



**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) 2016 Act**

**Chamber Ref: FTS/HPC/CV/25/3957**

**Re: Property at 45-5 Torrance Park, Edinburgh, EH4 7LF (“the Property”)**

**Parties:**

**Sonali Mahay, 14 Bath Road, Walsall, WS1 3BS (“the Applicant”)**

**Rahat Chowdhary, 12a Main Street, Ballynahinch, BT24 8DN (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application be dismissed for the following reasons:**

**Background**

1. This was an application by the Applicant for civil proceedings in relation to a (purported) private residential tenancy in terms of rule 111 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”), namely an order for repayment of a deposit, and payment of other sums in recompense and damages, due under the Tenancy Agreement. The tenancy in question was said to be a Private Residential Tenancy (“PRT”) of a room at the Property by the Respondent to the Applicant (though the Tenancy Agreement was clearly headed as a “Lodger Agreement” and was otherwise not in a standard PRT style) commencing on 1 October 2024 and said to run for six months. The Tenancy was said to have ended on 30 April 2025.
2. The application was dated 15 September 2025 and lodged with the Tribunal on that date. The application relied upon evidence that a deposit of £650 was due

in terms of the Tenancy. It further referred to various other claims: for reimbursement of £350 over-payment rent (for a period out of the Property from 15 to 30 April 2025 due to a fire); damages for items said to have been misplaced by the Respondent after the fire; and damages arising from the fire (such as alternative accommodation).

3. A similar legal question to that discussed below – whether the Tribunal had jurisdiction over this Tenancy – had already been discussed in an earlier application raised (under reference PR/25/2686) seeking compensation under the Tenancy Deposit Schemes (Scotland) Regulations 2011/176. That application was dismissed on 28 November 2025 on the basis that the application was not a “relevant tenancy” in terms of the said Regulations on tenancy deposits, due to the Respondent residing at the Property as his main residence during the Tenancy. The Tribunal in that application did not, therefore, require to consider jurisdiction as the application fell as a result of the terms of the 2011 Regulations themselves. The current application was a matter of contract law, and therefore I noted the question arose as to whether the Tribunal had jurisdiction to consider the application (as the Tribunal lacks jurisdiction to consider contractual claims arising other than from those forms of tenancy that fall within its jurisdiction).
4. In advance of the case management discussion, I issued a Notice of Direction asking the Applicant to provide:
  1. *Submissions on whether the Respondent resided at the Property during some or all of the Applicant’s tenancy (and if for only some of the Applicant’s tenancy, which dates).*
  2. *If the Respondent resided at the Property during any part of the Applicant’s tenancy, submissions on whether:*
    - a. *The Respondent used the same kitchen and/or bathroom used by the Applicant.*
    - b. *It was the Respondent’s only or principal home at any time during the Applicant’s tenancy.*
    - c. *The Respondent took access through those areas used by the Applicant to reach the area he lived in, or whether he had a different access.*
  3. *Submissions on whether the Respondent occupied a single room within the Property during the period of her tenancy, or whether she occupied different rooms. If she occupied different rooms, she should provide submissions as to which rooms and which dates, and the reasons for her moving rooms.*
  4. *Any submissions the Applicant wishes to make as to whether or not the Applicant’s tenancy fell within any of the provisions of paragraphs 7 to 10 of Schedule 1 of the Private Housing (Tenancies)*

*(Scotland) Act 2016 (tenancies which cannot be private residential tenancies on account of there being a resident landlord).*

I asked for any response to be lodged no later than close of business on 10 April 2026. The Applicant's representative lodged such submissions on 1 April 2026 (which I shall refer to below). The Respondent lodged submissions, in regard to the application in general, on 3 April 2026.

### **The Case Management Discussion**

5. On 1 May 2026 at 10:00, at a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote conference call, there was appearance by the parties, as well as the Applicant's representative, Farhad Kochaliya. Both the Applicant and her representative provided oral submissions.
6. The oral submissions from the Applicant's representative materially repeated his written submissions following the Notice of Direction. To repeat the written submissions (in abbreviated form):
  - a) The Respondent resided at the property during the Applicant's tenancy. He lived there with his family throughout the period of the Tenancy.
  - b) The Respondent and the Applicant used the same kitchen and bathroom facilities.
  - c) To the best of the Applicant's knowledge, the Property appeared to be the Respondent's main residence during the tenancy.
  - d) The Respondent used the same entrance and common areas as the Applicant and did not have separate access.
  - e) The Applicant occupied a single room throughout the period of the Tenancy and was not moved between different rooms.
  - f) The overall arrangement operated in practice as a landlord-tenant relationship. The Respondent presented himself as the landlord, entered into the agreement in that capacity, took a deposit and rent payments directly, and exercised full control over the tenancy. At no point was it disclosed that he was not the legal owner of the Property, or that the arrangement would fall outside standard tenancy protections. The Applicant entered into the agreement in good faith, believing it to be a standard tenancy arrangement. Regardless of the classification of the arrangement, the Respondent took a deposit and rent and has failed to return the money owed.
  - g) The Property was occupied by multiple individuals during the Tenancy period. In addition to the Respondent and the Applicant, another room was rented to a separate individual. The arrangement was a structured letting arrangement where the Respondent was renting out multiple rooms and exercising control in a manner consistent with that of a landlord.
  - h) The Land Register confirms that the Property is owned by a different individual and not by the Respondent.
  - i) While it is acknowledged that the Respondent resided at the property, the application should still be considered within the Tribunal's jurisdiction under Section 71, having regard to the substance and circumstances of the arrangement.

- j) It has now been approximately one year since the end of the Tenancy, and the matter remains unresolved. The Applicant is currently on a temporary work visa which is due to expire in June, and it would be extremely difficult and unfair for her to initiate fresh proceedings in another forum after leaving the country.
  - k) In these circumstances, the Tribunal should consider retaining jurisdiction in the interests of fairness, efficiency, and access to justice.
7. The Applicant's oral submissions focused on whether the Respondent had been misleading in holding himself out as owner of the Property, when he had only been a tenant. The Applicant advanced the argument that she could not have been the Respondent's "lodger" as he was not the owner of the Property. She submitted that she could only be held to be a "lodger" if she had an agreement with the owner themselves.
  8. The Respondent's written submissions addressed the sums claimed themselves. He admitted he owed £650 for the deposit and £325 for the rent for 15-30 April 2026 but "due to my financial circumstances" he was not yet able to repay it. He claimed to have returned all items of the Applicants that he subsequently located (and implicitly disputed claims for damages for the items). Little was said in regard to the other damages sought. He made no written submissions on the issue of jurisdiction.
  9. At the CMD, I took the Respondent through the factual points accepted by the Applicant (at paragraph 6(a)-(e) above). He agreed that was the factual position: he lived with his family at the Property the entire time of the Tenancy as his main residence, and they shared kitchen and bathroom facilities with the Applicant, and used the same entrance into the Property through a shared internal hallway as the Applicant.
  10. I explained to the parties that the issue before me was not whether or not the Respondent was owner of the Property, or what made a person a "lodger". I explained that, in some cases, a PRT might be formed between someone who rented a property and a sub-tenant, as ownership of the Property was not essential to form a PRT. I explained that the question on which I required addressed was whether the Tenancy was a PRT, specifically as paragraphs 7 to 10 of Schedule 1 of the *Private Housing (Tenancies) (Scotland) Act 2016* set out the conditions where a tenancy could not be a PRT "on account of there being a resident landlord". I explained that parties appeared to be agreed that the Respondent was resident there with his family as his main residence. In the circumstances, I required addressed on any interpretation of the 2016 Act where the facts of the Tenancy could be distinguished from paragraphs 7 to 10 of Schedule 1 of the 2016 Act, or to be addressed on the Tenancy being a different form of tenancy over which I had jurisdiction. I provided the Applicant and her representative further time to provide any additional submissions, but received no further submissions materially different to those set out above.
  11. No motion was made for expenses.

## **Findings in Fact**

12. The Respondent, as a tenant of the Property, sub-let a room with shared facilities at the Property to the Applicant under an agreement headed "Lodger Agreement" for a "term of 6 months commencing on 1 October 2024".
13. The Applicant provided notice that she intended to vacate on 30 April 2025.
14. The Applicant resided at the Property from 1 October 2024 until 15 April 2025, at which date a fire caused her to leave the Property prior to her intended last day of occupation.
15. At all material times between 1 October 2024 and 15 April 2025, the Respondent resided in the Property as his main residence.
16. The Applicant and the Respondent shared use of the kitchen and bathroom facilities at the Property.
17. The Applicant and the Respondent accessed their private rooms and the shared areas at the Property through the same ordinary access, being the front door and internal hall.

## **Reasons for Decision**

18. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. In light of the submissions, I was satisfied both that the necessary level of evidence had been provided through the application, written submissions, and orally at the CMD, for a decision to be made by me on the question of jurisdiction.
19. In terms of the agreed facts, the Respondent was a resident landlord in terms of Schedule 1 of the 2016 Act and the Tenancy could not be a PRT. No other form of tenancy for which I may have jurisdiction was argued. (Given the date of commencement of the Tenancy I could not see that there would be any other such form of tenancy.) In the circumstances, the Tribunal does not have jurisdiction and I am not able to issue an order.
20. I appreciate that this may seem a harsh and inconvenient outcome for the Applicant, especially in the circumstances where the Respondent admits two of the sums sought. This does not alter the Tribunal's lack of jurisdiction however. The order sought cannot be granted by this Tribunal. The appropriate recourse is (and always was) to the courts.

## **Decision**

21. I dismiss the application for the above reasons in terms of Rule 27(1) on the grounds that the Tribunal lacks jurisdiction.

## 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.

# Joel Conn

1 May 2026

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Legal Member/Chair

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Date