Street, Aberdeen, AB10 6DD ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Jane Heppenstall (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) grants Application with reference FTS/HPC/CV/24/2962 and makes a Payment Order in favour of the Yvette MacAulay against Mr David Daniel in the sum of £515.00. The Tribunal refused Application with reference FTS/HPC/CV/25/1689.

Introduction

[1] In Application with reference FTS/HPC/CV/24/2962, Yvette MacAulay seeks a Payment Order in the sum of £515.00 against Mr David Daniel in respect of a deposit which she alleges has been unlawfully retained by Mr Daniel following on from the ending of a tenancy between the parties.

[2] In Application with reference FTS/HPC/CV/25/1689, the same Mr Daniel then seeks a Payment Order (now in the sum of £4,279.00) from the same Yvette MacAulay for losses said to have arisen as a result of her breaches of a tenancy agreement. The Applications had called for a Case Management Discussion previously and been continued to a Hearing for evidence to be heard and a final decision to be made.

[3] The Applications then called at 11 am on 30 September 2025 for a Hearing in person at AB1, 48 Huntly Street, Aberdeen. Both parties were personally present. Neither had any other witnesses. The Tribunal began by ensuring that both parties were familiar with the documentation and had submitted everything they wished to. The parties explained that they had no preliminary matters and were happy to start the Hearing. The Tribunal began by hearing from MacAulay and then from Mr Daniel. After each party gave evidence, they had the right to cross-examine the evidence presented. After all evidence had been heard, each party also had the opportunity to make closing submissions.

[4] The Tribunal comments on the evidence heard as follows:

Ms Yvette MacAulay

[5] Ms MacAulay explained how she rented the Property from the Respondent by virtue of a Short-Assured Tenancy. She explained that she wanted to leave the Property because she became unhappy with noise and anti-social behaviour in the building. She instructed her solicitors to serve a notice to the Respondent ending the tenancy. They served a notice dated 19 December 2023 on the Respondent indicating that she would vacate the Property on 1 February 2024. She gave the keys to her solicitors on 29 January 2024. Ms MacAulay reported that the notice was served by her solicitors via email to the email address used by the Respondent for tenancy business and also by recorded delivery post.

[6] The Tribunal examined the relevant notices and the tenancy agreement. The original tenancy agreement was a short-assured tenancy agreement which commenced on 2

November 2017 and ended on 1 November 2018. The tenancy agreement is silent on the issue of tacit relocation. Ms MacAulay stayed in the Property well beyond the expiry of the tenancy.

[7] However, Ms MacAulay explained that she had a direct discussion with Mr Daniel in which the Mr Daniel explained that the new tenancy would continue on a month-to-month basis. Ms MacAulay explained that she clearly recalled this conversation. Later the Tribunal would hear Mr Daniel explain that he “*couldn’t remember*” whether this conversation took place or not. The Tribunal comments further on that later on.

[8] Ms MacAulay also pointed to an email which Mr Daniel had sent her which corroborates this conversation as having taken place. The Tribunal considered this email which was dated 23 October 2018. In this email, Mr Daniel confirmed that he was happy for Ms MacAulay to stay in the property but that he did not want to give her a ‘*new lease*’. He made comments which suggested he was unhappy with the consequences that would have arisen had a new Private Residential Tenancy been created. He did however write that:

“PS you might want to have a read of your existing lease so you can see how it will carry on after the fixed term that is due to end on the 1st November - its only the fixed term that will end, not the actual lease”

[9] Ms MacAulay explained that she took this to mean that the lease was not to renew by tacit relocation but instead continue on a month to month rolling basis. This email and the conversation she had with Mr Daniel around that time were both consistent with that.

[10] The Tribunal then however noted that the notice which Ms MacAulay’s solicitor provided 40 days’ notice rather than a month. The notice said that the contractual monthly end date of the tenancy was 1 November 2024. That contradicted Ms MacAulay’s position that all parties had been working on the understanding that the tenancy was continuing on a month-to-month basis.

[11] Ms MacAulay explained that at the time her solicitors sent this notice, she was not particularly aware that tacit relocation was an issue and she had forgotten about the email received from Mr Daniel as she didn’t consider that relevant. She simply wanted her solicitor to exit her from the tenancy.

[12] Ms MacAulay also described her difficulties with her deposit. She had tried several times to contact the relevant scheme and ask them to start the adjudication process at the end of the tenancy. She reported that on each occasion, Mr Daniel informed the scheme that the tenancy had not ended and was ongoing. That meant that the relevant deposit scheme ended their involvement. Mr Daniel was then said to have failed to engage with

the scheme and communicate with them. While Mr Daniel would later deny this, the Tribunal had an email from the relevant scheme which confirmed exactly that.

[13] Ms MacAulay therefore found herself in the unusual position of now living elsewhere and having moved out of the Property since 9 January 2024 but still with her deposit held in a secure scheme.

[14] Ms MacAulay denied that she should be liable for Mr Daniel's claimed losses as set out in his Application. The Tribunal therefore now turns to Mr Daniel's evidence.

Mr David Daniel

[15] Mr Daniel's presentation of his case was somewhat unusual. His cross examination of Ms MacAulay asked unusual questions such as *"is there any anything about me as a landlord you didn't like?"*

[16] The Tribunal intervened to restrict the questions asked to relevant matters. The questions then became more unusual and seemed to focus intensely on a very minor part of the story. In the notice Ms MacAulay instructed her solicitors to write to the Respondent, a brief summary of the reasons for wanting to end the tenancy was given. This included the following text:

"One recent incident involved a lit cigarette being dropped on the wooden staircase causing a significant fire risk. Our client feels that she has no option but to seek alternative accommodation in order to ensure her safety but most importantly for her quality of life."

[17] Mr Daniel appeared to use this part of the letter to suggest that once Ms MacAulay left the Property, the Property was no longer safe to rent out. Mr Daniel made repeated reference to wanting the Tribunal to make an official finding about this in its decision. The Tribunal explained that its remit was not to make findings about fire safety but to determine the Applications before it. Nevertheless, Mr Daniel appeared preoccupied with this and repeated his requests. He also made reference to challenging council tax in a somewhat vague manner and the Tribunal was left with the impression that the issue Mr Daniel wanted the Tribunal to make a finding on was for a purpose out with the scope of the Application.

[18] The Tribunal asked Mr Daniel if he had carried out any kind of risk assessment himself of the Property and he seemed somewhat taken back and explained that he hadn't. Mr Daniel's evidence continued on in a somewhat unusual manner. He then appeared to suggest that it was Ms MacAulay herself who had been the perpetrator of the anti-social behaviour in the building and been smoking in communal areas. He had no evidence for this at all and the manner in which he mentioned this allegation deep into the discussion came across as odd.

[19] Mr Daniel's evidence around the ending of the tenancy was very patchy. He said he couldn't remember the discussion about the tenancy continuing on a rolling monthly basis. His answers were unconvincing. When shown the relevant email which was said to corroborate this, he again appeared to avoid the issue.

[20] Mr Daniel addressed the Tribunal on the sums he himself was claiming from Ms MacAulay. Mr Daniel stated that the *'fire risks'* prevented him from renting the flat out again and so he was unable to mitigate his losses. But equally he claimed rent from Ms MacAulay notwithstanding that had she stayed in the Property then presumably she would have been subject to the same risks which were said to make it unsafe to rent out. Also, if she had been the cause of her own complaints, then her absence would have resolved them.

[21] Mr Daniel claimed £3,735.00 for the rent that he said ought to have been paid until the tenancy would have apparently ended in November 2024. He also claimed interest on that rent in the sum of £110.00 amended up to £291.00 by the time of the Hearing.

[22] Mr Daniel claimed the sum of £125.00 for phoning *"a legal helpline"*. There was no vouching for this and Mr Daniel was vague about the details of this when asked. In the Application, Mr David claimed £90.00 for the cost of a *"small professional repair for fire damage to the communal hallway carpet"*. It was noteworthy to the Tribunal that there was zero evidence which suggested that Ms MacAulay was liable for this at all especially given it related to a common area of the building rather than a carpet in the Property itself.

[23] In his Application itself, Mr Daniel had also claimed £930.00 for a disputed council tax liability for the period he says that the lease continued to run (1 February 2024 to 1 November 2024). He also claimed £283.00 for a utilities bill for *"standing charges during the vacant period"*.

[24] Mr Daniel claimed £38.00 for having to get new keys cut. Mr Daniel appeared to accept that the keys were made available to him for collection, but he refused to uplift them for in excess of six months meaning that the solicitors destroyed the keys. Mr Daniel's explanation for why he didn't pick the keys up was vague and unconvincing. It seemed done out of spite.

[25] The sum claimed in the Application however was amended by Mr Daniel at the hearing to £4,279.00. He no longer was claiming the sums for the council tax as he stated that he can't claim for something he's not paid, removed the utilities bill and had recalculated the interest. The total sum claimed at the Hearing £4,279.00 which was comprised of the following:

£3,735 for 9 months' rent
£291.00- interest on that sum
£125.00- legal helpline
£90.00- carpet damage
£38.00- replacement keys

[26] Mr Daniel denied that he failed to communicate with the relevant tenancy deposit scheme. The Tribunal showed Mr Daniel the email from the relevant tenancy deposit scheme saying just that. Mr Daniel then seemed to change his position completely and he contradicted himself and even suggested that he was actually currently trying to have the deposit returned to him. His evidence was tarnished with what appeared to be obfuscation and game playing.

Assessment of evidence and analysis

[27] The Tribunal found Ms MacAulay's evidence to be entirely credible and reliable. It was backed up by evidence and was entirely reasonable. The Tribunal however was not willing to accept Mr Daniel's evidence as credible and reliable. What he said came across as unusual and he lacked evidence for much of his position. He did not come across as having acted reasonably in respect of these matters. Having heard from parties and having considered the evidence before it, the Tribunal made the following findings in fact.

Findings in Fact

1. The parties entered into a short-assured tenancy agreement whereby Mr David Daniel let the Property to Ms Yvette MacAulay. The tenancy commenced on 2 November 2017 and ended on 1 November 2018. The tenancy agreement was silent on the issue of tacit relocation. Ms MacAulay stayed in the Property well beyond the original expiry of the tenancy.
2. Ms MacAulay paid a deposit of £515.00 to Mr Daniel.
3. Ms MacAulay had a direct discussion with Mr Daniel in which the Mr Daniel explained that the tenancy would continue on after its initial expiry on a rolling month-to-month basis.
4. Mr Daniel had also sent Ms MacAulay an email dated 23 October 2018 which corroborates this arrangement. In this email, Mr Daniel confirmed that he was happy for Ms MacAulay to stay in the property but that he did not want to give her a '*new lease*'. He made comments which suggested he was unhappy with the consequences that would have risen had a new Private Residential Tenancy been created. He did however write that "*PS you might want to have a read of your existing lease so you can see how it will carry on after the fixed term that is due to end on the 1st November - it's only the fixed term that will end, not the actual lease*"
5. The parties therefore had agreed that the tenancy agreement would continue on a rolling month-to-month basis.

6. Ms MacAulay then became unhappy with the noise and anti-social behaviour in the building and decided to leave.
7. By notice dated 19 December 2023, her solicitors served a formal notice on Mr Daniel indicting that she would leave the vacate the Property on 1 February 2024. Ms MacAulay gave the keys to her solicitors on 29 January 2024. Ms MacAulay reported that the notice was served by her solicitors via email to the email address used by the Respondent for tenancy business and also by recorded delivery post.
8. Mr Daniel refused to accept the keys and has treated the tenancy as having continued until November 2024.
9. Mr Daniel has failed to cooperate and engage with the relevant tenancy deposit scheme. The sum of £515.00 paid as a deposit therefore remains held in the scheme.

Decision

[28] Having made the above findings in fact, the Tribunal therefore concludes that the tenancy ended on 1 February 2024 which is when Ms MacAulay's notice said it was to end. That provided sufficient notice to accord with the terms of the tenancy agreement as varied by the subsequent agreement. Accordingly, Ms MacAulay is not liable to Mr Daniel for any costs claimed to have been accrued after that period in respect of the rent and other costs claimed. Ms MacAulay is also not liable for the costs of any replacement keys. Mr Daniel should have uplifted them when they were made available to him.

[29] The Tribunal orders that Mr Daniel should pay Ms MacAulay her deposit of £515.00 back and makes a payment order accordingly.

[30] In order to stop any potential for a "*double counting*" of the deposit, Mr Daniel may wish to show this decision to the relevant deposit scheme as the sum of £515.00 should be paid by Mr Daniel to Ms MacAulay and then the deposit held in the scheme returned to Mr Daniel.

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.

Andrew McLaughlin

Legal Member/Chair

11 November 2025
Date