



**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/24/1682**

**Re: Property at Roslyn Cottage 21 David Street, Inverbervie, By Montrose,  
Angus, Scotland, DD10 0RR (“the Property”)**

**Parties:**

**Mr John Smith, Braeburn Cottage, Garvock, Laurencekirk, Scotland, AB30 1HQ  
 (“the Applicant”)**

**Mr Andrew Duncan, Crown Hotel, Inverbervie, By Montrose, Angus, Scotland,  
DD10 0RG (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision (in absence of the Respondent)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is liable to pay the sum of Eight thousand five hundred pounds (£8500) to the Applicant under the terms of the private residential tenancy between the parties.

The Tribunal therefore made an order for payment in the sum of £8500 against the Respondent.

**Background**

- 1 This is an application for a payment order 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 Applicant sought to recover unpaid rent from the Respondent arising from a private residential tenancy between the parties.
- 2 The application was accepted and referred to a case management discussion (“CMD”) to take place by teleconference on 5 November 2024. The Tribunal gave

notice of the CMD to the parties under Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers.

- 3 On 26 September 2024 the Tribunal issued a Direction requiring the Applicant to provide:-

*“1. A copy of the written private residential tenancy agreement between the parties.*

*2. Confirmation of the date that the respondent vacated the property.*

*3. A rent schedule detailing all payments falling due by the Respondent during the subsistence of the tenancy and all payments received (the production of bank statements is not sufficient and it is not acceptable to Housing and Property Chamber First-tier Tribunal for Scotland expect the tribunal or the respondent to extract the required information).*

*4. Clarification and vouching in respect of the recovery of any deposit paid via a relevant Tenancy Deposit Scheme.*

*5. Clarification of what the applicant means when he refers to a previous application which was submitted (this tribunal has no knowledge of this and any previous order granted by the tribunal must be fully and fairly disclosed and vouched).*

*6. Reference is made in the application to clearance of items from the home but it is unclear what the applicant seeks, if anything, by way of recovery. Receipts must be [provided if relevant.*

*7. A detailed written signed statement/submission setting out the relevant background, the claims which the applicant seeks and the amounts involved.”*

- 4 On 7 October 2024 the Tribunal received the Applicant's response to the Direction.

### **The CMDs**

- 5 The CMD took place on 5 November 2024. The Applicant joined the call. The Respondent did not participate. Having heard submissions from the Applicant the Tribunal made a payment order in the sum of £8500.

- 6 On 19 November 2024 the Tribunal received a request for recall of the order from the Respondent. By decision dated 26 November 2024 the Tribunal determined it would be in the interests of justice that the payment order be recalled. The application was referred again to a CMD and the Applicant was asked to submit a supplementary submission addressing the Respondent's position.

- 7 On 8 January 2025 the Tribunal received written submissions from the Applicant.

- 8 The second CMD took place on 24 April 2025. Both parties joined the call.

- 9 The parties could not agree on the end date of the tenancy. The Applicant believed that the tenancy ended in February 2024 whilst the Respondent believed it ended in January 2024. The Tribunal noted that there was information within the papers about work being carried out to the Property by the Respondent. The work included installing a ramp, repairing cracks in walls and modernising the Property. The Respondent advised that it was agreed between the parties that the cost of the work carried out was to be deducted from the agreed sale price. In the event, the Respondent did not purchase the Property from the Applicant. It was agreed during the CMD that the issue of work being carried out in the Property was not relevant for the purposes of the claim by the Applicant. The Applicant's position is that the Respondent owes rent arrears of £8,500. The Respondent accepted that he was responsible for payment of rent throughout the period of the tenancy and his position is that all rent was paid in full.
- 10 The Tribunal noted that the Applicant had not lodged a rent statement. The Applicant was advised that a rent statement was required. It was clear to the Tribunal that there was a factual dispute about whether rent arrears are due or not. That dispute could not be resolved at the CMD. The parties were advised that an evidential hearing would be assigned and they would each have an opportunity to present evidence from witnesses and documents which they wish to rely upon in support of their respective positions. The issues for the Tribunal to determine were noted as:-
- (i) What date did the tenancy start?
  - (ii) What date did the tenancy end?
  - (iii) Did the Respondent pay all rent due during the period of the tenancy?
- 11 A Direction was issued following the CMD requiring parties to submit details of witnesses, documents, and any emails, notes, letters or otherwise showing or tending to show when the tenancy started and ended. The Applicant was directed to lodge a rent statement. The Respondent was directed to provide evidence of payments made by him in respect of rent throughout the period of the tenancy.
- 12 On 2 and 22 May 2025 the Tribunal received an email from the Applicant with further representations. On 21 May 2025 the Tribunal received an email from the Respondent with further representations. On 27 August 2025 the Tribunal received a rent statement from the Applicant.
- 13 The hearing was scheduled to take place on 2 September 2025. On 28 August 2025 the Tribunal received a postponement request from the Respondent to allow further time for evidence to be submitted. The Respondent further advised that he would not be available on the date of the hearing due to family commitments.

### **The hearings**

- 14 The first hearing took place on 2 September 2025 by teleconference. Neither party joined the call. The Tribunal clerk contacted the Applicant and he joined the

hearing. The Tribunal clerk used the contact number for the Respondent but was unable to reach him, having been told that the Respondent was not available today.

- 15 The Tribunal clarified the Applicant's position on the postponement request. He explained that he did not expect the hearing to proceed that day because the Respondent asked for it to be postponed. He confirmed that he was seeking payment of £8500 in respect of unpaid rent.
- 16 The Tribunal adjourned the hearing to enable the members to discuss matters. When the hearing reconvened, the Tribunal explained to the Applicant that the hearing would be adjourned to another date. However, the Tribunal would expect both parties to participate in the hearing.
- 17 The hearing was rescheduled to take place on 30 January 2026. The Tribunal gave notice of the hearing to the parties by email on 15 December 2025.
- 18 The second hearing took place on 30 January 2026. The Applicant joined the call. The Respondent was not in attendance.
- 19 The Tribunal considered whether to proceed with the hearing in the Respondent's absence. The Tribunal noted that he had requested a postponement of the previous hearing, one of the reasons being to gather more evidence. Nothing further had been received from him in that regard. The Tribunal noted that he had been given notice of the hearing to the email address he had been using to communicate with the Tribunal. The Tribunal was therefore satisfied that he was aware of the proceedings. He had given no explanation for his failure to attend. The Tribunal had to balance the competing interests of the parties in this case and considered that it would prejudice the Applicant if the proceedings were to be delayed any further. The Tribunal therefore determined to proceed with the hearing in the absence of the Respondent.
- 20 The Tribunal heard oral evidence from the Applicant. The following is a summary of the key elements of the evidence.
- 21 The Applicant confirmed that the tenancy had commenced on 22 June 2022. The Respondent had agreed to pay a deposit to take the property off the market in the sum of £10,000. The Respondent had paid only £2000 on 11 July 2022. The Applicant believes the tenancy ended on 2 February 2024 as that was the date the Respondent returned the keys for the property to the Applicant's father.
- 22 The Applicant noted the Respondent's position is that he made payments of £3000 in cash. The Applicant confirmed that no payments had been received from the Respondent other than those noted in the rent statement. There had never been any agreement between the parties whereby the Respondent could carry out works to the property and recover his costs from the Applicant. The Respondent had referenced an electricity bill, but this post-dated the tenancy and was between the Respondent and the new owners. The Applicant pointed out that if the Respondent had made the payments in cash as claimed, taking

account of the repairs costs the Respondent claimed were owed to him, the Applicant would in fact owe the Respondent money. The Applicant referred to the communications between the parties which had been produced in support of his position.

### **Findings in fact and law**

- 23 The parties entered into a verbal agreement whereby the Applicant offered to sell the property to the Respondent with a non-refundable deposit of £10,000 being paid in advance, with a further agreement that the Respondent would rent the property at a rate of £1000 per month pending the sale in early 2024.
- 24 The Respondent took up occupation of the property on 22 June 2022. The Respondent did not pay the deposit of £10,000. Instead, the Respondent paid a deposit of £2000 which was applied to rental payments.
- 25 The verbal agreement between the parties and the Respondent's subsequent occupation of the property and the payment of rent constitute a private residential tenancy for the purposes of the 2016 Act.
- 26 The Respondent did not pay rent as agreed. The Respondent failed to pay the rent for the month of November 2022, and for the months of January, February, July, August, September, November and December 2023. The Respondent paid £500 for the month of October 2023.
- 27 The Respondent vacated the property and returned the keys to the Applicant's father on 2 February 2024. The private residential tenancy between the parties terminated on that date.
- 28 The Respondent is liable to pay the Applicant the sum of £8500 under the terms of the lease agreement constituted between the parties.

### **Reasons for decision**

- 29 The Tribunal considered all documents before it, the submissions from the CMDs, and the oral evidence from the Applicant at the hearing in its determination of this application. The Tribunal concluded that it had sufficient information to make relevant findings in fact to reach a decision on the application.
- 30 The Tribunal determined based on the evidence before it that the parties had entered into a private residential tenancy in terms of which the Respondent had undertaken to pay rent of £1000 per month, and that the Respondent had accrued rent arrears in the sum of £8500. The Applicant had been clear and consistent on these matters throughout the proceedings, and his claim was supported by the communications between the parties, the rent statement and the bank statements produced.

- 31 In contrast, the Respondent had provided no evidence to substantiate his claim that rent had been paid in full. He had failed to participate in the hearings. In any event the Respondent's position was simply not credible. It was difficult to believe he would have made such large payments in cash to the Applicant without seeking some form of written receipt. The Tribunal agreed with the Applicant's view that if indeed the payments had been made as claimed by the Respondent, he himself would be seeking repayment from the Applicant, which was not the position he had adopted in the application. The Tribunal therefore preferred the Applicant's account of what had transpired between the parties in this case.
- 32 The Tribunal accordingly made a payment order in the sum of £8500 against the Respondent.
- 33 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

**Ms R O'Hare**

**30 January 2026**

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**Legal Member/Chair**

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**Date**