



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the TD Regulations”) and Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).

Chamber Ref: FTS/HPC/PR/24/2400

Re: Property at 26 Glenshee Street, Glasgow, G31 4RU (“the Property”)

Parties:

Miss Norah Okechukwu, 6 Bedes Chambers, Albert Road, Jarrow, NE32 5AD (“the Applicant”)

Mrs Seraphine Mordi, 26 Glenshee Street, Glasgow, G31 4RU (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having found that the Applicant’s occupation of the Property is not subject to the Tenancy Deposit Schemes (Scotland) Regulations 2011, dismissed the Application without order.

1. By application received on 24 May 2025 (“the Application”), the Applicant applied to the Tribunal for an Order in terms of Regulation 10 of Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”).

2. The Application comprised screenshots between the Parties in respect of the Applicant leasing a room at the Property, evidence of rent and a deposit of £300.00 paid by the Applicant to the Respondent, further screenshots relating to the Applicant's residence at the Property and copy correspondence from the three approved schemes confirming that the deposit had not been lodged.
3. The Application was accepted by the Tribunal and a Case Management Discussion (the "CMD") was fixed for 18 September 2024. Prior to that CMD, both Parties lodged written submissions. The Respondent's submission explained that she did not consider that the arrangement between the parties was subject to the TD Regulations.
4. The Tribunal at the CMD noted that there were other issues of conduct during the Applicant's occupation of the Property and advised that these matters were not relevant to the Application.
5. The following matters were agreed at the CMD:
 - a) The Applicant moved into the Property on 29 September 2023 and moved out on 16 May 2024.
 - b) The Property was advertised on 'Spare Room' then the terms agreed on 'What's App'.
 - c) No tenancy agreement or any other written document was provided.
 - d) The Property is a three bedoomed house.
 - e) Rent was paid for the initial two weeks of £250 and a deposit of £300 by bank transfer from the Applicant to the Respondent.
 - f) The payment was paid into the Respondent's personal account around 14 September 2023.
 - g) The deposit was not paid into any approved scheme and remained with the Respondent.
 - h) The monthly rent was £500 and included all bills such as electricity and council tax.
 - i) The Property is not registered for landlord registration purposes as the Respondent does not believe that it needs to be.

Hearing

6. A Hearing was fixed for 26 March 2025 but did not proceed. A further Hearing was fixed for 29 August 2025 and was postponed. The following Direction was issued at that time: *“Each Party is required to provide: 1. Written submissions addressing the following points:- a) Whether the tenancy is one which is subject to the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the TDS Regs”). b) The reason any tenancy deposit was not lodged with an approved tenancy deposit scheme. c) In the event the Tribunal concludes the tenancy is a relevant tenancy and that the TDS regs have been breached, the level of penalty which should be imposed in relation to any such breach with reasons for same.”*
7. The Direction instructed the Parties that the matters to be determined at the Hearing are whether the tenancy is a relevant tenancy for the purpose of the TD Regulations, if so, why the tenancy deposit was not lodged with an approved tenancy deposit scheme and, if so, the level of penalty to be imposed upon the landlord for failure to comply with the TD Regulations.
8. Both Parties complied with the Direction. The Applicant's written submission was that the TD Regulations applied and the Respondent did not provide an explanation as to why the TD Regulations did not apply. The Respondent's written statement stated that the occupation arrangement was not a private residential tenancy, and, the Applicant shared the Respondent's home. The Respondent submitted sworn affidavits by Lesere Maebe and Orlando Delgado.
9. The Hearing took place on 18 December 2025 at 10.00 by video conference. Both Parties took part and neither was represented.
10. The Tribunal reminded the Parties that the focus of the Hearing was whether the tenancy is a relevant tenancy for the purpose of the TD Regulations and explained that the scope of the TD Regulations is wider than a private residential tenancy and includes other occupancy arrangements such as shared homes.

The Applicant's Evidence

11. The evidence of the Applicant, Ms. Okechukwu, was as set out in her written representations and as discussed at the CMD on 18 September 2024. She stated that she replied to an advert on 'Spare Room' and agreed terms via 'What's App'. She was not given a tenancy agreement and paid the initial rent and deposit to the Respondent. or any other written document was provided.
12. Ms. Okechukwu stated further that the Respondent, Mrs. Mordi did not reside at the Property but was abroad. She stated that she rented a room in the Property and shared the Property with Orlando Delgado and Lesere Maebe, both of whom were not permanent residents but resided at the Property from time to time. Ms. Okechukwu stated that both co-residents acted as property managers and liaised with Mrs. Mordi. Mr. Delgado and another person, Oscar, dealt with repairs issues. She stated that she had thought that Ms. Maebe was the landlady because of the way that she had acted. Ms. Okechukwu stated that she had not met Mrs. Mordi in person and only communicated with her by telephone and messaging, as evidenced by her written submissions, and via Mr. Delgado and Ms. Maebe.
13. Ms. Okechukwu accepted that the address she had given for Mrs. Mordi on the Application form is that of the Property and that mail arrived at the Property for Mrs. Mordi. She understood that the mail was dealt with or sent on by Ms. Maebe.

The Respondent's Evidence

14. The evidence of the Respondent, Mrs. Mordi, was also as set out in her written representations and as discussed at the CMD on 18 September 2024 and was broadly in line with that of Ms. Okechukwu. Mrs. Mordi's evidence differed in so far as she maintained that Property was her main residence and that Mr. Delgado and Ms. Maebe were not tenants but were close family friends who used the Property from time to time and who looked after the Property for her in her absence.

15. Mrs. Mordi stated that she had resided in the Property as her home until she travelled to the United States and that a temporary stay there resulted in a longer stay as her son required significant medical treatment. Mrs. Mordi referred the Tribunal to medical information submitted by her. She accepted that she had not lived in the Property during the time when Ms. Okechukwu resided there.

16. Mrs. Mordi stressed that her personal belongings and items relating to her businesses remained in the Property in either the living room which was locked or the locked shed.

17. In answer to questions from the Tribunal, Mrs. Mordi stated that the bills for the Property were in her name, that the Council Tax has always been in her name and that she remained registered with the same GP. She pointed out that the Application was issued to the Property address. Mrs. Mordi confirmed that she has returned from the USA and continues to reside in the Property.

Additional Evidence

18. The Tribunal had the benefit of a sworn affidavit by Ms. Lesere Maebe which affirmed that she visited the Property at weekends to assist her friend, Mrs. Mordi, when Mrs. Mordi was out of the country due to matters out with Mrs. Mordi's control.

19. The Tribunal also had the benefit of a sworn affidavit by Mr. Orlando Delgado which affirmed that he makes use of the Property from time to time due to his lifestyle and that, in exchange for this, he looks after the Property for Mrs. Mordi.

20. The Tribunal had regard to the Parties' written submissions.

Tribunal's assessment of the evidence.

21. The Tribunal found both Parties to be straightforward and factual in their evidence. The dispute between them and the issue for the Tribunal was not a dispute on the facts but whether or not, on the evidence before the Tribunal, the Property was the main residence of the Respondent.

Findings in Fact

22. The Tribunal made the following findings in fact on the balance of probability: -

- a) The Applicant resided in the Property on 29 September 2023 and moved out on 16 May 2024.
- b) The Applicant had the use of a room in the Property and shared other facilities.
- c) There was no tenancy agreement or other formal written agreement between the Parties.
- d) A deposit of £300 was paid by bank transfer from the Applicant to the Respondent.
- e) The Applicant's rent included a share of the utility and Council Tax bills.
- f) The utility and Council Tax bills are in the name of the Respondent and are paid by her.
- g) Correspondence, including service of the Application, were addressed and issued to the Respondent at the Property's address.
- h) There were no tenants or paying lodgers in the Property during the Applicant's residence there.
- i) Ms. Maebe and Mr. Delgado occupied the Property from time to time on a care-taking basis.
- j) The Respondent resided in the Property as her main residence before travelling to the USA.
- k) The Respondent's stay in the USA was temporary and prolonged due to her son's medical condition.
- l) The Respondent did not have a permanent residence in the USA.
- m) The Respondent has resided in the Property as her main residence since her return from the USA.

Decision and reasons for the decision

23. Having made those findings, the Tribunal had regard to the TD Regulations.

24. Regulation 3 (1) states: “(1) A *landlord* who has received a *tenancy deposit* in connection with a *relevant tenancy* must, within 30 working days of the beginning of the tenancy (a)pay the deposit to the scheme administrator of an approved scheme; and (b)provide the tenant with the information required under regulation 42.”

25. Regulation 3 (3) goes on to define “*a relevant tenancy*” as “any tenancy or occupancy arrangement (a)in respect of which the *landlord* is a *relevant person*; and (b)by virtue of which a *house* is occupied by an *unconnected person*, unless the use of the *house* is of a type described in section 83(6) (application for registration) of the 2004 Act.”, the 2004 Act being the Anti-social behaviour etc (Scotland) Act 2004 which introduced landlord registration.

26. Section 83(6) of the Anti-social behaviour etc (Scotland) Act 2004 states “*For the purposes of subsection (1)(b), the use of a house as a dwelling shall be disregarded if(e) the house is the only or main residence of the relevant person*”.

27. Section 83(8) defines a “*relevant person*” as a person who is not a local authority or a registered social landlord. Section 83(8) defines an “*unconnected person*” as a person who is not a family member of the “*relevant person*”.

28. The Tribunal determined that, in terms of the TD Regulations, the Respondent is “*a relevant person*” and the Applicant is an “*unconnected person*”.

29. The Tribunal then considered whether the occupancy arrangement between the Parties was a “*relevant tenancy*” and had regard to the precise wording of Section 83(6) (e) of the Anti-social behaviour etc (Scotland) Act 2004 which states that the use of the *house* as a *tenancy* or *occupancy arrangement* is to be disregarded if the *house* is “*the only or main residence of the relevant person*”. The wording does not require the *relevant person* to be residing in

the house, nor does it require the house to be the relevant person's only or sole residence.

30. Having found in fact that the Property was the Respondent's main residence before and after her stay in the USA and having found in fact that the Respondent did not have a permanent residence in the USA, the Tribunal determined that it followed that the Property was the Respondent's main residence during the Applicant's residence in the Property. Therefore, the Tribunal's view is that the occupancy arrangement between the Parties was not a "*relevant tenancy*". Accordingly, the Tribunal determined that the TD Regulations did not apply to the occupancy arrangement between the Parties and so dismissed the Application.

31. This Decision is 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.

Karen Moore

Legal Member/Chair

18 December 2025

Date