



**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/25/4366

**Re: Property at The Tack Shed, Station Road, Dairsie, Fife, KY15 4RW (“the
Property”)**

Parties:

**Miss Charlotte Davies, 20/1 GFL, Livingston PLace, Newington, Edinburgh,
EH191PD (“the Applicant”)**

**Mr William McGuckin, Ash Cottage, Station Road, Dairsie, Fife, KY15 4RW
 (“the Respondent”)**

Tribunal Members:

Gillian Buchanan (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

Decision

At the Hearing which took place by telephone conference on 16 July 2026, the Applicant was present. The Respondent was not present but was represented by Mr David Sinclair Aiton.

The Hearing was in respect of this matter and the related case bearing reference FTS/HPC/PR/25/4372.

Procedural History

A Case Management Discussion (“CMD”) had previously taken place on 25 March 2026 before a differently constituted Tribunal in respect of this application and the related one.

At the CMD the key issue in dispute identified was stated to be whether or not the tenancy arrangement between the parties was a Private Residential Tenancy under the Private Housing (Tenancies)(Scotland) Act 2016 or not. The Hearing was assigned to resolve that issue.

At the CMD both parties indicated a willingness to enter into negotiations to seek to resolve both applications. Those negotiations were not successful. The detail of these discussions is not relevant for the purposes the Hearing.

Subsequent to the CMD and prior to the Hearing the parties both lodged addition submissions by email.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that -

Background

The Tribunal noted the following background –

- i. The Respondent leased the Property to the Applicant in terms of a tenancy that commenced on 12 March 2025.
- ii. The lease document is headed "Private Residential Tenancy Agreement".
- iii. The rent payable in terms of the tenancy was initially agreed to be £800 per calendar month payable in advance on the 12th day of each month.
- iv. The deposit agreed to be payable in terms of the tenancy was £800 and was paid by the Applicant to the Respondent.
- v. The deposit was not and has never been lodged in an approved deposit scheme.
- vi. On 8 August 2025 the Applicant gave written notice to the Respondent that she would remove from the Property on 12 August 2025.
- vii. The Applicant vacated the Property on 12 August 2025.
- viii. This application is made under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").
- ix. The Applicant has not received the return of the deposit or any part of it.

None of these matters are in dispute.

The Applicant submits that the tenancy between the parties was a Private Residential Tenancy under the 2016 Act and that the deposit therefore ought to have been lodged in an approved scheme in terms of the Regulations. In this application she seeks to recover a sum of £594.32 of the deposit paid.

The Respondent, on the other hand, submits that he was a resident landlord and therefore notwithstanding the "label" on the tenancy documentation the lease was not a PRT and the deposit did not require to be lodged as the Regulations did not apply. His position on the Applicant's claim is not clear.

The Hearing

At the outset of the Hearing the Tribunal noted the lengthy submissions and supporting papers that both parties had lodged which had been carefully read by the Tribunal. However, neither party had addressed the definition of "Resident Landlord" within paragraphs 7-11 of Schedule 1 of the 2016 Act. The relevant paragraphs for present purposes are paragraphs 7-9 which states:-

"7

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

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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.

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(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)."

The Tribunal also referred to the meaning of "private residential tenancy" as defined in Section 1 of the 2016 Act which states:-

"(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."

Having regard to the foregoing provisions the Applicant and the Respondent's representative made the following oral submissions:-

Resident Landlord

Submissions by the Applicant -

- i. Having regard to the photographs of the Property lodged by the Applicant, she confirmed the Property to be entirely separate from the Respondent's residence with no connection thereto and no corridor between them. The Property had its own external entrance.
- ii. Utilities were shared, and the Tribunal noted the provisions within the tenancy agreement relative to the cost of utilities consumed and council tax all of which formed part of the rent paid by the Applicant to the Respondent.
- iii. The Tribunal took the Applicant through paragraphs 8 and 9 of Schedule 1 of the 2016 Act and she said there was no shared accommodation and that the Property and the Respondent's own accommodation were not within the same building. These paragraphs did not therefore apply.

Submissions for the Respondent –

- i. Mr Aiton accepted that the Applicant and the Respondent did not share any accommodation.
- ii. It is accepted that the Property is a separate structure with its own amenities.
- iii. The Respondent had been advised by Fife Council that he would be a resident landlord in the circumstances arising.
- iv. Having regard to the definitions outlined by the Tribunal Mr Aiton on behalf of the Respondent accepted the tenancy to be a Private Residential Tenancy under the 2016 Act.

Only or Principal Home

Submissions by the Applicant

- i. She graduated from St Andrews University in June 2023.
- ii. She moved to New Zealand in September 2023, staying with her parents in North Wales in between.
- iii. She stayed in New Zealand for 18 months before moving back to St Andrews.
- iv. She has worked as a freelance photographer for around 7 years with 95% of her work in Scotland.
- v. She has a lot of work near St Andrews having gained good traction there and decided to take a tenancy nearby.
- vi. The Property was her principal home whilst she lived there.
- vii. She would stay with her parents once every couple of months and would stay for a couple of days at a time.
- viii. She worked at a couple of weddings in London and stopped at her parents' home on the way back up.
- ix. She was registered with a GP practice in St Andrews.
- x. She had work done on her car there.
- xi. She would not have moved her partner into the Property if she had not been living there as her principal home.
- xii. She moved to Edinburgh after vacating the Property and is still there.

Submissions for the Respondent

Having heard the Applicant's submissions Mr Aiton accepted that she had a clear commitment to the Property being her own home and the Respondent cannot offer any evidence to the contrary.

Rent Increase

Submissions by the Applicant

The Tribunal noted the Applicant to have paid increased rent of £950 for the months beginning 12 June and 12 July 2025. She now maintains that only £800 was due for each of these months as no Rent Increase Notice was properly served by the Respondent. The calculation of her claim for payment per her email to the Respondent dated 28 September 2025 therefore includes a refund of £300.

The Tribunal challenged the Applicant on her position having regard to the terms of the emails (or perhaps text messages) she exchanged with the Respondent on 12 June 2025 in which, at the request of the Applicant, the Respondent agreed to the Applicant's partner moving into the Property but subject to an increase in the monthly rent of £150 to cover additional costs for electricity, water and additional wear and tear caused by there being two people then living in the Property. The Tribunal noted utility costs to form part of the rent paid by the Applicant in terms of the tenancy agreement which is not in dispute. The Applicant responded stating "... *that is a huge relief thank you. I will pay £950 then for the payment due today to cover us both June12 to July12...*". The Tribunal suggested this was a re-negotiation of the tenancy agreement rather than a situation that required a Rent Increase Notice which is a unilateral process used by a landlord to increase rent when no other changes to the tenancy are involved. That was not the position here.

The Applicant accepted the arrangements described (which again are not in dispute) to be a renegotiation and that her calculation of the sum claimed in the application should be adjusted accordingly.

The Tribunal also noted that the Applicant's calculation of the sum claimed wrongly divided the monthly rent by 28 days to reach a daily rate. That is not correct. The monthly rent should be divided by 31 days being the period from 12 August to 11 September 2025. Again the Applicant accepted this error.

Taking the above into account the Tribunal suggested to the Applicant that her claim is correctly calculated at £244.40 not £594.32. She agreed.

Submissions for the Respondent

Mr Aiton for the Respondent accepted the Tribunal's position and the re-calculation of the Applicant's claim. He agreed the Respondent should pay £244.40.

The Tribunal adjourned briefly.

Findings in Fact

The Tribunal made the following findings in fact –

- i. The Respondent is the heritable proprietor of the Property.
- ii. The Respondent leased the Property to the Applicant in terms of a tenancy that commenced on 12 March 2025.
- iii. The Respondent was not a "Resident Landlord" as defined in paragraphs 7-9 of Schedule 1 of the 2016 Act.
- iv. The Applicant occupied the Property as her principal home.
- v. The tenancy was a Private Residential Tenancy in terms of the 2016 Act.
- vi. The rent payable in terms of the tenancy was initially agreed to be £800 per calendar month payable in advance on the 12th day of each month.
- vii. The deposit agreed to be payable in terms of the tenancy was £800 and was paid by the Applicant to the Respondent.

- viii. The deposit was not and never has been lodged in an approved deposit scheme in terms of the Regulations.
- ix. The Regulations apply to the tenancy.
- x. On 8 August 2025 the Applicant gave written notice to the Respondent that she would remove from the Property on 12 August 2025.
- xi. The Applicant vacated the Property on 12 August 2025.
- xii. The Applicant has not received the return of the deposit or any part of it.
- xiii. The Respondent is liable to pay to the Applicant £244.40 from the deposit paid.

Reasons for Decision

During the Hearing Mr Aiton for the Respondent accepted the tenancy to be a Private Residential Tenancy in that the arrangements did not meet the definition of "Resident Landlord" in Schedule 1 of the 2016 Act and also accepted that the Property was used by the Applicant as her principal home. Indeed the Tribunal would have made findings to that effect had it been required to do so.

Having made those concessions (which could have been made at a much earlier date had the terms of paragraphs 7-9 of Schedule 1 of the 2016 Act been properly considered) the deposit of £800 paid by the Applicant to the Respondent therefore ought to have been lodged into an approved scheme in terms of the Regulations.

Having not lodged the deposit into an approved scheme as required by the Regulations the Applicant was deprived of the adjudication process that ought to have been available to her to claim on and resolve her entitlement or otherwise to the return of the deposit.

In this application the Applicant seeks to recover a sum of £594.32 of the deposit paid. The applicant's calculation of how that sum is reached is contained within her email to the Respondent dated 28 September 2025 within the case papers.

That calculation is flawed for the following reasons –

- i. By agreement the rent was increased to £950 per month from the month commencing 12 June 2025. No Rent Increase Notice was required. The parties agreed that in exchange for the Applicant's partner being allowed to move into the Property the increased rent would apply which took account of increased water usage, utility costs and wear and tear all of which form part of the rent paid.
- ii. The daily rate of rent is wrongly calculated and should be by reference to 31 days being the period from 12 August to 11 September 2025.

The Applicant accepted the re-calculation of her claim on this basis which reduced her claim to £244.40. The Respondent agreed the calculation in that amount and accepted that amount to be payable to the Applicant from the deposit of £800.

Decision

The Respondent is ordered to pay to the Applicant a sum of £244.40.

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.

Gillian Buchanan

Legal Member/Chair

16 July 2026
Date