



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 3 and 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/26/0151

Re: Property at 33/3 (PF3) Rossie Place, Edinburgh, EH7 5RX (“the Property”)

Parties:

Mr Abubakr Malik, 2 Westbrae, Paisley, PA1 2EB (“the Applicant”)

Mr Ishtiaq Hussain, 12 Smith's Place, Edinburgh, EH6 8NT (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision

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

Background

1. On 13th January 2026 the Applicant lodged an application under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking a sum under the Tenancy Deposit (Scotland) Regulations 2011. At the same time, he lodged an identical application in relation to the property at 33/4 (PF4) 33 Rossie Place, Edinburgh, EH7 5RX. The identical application proceeds under reference FTS/HPC/PR/26/0152.
2. The Applicant lodged some documentation in support of the application. He confirmed that there were no formal tenancy agreements for either property. He was asked questions during the sifting process. He confirmed that both tenancies ran from 16th June 2025 until 12th January 2026. He confirmed that he had paid a deposit of £2000 in relation to each property and that he had paid rent throughout the period.

3. The Applicant was asked during the sifting process, in an email of 20th January 2026 from the Tribunal, the following:

“You state that you took possession of two self-contained properties. A private residential tenancy can only be created where an individual is occupying the property as their only or principal home. Please explain the basis upon which you could occupy two separate properties as your only or principal home.”

4. The Respondent replied to that point, in an email of 22nd January 2026 to the Tribunal, as follows:

“I confirm that these were two separate, self-contained flats let to me under two separate verbal residential tenancy arrangements, each with its own deposit. The landlord granted me possession of both flats at the same time. In practice, I could not physically occupy two separate flats as my only or principal home at exactly the same time; however, I was the tenant in each tenancy, I had possession/control of both properties, and deposits were taken from me for each flat.”

5. The case was accepted and allowed to proceed to a Case Management Discussion, but it was pointed out to the Applicant that he may have to answer further questions on that point.
6. The Application was served on the Respondent by Sheriff Officer on 3rd June 2026.
7. On 23rd June 2026 the Respondent’s solicitor lodged a lengthy and comprehensive Written Submission laying out the details of the agreement between the parties regarding the rental, in that it was commercial in nature, and that the leases were not intended to be private residential tenancies.
8. The Respondent’s Written Submission submitted that the primary point to be decided was whether or not the Tribunal had jurisdiction, given the nature of the leases.

Case Management Discussion

9. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented himself. The Respondent was not present but was represented by Mr Ahmed of SLC Solicitors.
10. The Chairperson made introductions and explained the purpose of a CMD in terms of Rule 17 of the Tribunal’s Rules.

11. The Chairperson confirmed with the Applicant that he had rented two properties, 33/3 Rossie Place and 33/4 Rossie Place. He had paid a deposit of £2000 for each property and paid rent. He confirmed that the leases had started on 16th June 2025 and finished on 12th January 2026. He had brought two applications claiming that the tenancy deposits paid by him should have been placed in a tenancy deposit scheme in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, and two cases seeking return of the deposit amounts.
12. Mr Ahmed said that he wished to advance the preliminary point as per his Written Submission, that the Tribunal did not have jurisdiction and the leases were not private residential tenancies within section 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
13. The Chairperson asked the Applicant who had lived at the property at 33/3 Rossie Place between 16th June 2025 and 12th January 2026. He said that at times he had lived there, and also family members. The Chairperson asked for the names of the family members. He said they were not actually family members but friends that he considered to be family. When asked for their names he could give a first name for one person, and no surname. He said that he had not been expecting to be asked for these details and he could provide them if necessary. He was asking that the Tribunal make a decision as to what types of tenancy they were. When asked he confirmed that the people staying in the property had been paying him money, but he refused to call it rent.
14. The Chairperson asked the Applicant who had lived at the property at 33/4 Rossie Place between 16th June 2025 and 12th January 2026. Again he said that at times he had lived there, and also friends, and at times the property was empty. He confirmed that they were paying him to live there and he said that at times he also lived there.
15. The Chairperson asked the Applicant if he considered that he was occupying 33/3 Rossie Place between 16th June 2025 and 12th January 2026 as his only or principal home and he said that he was.
16. The Chairperson asked the Applicant if he considered that he was occupying 33/4 Rossie Place between 16th June 2025 and 12th January 2026 as his only or principal home and he said that he could not be occupying both as his only or principal home. He then said that actually he was occupying them both. After further questions he said that he also had addresses in Glasgow, Paisley and Manchester, and had lived at those addresses for periods between 16th June 2025 and 12th January 2026.
17. Mr Ahmed did not have anything that he wanted to say in relation to the preliminary point further to what was in his Written Submission.
18. The Chairperson considered that she had sufficient information to allow her to make a decision without having to continue the matter to a Hearing. She confirmed that she found that the properties were not leased to the Applicant

as private residential tenancies and therefore all four actions would be dismissed. She confirmed to the Applicant that his remedy, should he have one, may lie in the Sheriff Court.

Findings In Fact

- i. The parties entered in to an Agreement for the Applicant to lease a property at 33/3 (PF3) Rossie Place, Edinburgh, EH7 5RX, commencing on 16th June 2025 and ending on 12th January 2026;
- ii. The Applicant entered in to an Agreement with Union Holdings Ltd to lease a property at 33/4 (PF4) Rossie Place, Edinburgh, EH7 5RX, commencing on 16th June 2025 and ending on 12th January 2026;
- iii. The Applicant allowed other persons to stay in each property between 16th June 2025 and ending on 12th January 2026 and took money from them for staying there;
- iv. Between 16th June 2025 and 12th January 2026 the Applicant lived at addresses in Glasgow, Paisley and Manchester;
- v. The Applicant did not occupy the property as his only or principal home;
- vi. The Tribunal does not have jurisdiction to deal with the application;
- vii. The terms of the Tenancy Deposit Scheme (Scotland) Regulations 2011 do not apply.

Reasons For Decision

19. Section 1 of the Private Housing (Tenancies)(Scotland) Act 2016 defines a private residential tenancy as follows:

1. *Meaning of private residential tenancy*

(1)A tenancy is a private residential tenancy where—

(a)the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b)the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c)the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2)A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

20. Paragraphs 7 to 10 of Schedule 1 to the Act provide exceptions, and deal with resident landlords in paragraphs 7 to 10 as follows:

Resident landlord

7 A tenancy cannot be a private residential tenancy if paragraph 8 or 9 applies to it.

8 This paragraph applies to a tenancy if—

(a) the let property would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the tenant to use property in common with another person (“shared accommodation”), and

(b) from the time the tenancy was granted, the person (or one of the persons) in common with whom the tenant has a right to use the shared accommodation is a person who—

(i) has the interest of the landlord under the tenancy, and

(ii) has a right to use the shared accommodation in the course of occupying that person’s home.

9(1) This paragraph applies to a tenancy if sub-paragraphs (2) and (3) apply to it.

(2) This sub-paragraph applies to a tenancy if, from the time it was granted, a dwelling within the same building as the let property has been occupied as the only or principal home of a person who, at the time of occupying it, has the interest of the landlord under the tenancy.

(3) This sub-paragraph applies to a tenancy if, at the time it was granted, there was an ordinary means of access—

(a) through the let property to the dwelling occupied by the person who is, or is to be, the landlord, or

(b) through the dwelling occupied by the person who is, or is to be, the landlord to the let property (whether or not that access was available to the tenant as of right).

(4) For the purpose of this paragraph, in determining whether a dwelling is occupied as the only or principal home of the person having the interest of the landlord, no account is to be taken of—

(a) any period beginning with the date on which the interest of the landlord is transferred (other than on death) and ending—

(i) 28 days later, or

(ii) 6 months later if, within 28 days of the period beginning, the person to whom the interest is transferred notifies the tenant of the person's intention to occupy a dwelling within the same building as the let property,

(b) any period of up to 24 months beginning with the date of the person's death and ending with the person's interest in the tenancy being vested in another person (otherwise than as the person's executor).

10 If, at any time, the landlord holds the landlord's interest as a trustee under a trust, a reference in paragraph 8 or 9 to a landlord or the person having the interest of the landlord includes a person who is a beneficiary under the trust.

11 In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in paragraphs 8 to 10 are to any one of those persons.

21. The Applicant gave answers which were confusing, and contradictory at times. He did not answer questions in a straightforward manner. He claimed to have occupied both properties as his only or principal home at the same time. He also said that during the time period he had lived in properties in Glasgow, Paisley and Manchester. It was clear that he did not occupy either of the properties as his only or principal home at any time during the period of the leases. It was also clear that none of the exemptions in paragraphs 7 to 10 of Schedule 1 of the Act applied. Accordingly, as the Applicant did not occupy the property as his only or principal home as required by Section 1 (1)(b) of the 2016 Act the lease cannot be a Private Residential Tenancy and therefore the Tribunal does not have jurisdiction to deal with the claim.

22. In relation to the Tenancy Deposit Scheme (Scotland) Regulations 2011 Regulation 3 states:

3.—(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.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid

to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means 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.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

23. The Applicant was not occupying the property as required by Regulation 3 (3) (b) and the Regulations do not apply.

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.

Alison Kelly

29th June 2026

Legal Member/Chair

Date