



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

Chamber Ref: FTS/HPC/PR/25/4372

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, EH19 1PD ("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

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/CV/25/4366.

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.

None of these matters are in dispute.

In summary, in this application 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, failing which a penalty is payable in terms of Regulation 10.

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.

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.

Mitigation

Having accepted the tenancy to be a Private Residential Tenancy and that the deposit paid should therefore have been lodged in an approved scheme in terms of the Regulations, Mr Aiton referred to his written submissions in mitigation relative to the Tribunal's assessment of the penalty to be imposed. In response to questions from the Tribunal he further stated -

- i. The Respondent did have one other rental property in Falkirk which was sold earlier this year. Mr Aiton did not know how long the Respondent had rented out that property.
- ii. As a commercial landlord, the Tribunal asked Mr Aiton whether the Respondent was aware of the Regulations and he said "I believe so, yes".
- iii. If the Respondent had made an error it was in good faith. He has no intent to deceive or circumvent the Regulations.
- iv. The Respondent did not know who he spoke to in Fife Council or the department contacted.
- v. Mr Aiton did not know whether the Respondent took deposits relative to the other rental property now sold.
- vi. The Respondent did attend the CMD and made representations to the Tribunal at that time. He was contrite and did not dispute Mr Mill's preliminary view of the tenancy at that time.

The Tribunal observed that in the absence of the Respondent attending the Hearing his credibility and reliability could not be assessed. Mr Aiton appreciated the position.

In response the Applicant referred to her email exchanges with the Respondent in September 2025 and suggested he should have taken advice at that time.

The Tribunal adjourned to consider the parties' positions.

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.

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.

The Tribunal takes a landlord's failure to comply with the Regulations seriously.

Regulation 3 of the Regulations 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;"*

Regulation 10 of the Regulations states:-

*"If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal -
(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit;"*

The Respondent leased the Property to the Applicant in terms of a Private Residential Tenancy.

The deposit paid by the Applicant to the Respondent in terms of the PRT was £800.

This application is made timeously.

The deposit of £800 was never lodged with the scheme administrator of an approved scheme as required in terms of Regulation 3 of the Regulations.

The Regulations require a landlord to lodge a tenancy deposit with an approved scheme within a period of 30 working days from the beginning of the tenancy.

None of the above is now in dispute between the parties.

In determining the amount payable by the Respondent to the Applicant in terms of Regulation 10 the Tribunal took into account the following:-

- i. The deposit was unprotected for the entire duration of the tenancy.
- ii. No part of the deposit has ever been returned to the Applicant.
- iii. The Respondent is a commercial landlord.
- iv. The Respondent previously also rented out another property in Falkirk. He was therefore aware or ought to have been aware of the Regulations.
- v. The Applicant was deprived of the adjudication scheme that ought to have been available to her at the end of the tenancy relative to the return of the deposit.
- vi. The credibility and reliability of the Respondent could not be assessed due to his absence from the Hearing. Whilst it was stated on the Respondent's behalf that he had taken advice from Fife Council prior to entering into the tenancy with the Applicant no detail

of that discussion could be provided and, on the balance of probabilities, the Tribunal could not be satisfied such a call had taken place. The same difficulties arise relative to the suggestion that the Respondent simply erred in good faith and had no intent to deceive.

The Tribunal therefore determined that, having regard to the foregoing, the Respondent must pay to the Applicant a sum of £1600 by way of a penalty for the failure to comply with the Regulations. Such a penalty is proportionate, fair and just in the circumstances.

Decision

The Respondent is ordered to pay to the Applicant a sum of £1600.

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