



**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 107 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/TE/25/0864**

**Re: Property at 8/2 Eyre Crescent, Edinburgh, EH3 5ET (“the Property”)**

**Parties:**

**Mr Christopher Lynch, formerly of 8/2 Eyre Crescent, Edinburgh, EH3 5ET and now of no fixed abode (“the Applicant”)**

**Ms Carolyn Clark, 65 Dukes Avenue, New Malden, Kent, KT3 4HW (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application be refused.**

**Background**

1. By application received on 26 February 2025, the Applicant sought an order against the Respondent in terms of Rule 107 (application for payment of a sanction where landlord has failed to provide tenancy information). Supporting documentation was submitted with the application, including copy messages/emails between the parties. The Applicant claimed that he had not been issued with a tenancy agreement/or an appropriate tenancy agreement by the Respondent. His tenancy had commenced on 1 January 2019 at an initial rent of £435 per calendar month, although that amount had subsequently been varied. He claimed that the Respondent had subsequently produced “lodger agreements” for him which he had not signed as he did not agree that they reflected the accurate tenancy terms, nor that they were legally compliant in that some of their terms were not in accordance with a proper Private

Residential Tenancy (PRT). The application was submitted together with a separate application under Rule 105 (application to draw up terms of tenancy). A previous application had also been lodged by the Applicant under Rule 103, alleging a breach of the Tenancy Deposit Regulations by the landlord. The three applications were conjoined and proceeded together through the Tribunal procedures.

2. On 29 January 2025, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance in respect of the application in terms of Rule 9 of the Regulations. Papers were served on the Respondent by Process Server on 2 April 2025 at her residential address in England.
3. On 15 April 2025, the Applicant lodged the completed attendance form with the Tribunal, confirming that he would attend the scheduled Case management Discussion ("CMD").
4. On 19 April 2025, the Respondent lodged written representations in respect of the applications. In relation to this and the Rule 105 application, she disputed the Applicant's claims. She stated that the original PRT was at the Property. The Applicant has denied her access to the Property so she cannot retrieve the tenancy agreement or considers that it may be lost. On the advice of a Mr Gormley from Edinburgh City Council (private renter sector enforcement officer), she issued a fresh PRT to the Applicant in January 2025, in accordance with a template Mr Gormley had provided. She lodged a copy of same and it was noted that this PRT was offered from 1 February 2025 at a monthly rent of £490. She also provided further background information concerning her being a 'resident landlord', uncertainty as to HMO regulations, serving a Notice to Leave on the Applicant on 2024 and her being denied access to the property for essential works.
5. On 2 June 2025, the day before the CMD and after close of business, the Respondent lodged a large volume of documentation which was circulated to the Tribunal Members and the Applicant on the morning of the Tribunal. The documentation contained numerous attachments and appeared to relate to this and the Rule 105 application.

### **Case Management Discussion**

6. The CMD took place by telephone conference call on 3 June 2025 at 10am. It was attended by both the Applicant and Respondent. The Applicant had a Ms Claire McIntyre attending in a supportive capacity and the Respondent had a Dr Cliff Morgan attending in a supportive capacity.
7. Following introductions and introductory comments by the Legal Member, there were discussions regarding the late lodging of documentation the previous evening by the Respondent. She did not provide any explanation as such for the late lodging but explained that this followed on from the representations she had lodged in April 2025. The Applicant confirmed that he had received copies

just a few minutes before but was happy to proceed with the CMD, without a brief adjournment which had been offered. Both the Applicant and Respondent addressed the Tribunal at length in respect of their respective positions and answered questions from the Tribunal Members. It was apparent that they were at odds over numerous tenancy-related matters and it appeared that both had raised, or were intending to raise, other applications, both at the Tribunal and the Sheriff Court.

8. The Legal Member explained the role of the Tribunal and the likely process at the Evidential Hearing in respect of the Rule 105 application regarding the tenancy terms. The Tribunal would also then determine this application, as to whether a sanction should be imposed on the Respondent and, if so, the appropriate level of sanction, following consideration of all evidence led by the parties at the Evidential Hearing in this regard. It was explained that other matters in dispute between the parties, such as liability for the utility bills, rent deductions, rent arrears, potential eviction proceedings, repair/maintenance/access issues, alleged contraventions of Landlord Registration/HMO/other regulations or legislation would not be considered in any detail at the Evidential Hearing, unless there was relevancy to these particular applications.
9. The outcome of the CMD was that the application was adjourned to an Evidential Hearing, to take place in-person at a suitable venue. A CMD Note dated 3 June 2025 detailing the discussions at the CMD was issued to parties, together with a formal Direction, requiring the lodging of certain documentation in advance of the Evidential Hearing, together with details of any witnesses.

### **Direction and Further Procedure**

10. The Direction issued was in the following terms:-

*“The Respondent is required to lodge:-*

1. *The latest version of the Private Residential Tenancy Agreement (PRT) which she has offered the Applicant annotated with details of every clause which is different from the current Scottish Government's model PRT, together with a written explanation as to why each of these clauses are being changed.*

*The Applicant and Respondent are required to lodge:-*

2. *An inventory or list of any documentation/further documentation upon which the parties wish to rely at the Evidential Hearing in support of their respective positions, together with numbered copies of said documentation; to include any prior written agreements entered into between the parties or any other documentation showing any terms and conditions of tenancy/occupancy of the Property;*
3. *Written submissions in respect of their respective positions as to these applications, referring to any supporting legislative provisions, statutory guidance, case law or other legal authorities; together with copies of said authorities; and*

4. *A list of any witnesses that the parties wish to call to give evidence at the Evidential Hearing, and to make arrangements for the attendance at the Hearing of any such witnesses.*

*The documentation referred to in paragraph 1 above should be lodged with the Tribunal Administration by the Respondent no later than 28 days prior to the Evidential Hearing to be fixed in respect of this application.*

*The documentation referred to in paragraphs 2, 3 and 4 above should be lodged by both parties with the Tribunal Administration no later than 14 days prior to the Evidential Hearing to be fixed in respect of this application.”*

11. On 7 July 2025, in response to the Direction, the Respondent lodged written submissions, together with some supporting documentation, including a copy of an amended 'lodger agreement' which she stated she had issued to the Applicant in October 2023 and a copy PRT agreement which she stated she had issued to him in January 2025.
12. The Evidential Hearing was subsequently scheduled to take place at George House in Edinburgh on 6 November 2025 at 10am.
13. Other than the Respondent acknowledging the hearing notification on 13 October 2025, no further written representations were lodged prior to the Evidential Hearing.

## **Evidential Hearing**

14. The Evidential Hearing took place at George House, Edinburgh on 6 November 2025. It was attended by both the Applicant and the Respondent and neither party had any witnesses.
15. Both parties initially gave evidence in respect of the Rule 103 application, although there were areas of overlap with the other applications. In the course of the hearing, it was noted from the Applicant that he had now vacated the Property, as at the end of June 2025, following formal notice being given by the Respondent. The tenancy which was the subject of this application was therefore at an end. The Respondent also indicated that she had now moved back into the Property.
16. No prior notice had been given to the Tribunal regarding this. During an adjournment in proceedings, the Tribunal considered the matter and, on re-convening, advised that it was not appropriate, in terms of the legislation, to further consider either the Rule 105 application or the Rule 107 application, given that the tenancy between the parties had ended and the Respondent was no longer under a duty to provide the Applicant with written terms of tenancy. It was explained that both applications were accordingly being refused.

## **Reasons for Decision**

1. The Tribunal had regard to the terms of Section 16(1) of the 2016 Act which states as follows:-

*“16. First-tier Tribunal’s power to sanction failure to provide information*

*(1) On an application by the tenant under a private residential tenancy, the First-tier Tribunal may make an order under subsection (2) where-*

- (a) the landlord has failed to perform a duty arising by virtue of section 10 [duty to provide written terms of tenancy] or 11 [duty to provide specified information] to provide the tenant with information,*
- (b) at the time the First-tier Tribunal considers the application, the landlord has still not provided the tenant with the information, and*
- (c) the landlord does not have a reasonable excuse for failing to perform the duty.”*

2. The Tribunal determined that the Applicant was previously “the tenant” under the tenancy and could competently make this application. However, as the tenancy had now ended, the Respondent was no longer under the section 10 duty to provide the Applicant with written terms of tenancy. In any event, the Tribunal only has power to sanction a failure to provide information if all three parts of subsection 16(1) above are met and, in the Tribunal’s view, subsection 16(1)(b) was not met at the time the Tribunal was considering the application, that is, at the Evidential Hearing. By the Applicant’s own admission, the Respondent had issued him with written tenancy terms in the past, albeit not in accordance with the requirements of a PRT and not in terms with which he agreed. Furthermore, in the course of these Tribunal proceedings, the Respondent had produced written tenancy terms in PRT format to the Tribunal, both immediately before the CMD and also on 7 July 2025, in response to the Tribunal’s Direction. There was a dispute as to whether or not the Respondent had also issued these PRTs directly to the Applicant. However, the Tribunal was of the view that, as these had been circulated to the Applicant by the Tribunal, he had been ‘provided’ with the information well in advance of the Evidential Hearing. The Tribunal was satisfied that the effect of the wording of subsection 16(1)(b) was that the power to sanction was intended to encourage compliance by landlords with their duty to provide tenants with written tenancy terms, rather than being retrospective in nature and penalising landlords for past failures.
3. Having considered the matter, the Tribunal accordingly refused 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.**

**Nicola Weir**

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**Legal Member/Chair**

**6 November 2025**  
**Date**