

Housing and Property Chamber
First-tier Tribunal for Scotland



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 (“the Act”)

Chamber Ref: FTS/HPC/CV/26/1780

Re: Property at 44/2 Montgomery Street, Edinburgh, EH7 5JY (“the Property”)

Parties:

Mr Connor McLean, Miss Isabella Oliver, 4/205 Brunswick Road, Brunswick, 3056, Melbourne, Victoria, Australia; 4/205 Brunswick Road, Brunswick, Melbourne, Victoria, Australia (“the Applicant”)

Ms Sophie Duncan, Auchenlays, Kirkmahoe, Dumfries, DG1 1RE (“the Respondent”)

Tribunal Members:

Fiona Stephen (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of One Thousand Eight Hundred Pounds (£1 800.00) Sterling together with interest at the rate of four per cent per annum from the date of the decision, until payment

Background

1. By Application dated 22 April 2026 the Applicant sought an order for payment under section 71 of the Act and in terms of Rule 111 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) arising from the Respondent’s failure to repay their tenancy deposit following the end of their tenancy on 25 February 2026. This application was conjoined with application number FTS/HPC/PR/26/1779 in which the Applicant sought a sanction against the Respondent arising from her failure to lodge the deposit in one of the three deposit schemes as required by the Tenancy Deposit Schemes (Scotland) Regulations 2011.

2. The Application was accepted on 28 April 2026 and referred to a case management discussion (“CMD”) to take place by teleconference on 15 September 2026 at 2pm. Sheriff Officers served the papers and gave intimation of the CMD to the Respondent on 12 August 2026 by letterbox service conform to Execution of Service of the same date. The Respondent had until 26 August 2026 to lodge written representations with the Tribunal. No written representations have been lodged.
3. The Tribunal had before it:
 - (i) The Application Form F;
 - (ii) Confirmation from the Scottish Landlord Register that the Respondent is a registered Landlord for the Property;
 - (iii) Private Residential Tenancy agreement signed by the Applicant and Respondent dated 10 and 11 July 2025;
 - (iv) Proof of payment of deposit; and
 - (v) Case Papers.

Case Management Discussion

4. The Case Management discussion took place by teleconference call on 15 September 2026 at 2pm. The Applicant (both Mr McLean and Miss Oliver) appeared by joining the call from Australia, where it was 11pm. The Tribunal delayed the start of the CMD by a few minutes, but the Respondent did not appear.
5. The Tribunal explained the purpose of the CMD and the powers of the Tribunal to determine matters. The Tribunal asked various questions of the parties with regard to the application.
6. The Tribunal explained to the Applicant that it had noted the terms of the tenancy agreement and the deposit amount (£1800.00). It noted that this had been paid to the Respondent’s letting agent, Belvoir Edinburgh on 7 July 2025.
7. The Tribunal asked what contact there had been with the Respondent about the tenancy deposit. Miss Oliver said that she made contact with the Respondent towards the end of the tenancy at the point when they gave notice to leave. An email was sent to the Respondent but there was no response, which was not unusual. The parties communicated mostly via WhatsApp. The Respondent did not respond to your messages. On 24 February 2026, the Respondent confirmed that she was happy for the Applicant to leave the keys in the Property at the end of the tenancy. The last message you sent to her by WhatsApp was on 6 April 2026 when you told the Respondent that if she did not respond you would have no option but to lodge an application with the Tribunal. She did not respond. The Respondent “left” the WhatsApp group on 22 April 2026.

8. Miss Oliver said that they had left the Property in a good condition. They had cleaned it and took photographs of it, but these were too big to send in to the Tribunal. There was no reason for the Respondent not to return the deposit to them. The Respondent had raised no issues with them about the condition of the Property. During the tenancy, the Respondent had been in contact with the Applicant, for example, to discuss the heating so it was surprising that she had not been in contact with them since they left the Property.
9. The Tribunal asked the Applicant what impact the delay in getting the deposit back has caused. The Tribunal noted that the situation has been stressful for you. You were both leaving the tenancy to return to live in Australia, so as well as packing up to leave the Property, you were packing up to leave the country. The money would have been useful to have as it would have been used to off-set your financial commitments in Australia.
10. The Tribunal told the Applicant it considered it had sufficient information to make a decision today and would issue a written decision shortly.

Findings in Fact

11. The Applicant entered into a Private Residential Tenancy with the Respondent on 10 and 11 July 2025 in respect of the Property.
12. The tenancy commenced on 25 July 2025.
13. Clause 12 of the tenancy agreement provided that a deposit of £1800.00 was payable by the Applicant and would be placed with SafeDeposits Scotland.
14. The tenancy deposit of £1800.00 was paid by the Applicant to the Respondent's letting agent, Belvoir Edinburgh, 84 Commercial Street, Leith, Edinburgh EH6 6LX on 7 July 2025.
15. On 26 January 2026, the Applicant gave notice to the Landlord by email that they intended to leave the Property on 25 February 2026, in terms of the tenancy agreement.
16. The Applicant returned to Australia after the tenancy ended.
17. The Respondent did not reply to the Applicant's email request to provide them with information regarding the deposit nor did she respond to the Applicant's WhatsApp messages concerning this.
18. The Applicant last messaged the Respondent by WhatsApp on 6 April 2026 and she did not reply.
19. The Respondent exited the parties WhatsApp group on 22 April 2026 and the Applicant has not heard from her since.

20. The Respondent was served with the papers in this case by Sheriff Officers on 12 August 2026 conform to Execution of Service of the same date.
21. The deposit was not lodged with an approved tenancy deposit scheme throughout the duration of the tenancy.
22. The Applicant was put to significant inconvenience as a result of the Respondent's failure to comply with her obligations under the Deposit Regulations.
23. The Applicant has raised an application in the Tribunal under reference FTS/HPC/PR/26/1779 regarding the Respondent's failure to lodge the deposit with an approved deposit scheme.
24. The Applicant left the Property in good condition.
25. The Respondent has failed to repay the deposit money to the Applicant following the end of the tenancy. The Respondent has provided no explanation to the Applicant to justify retention of the deposit sum as provided for in Clause 12 of the tenancy agreement.
26. The Respondent is not entitled to retain the deposit sum.

Reasons for Decision

27. The Tribunal was satisfied that it was able to make a determination and that it was not contrary to parties' interest to do so at the CMD without the need for a hearing all in terms of Rules 17 and 18 of the Rules.
28. The Applicant has provided proof of payment of the deposit of £1800.00 to the Respondent's letting agent, Belvoir Edinburgh on 7 July 2025.
29. Clause 12 of the tenancy agreement provided, inter alia:

"DEPOSIT

The Landlord must lodge any deposit they receive with a tenancy deposit scheme within 30 working days of the start date of the tenancy (when a deposit is paid in instalments then each instalment must be lodged within 30 working days of that instalment being paid).

The Landlord will be entitled to make deductions from the deposit in relation to the following:

- (i) Any damage caused, to the Let Property, fixtures and fittings or any furniture provided as part of the Agreement with the exception of fair wear and tear;

- (ii) Any costs incurred in replacing any items detailed on the ingoing inventory which have been lost or broken, or have disappeared during the Agreement;
- (iii) Any costs incurred in carrying out any redecoration work in the Let Property where required due to damage caused by the Tenant and/or due to the Tenant having carried out redecoration work without the prior consent of the Landlord;
- (iv) Any costs incurred in bringing the garden back to an acceptable standard at the termination of the Agreement;
- (v) Any interest incurred due to the Tenant's late payment of rent or administrative or bank charges incurred by cheques not being met;
- (vi) Any unpaid bills for utility services and local authority taxes;
- (vii) Any cleaning charges arising from the Let Property not being properly maintained;
- (viii) Any amounts of rent, which remain unpaid;
- (ix) Any other costs arising from the Tenant's failure to fulfil the conditions of this Agreement.

A tenancy deposit scheme is an independent third-party scheme approved by the Scottish Ministers to hold and protect a deposit until it is due to be repaid.

At the start date of the tenancy or before, a deposit of £1,800 will be paid by the Tenant to the Landlord. The Landlord will issue a receipt for the deposit to the Tenant. No interest shall be paid by the Landlord to the Tenant for the deposit.

By law, the deposit amount cannot exceed the equivalent of two months' rent and cannot include any premiums. For example, charging for an administration fee or taking a non-refundable holding fee

The scheme administrator is SafeDeposits Scotland and their contact details are: SafeDeposits Scotland 1st Floor Page 8 of 25 Page 29 221 West George Street Glasgow G2 2ND Telephone: 03333 213 136

Where it is provided in this Agreement that the Tenant is responsible for a particular cost or to do any particular thing and the Tenant fails to meet that cost, or the Landlord carries out work or performs any other obligation for which the Tenant is responsible, the Landlord can apply for reasonable costs to be deducted from any deposit paid by the Tenant.

This would include cases where a tenant has not paid all of the rent payable, any amount in respect of one-off services, or unpaid utility bills, or a sum in relation to breakages or cleaning.

At the end of the tenancy the Landlord should ask the tenancy deposit scheme to release the deposit and the amounts payable to each party. If the Tenant disagrees with the amount, the scheme administrator will provide a dispute resolution mechanism.

Where the Tenant owes the Landlord an amount greater than the amount held by the tenancy deposit scheme, the Tenant will remain liable for these costs, and the Landlord may take action to recover the difference from the Tenant.

More information can be found in the Tenancy Deposit Schemes (Scotland) Regulations 2011.
(<http://www.legislation.gov.uk/ssi/2011/176/contents/made>).

30. The Applicant contacted the Respondent by email and via WhatsApp on a number of occasions to ask that the deposit sum be repaid to them. The Applicant assumed that the deposit had been lodged with SafeDeposits Scotland as provided for in the tenancy agreement. When the Applicant found out this was not the case, they made contact with the Respondent. She has not engaged at all with them. The Respondent deliberately exited the parties WhatsApp group on 22 April 2026 which demonstrates a failure to recognise her responsibilities as a landlord. The Applicant complied with their obligations under the tenancy agreement. They left the Property in a good condition. There are no grounds, in terms of Clause 12 of the tenancy agreement, on which the Respondent is entitled to retain the deposit sum or deduct monies from it. Accordingly, there is no reason why the Respondent should not repay the deposit to the Applicant in full.
31. The Tribunal is satisfied on the information before it that the deposit should be repaid in full and will make an order accordingly. The Tribunal was satisfied that interest should be applied on the deposit in terms of Rule 41A of the Rules. No contractual interest on late payment of the deposit is provided for in the tenancy agreement. The Tribunal determined that interest at the rate of four per cent per annum was a reasonable rate and that should be applied in terms of Rule 41A(2)(b) of the Rules to run from the date of the decision of the Tribunal.

Decision

The Tribunal granted an Order for payment of £1 800.00 in terms of Section 71 of the 2016 Act and Rule 111 of the Rules together with interest at four per cent per annum from the date of the decision until payment, in terms of Rule 41A (2)(b) of the Rules.

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.

Fiona Stephen

Legal Member/Chair

Date: 15 September 2026