



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/25/3780

Re: Property at Flat 2/1, 22 St James Street, Paisley, PA3 2JR (“the Property”)

Parties:

Chesnutt Skeoch Ltd, 30 East Main Street, Darvel, KA17 0HP (“the Applicant”)

Ms Fiona Haney, Flat 0/3, 1 New Harbour Way, Paisley, PA3 2BZ (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Mary Lyden (Ordinary Member)

Decision

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

Background

1. On 4th September 2025 the Applicant lodged an application under Rule 111 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking payment of £860.
2. Lodged with the Application were:
 - i. Copy Private Residential Tenancy commencing 13th October 2020
 - ii. Various invoices
 - iii. Copy Adjudication from MyDeposits Scotland dated 21st May 2025
 - iv. Email from David Crawford dated 3rd September 2025

Case Management Discussion

3. The Case Management Discussion ("CMD") took place on 19th May 2026 by teleconference. The Applicant was represented by Mr Johnstone, Director. The Respondent represented herself.
4. There was a discussion about whether the principle of res judicata applied to the issue of redecoration given that MyDeposits Scotland had already made a determination.
5. The Respondent was advised that her Written Submission had not been received by the Tribunal as it had been sent in by a third party. The Respondent's position was that she was not responsible for cotton buds, fat or grease in the waste pipe and there was no evidence that she was.
6. It was agreed that a Hearing was required and the issues to be addressed were:
 - The condition of the property at the start of the tenancy
 - The condition of the property at the end of the tenancy
 - Are the costs fair and reasonable
 - Should fair wear and tear be taken in to account
 - Is the Respondent liable for the sum sought
7. It was agreed that the legal issue in dispute was:
 - The legal basis on which the Tribunal can be asked to review the decision of MyDeposits Scotland

Subsequent to CMD

8. On 19th May 2026 the Respondent lodged a Written Submission.
9. On 3rd June 2026 the Applicant lodged a Written Submission.
10. On 14th June 2026 the Respondent lodged a further Written Submission.

Hearing

11. The Hearing took place on 13th October 2026 by teleconference. The Applicant was represented by Mr Johnstone, Director ("Mr Johnstone"). The Respondent represented herself.

12. The Chairperson established that neither party intended to call any witnesses. She went through the CMD Note and each party agreed that the issues in dispute had been correctly noted.
13. Mr Johnstone confirmed that he was seeking the sum of £860, being £550 to the plumber for fitting a new waste pump and pipe, £100 to the joiner for lifting the flooring to allow the work to take place, and the remaining sum for redecoration.
14. The Chairperson decided that the issue of res judicata should be dealt with first. She considered that there was an additional issue: whether the First-tier Tribunal had jurisdiction to deal with what was effectively an appeal of the decision named by the adjudicator at Mydeposits Scotland.
15. Mr Johnstone said that he took legal advice and was told that there was no case law on the issue. His view was that the adjudicator at MyDeposits Scotland made an error in deciding that the flat was an aged property when in fact it had been completely redecorated prior to the Respondent taking entry. He had not been able to submit evidence to establish that as they were past the initial stage at which evidence could be submitted. His solicitor had said that he was prejudiced because the adjudicator would not allow it to be submitted retrospectively. His solicitor said that as he was already going to be making an application to the Tribunal, he should not appeal the adjudication and instead include it in the Tribunal application. He said that there was no case law to say this was not competent.
16. Mr Johnstone conceded that he had not asked for a review or an appeal of the adjudication, even although he could have done so.
17. Mr Johnstone said that he understood the principle of res judicata, but he did not consider that it applied here. He did not advance any legal argument to support that contention.
18. The Respondent did not have anything to add.
19. The Tribunal adjourned to consider the matter.

Decision on Preliminary Points

20. The Tribunal reconvened and confirmed its decision.
21. The Tribunal decided that the principle of res judicata – the thing has been judged - applied. The parties were the same, the subject matter was the same, the matter had been adjudicated by a body with competent jurisdiction, and the appeal process for that body was exhausted. There was absolutely nothing different contained in the application to the Tribunal.

22. The Tribunal also decided that it was not competent for the Applicant to effectively ask the Tribunal to review the decision of the adjudicator at MyDeposits Scotland. In circumstances where an adjudication is sought and a decision made, but the sum claimed is larger than the sum held on deposit, it is competent to ask the Tribunal to grant an order for the difference. However, this was an entirely different set of circumstances. An adjudication had been made and Mr Johnstone confirmed he did not seek a review or appeal of that decision using Mydeposits Scotland's process. He seemed to be basing his application on his contention that the adjudicator made a mistake. The way to deal with that clearly would have been through MyDeposits Scotland's process, and it seems bold that he was advised not to do so. The First-tier Tribunal does not hold an appellate function in relation to the three tenancy deposit schemes and accordingly there is no basis for Mr Johnstone to ask the Tribunal to reconsider that decision. The contention made by Mr Johnstone that he had evidence which he could not submit is irrelevant.
23. The Chairperson confirmed that the Hearing would proceed in relation to the plumbing matter alone. She also reminded Mr Johnstone that the onus was on the Applicant to prove its case.

Evidence

24. Mr Johnstone gave evidence. He said that the Respondent's tenancy ran from 13th October 2020 until 20th March 2025. The property was re-let to a new tenant on 3rd April 2025. The new tenant, Olivia, moved in that weekend. She reported that the kitchen sink was not draining well. This report was made on 5th or 6th April. She said that when she put the washing machine on waste was coming up and in to the kitchen sink and not draining.
25. Mr Johnstone said that David Crawford of Crawford and Sons, was called out. He took the waste pipe apart and found it to be blocked with grease and fat. He cleaned it and said this would solve the problem. He said all this to Mr Johnstone. This was around the third week of April.
26. Mr Johnstone said that a few weeks later he received a phone call from the tenant. She said the situation had not improved. Mr Crawford went out again. He advised that he would need to lift the floor to allow him access to the pipe. A joiner was employed to lift the floor. Mr Crawford took apart the pipe and pump. Mr Johnstone said that a pump is required because the pipe lies horizontal. The pump was not working. Part of the pipe had to be replaced. The pipe was found to be filled with grease and fat and a number of cotton buds. Mr Johnstone referred to photographs lodged. He said these were taken by Mr Crawford, but he could not confirm the date they were taken. The pump had to be replaced. The old pump was found to have several cotton buds in it.
27. Mr Johnstone read out the email of 3rd September 2025 which he had received from Mr Crawford. In the email Mr Crawford outlines the work he carried out and draws the conclusion that the blockage was caused by malicious use by the former tenant.

28. The Chairperson asked that Mr Johnstone what weight he thought the Tribunal could give to Mr Crawford's email given that Mr Crawford was not there to speak to it and could not be cross examined on its contents. Mr Johnstone said that it was the best he could do as it was difficult to get witnesses to attend due to the cost. He said that the email came from Mr Crawford's email address and that written statements are admissible.
29. Mr Johnstone made reference to the invoices by Mr Crawford and the joiner, which were lodged by the Applicant, to establish the costs.
30. Mr Johnstone went on to refer to an email from Olivia Morwaska, the new tenant, sent on 1st June 2026. In the email Ms Morwaska laid out a timeline and confirmed that neither she nor her partner had put cotton buds down the sink. She said that she had never been aware of the pump working when she took occupation.
31. Mr Johnstone said that his position was that the only people who could have put the cotton buds down the sink were the Respondent or her partner. There were 15 to 20 cotton buds, which is not accidental and in his view is malicious. He was of the view that it had been done deliberately.
32. The Respondent was given the opportunity to cross examine. She asked if Mr Johnstone had checked the sink was working properly before the new tenant took occupation. He replied that he had run a short burst of water and there was no blockage showing.
33. The Respondent asked Mr Johnstone why he was prepared to believe the new tenant that she had not been responsible for the cotton buds. He said that there was no reason for the new tenant to have done it.
34. The Respondent gave evidence. She said that there were inconsistencies in the Applicant's documentation in relation to the number of cotton buds involved. It was originally listed as 12, then 15 and in evidence today as many as 20. She said there were also inconsistencies in where the cotton buds were alleged to have been found. Initially they were in the new pump, then the old pump. She questioned Mr Johnstone's credibility and reliability.
35. Further the Respondent said that the invoice for lifting the floor boards was dated six months after she had left the tenancy. There was a gap between her leaving and the new tenant moving in when various people including workmen had access to the property. There was no evidence to prove that it was her who had used the cotton buds. She did not use cotton buds. She said that the claim that she had done it maliciously was defamatory.
36. The Respondent said that Mr Johnstone had visited the property on many occasions and had never raised an issue. She left the property clean and tidy. She left of her own accord, she was not evicted.

37. Mr Johnstone said that it was a fact that cotton buds were involved. There were photographs and he had the blocked pipe. He said that he had not put the cotton buds there, he did not use cotton buds, and he had no motivation to put them down the sink. He said that he did not believe that the new tenant had done it and in his opinion only the Respondent had the opportunity. He said it may not have been malicious. He did not consider the fat build up to be malicious as that was just living.
38. The Respondent said that she had lived there nearly five years and there had never been any blockage. There had been a few issues with leaks coming from under the sink, which had been reported and dealt with.
39. The Tribunal asked Mr Johnstone about the renovation carried out before the Respondent moved in. He said that the property was in a tenement building. The kitchen had been relocated from the back to the front and new pipework was needed. A waste pump is necessary because of the level of the pipe. It helps the waste move to the common pipe outside. He has carried out such renovations in other properties and has not had issues.
40. Mr Johnstone said that the Respondent gave notice to terminate. The Applicant did not get to inspect the property with her present as she made it difficult. She moved out before the end of the tenancy, and the inspection did take place prior to the end of the tenancy.
41. The evidence concluded. Each party did a short summation and the Tribunal adjourned to consider its decision.

Findings in Fact

- a. The Applicant owns the property;
- b. The Respondent tenanted the property from 13th October 2020 to 20th March 2025;
- c. Mr Johnstone inspected the property prior to the end of the tenancy but after the Respondent had moved out;
- d. Mr Johnstone ran some water down the sink and it drained;
- e. Tradesmen had access to the property prior to the new tenant moving in;
- f. The property was relet to a new tenant on 3rd April 2025;
- g. The new tenant reported the kitchen sink not draining properly shortly after taking entry;
- h. Mr Crawford, plumber, attended during the third week in April 2025;
- i. Mr Crawford replaced the u-bend and cleared the pipe of fat and grease;
- j. A few weeks later the tenant reported that the problem had recurred;
- k. Mr Crawford asked that the floor be lifted for further inspection;
- l. A joiner was employed to lift the floor;
- m. Mr Crawford replaced piping under the floor as it was found to be filled with fat, grease and a number of cotton buds;
- n. The waste pump was not working and had to be replaced.

Decision and Reasons for Decision

42. The Tribunal found both witnesses to be credible and reliable. Each gave evidence in a straightforward manner. However, the evidence put forward was sparse.
43. Mr Crawford's email of 3rd September 2025 was lodged by the Applicant and Mr Johnstone read it out. Mr Crawford did not appear as a witness. He could therefore not be cross examined on the contents of his email or on his inspection, findings and work. The Tribunal could not attach a great deal of weight to his email for that reason. It is noted that it was Mr Crawford who used the word "malicious" in his email, and it would have been reasonable to expect to be able to ask him how he had drawn such a conclusion, "malicious" being a fairly emotive word. There was no opportunity to establish from him how long it would have taken for the cotton buds to have reached where they did.
44. Miss Marowska's email of 1st June 2026 was also lodged by the Applicant and Mr Johnstone referred to it. Miss Marowska did not appear as a witness. She could therefore not be cross examined on the contents of her email. The Tribunal could not attach a great deal of weight to her email for that reason.
45. The Tribunal accepts that there was a blockage. However, there was no evidence to show how long it would have taken to build up, nor to what extent the blockage was caused by the fat and grease build up which Mr Johnstone attributed to normal living, and to what extent by the cotton buds.
46. The Respondent denied putting cotton buds down the sink drain. Other people had access to the property after she moved out and before the new tenant moved in.
47. The standard of proof in a civil case is the balance of probabilities. The Tribunal has considered the evidence and there is no evidence which allows the Tribunal to conclude, on the balance of probabilities, that the Respondent did anything, negligent or deliberate, to cause the blockage.
48. The Applicant has not proved its case and the application falls to be dismissed.

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

13/10/2026

Legal Member/Chair

Date