



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 36 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/PR/23/2403

Re: Property at Elmsley Hallyburton, Coupar Angus, Blairgowrie, Perthshire, PH13 9JY (“the Property”)

Parties:

James (Jim) Sinclair, 17 Craighall Place, Rattray, Blairgowrie, PH10 7AJ (“the Applicant”)

HB Properties, Hallyburton Estate Office, Hallyburton Estate, Coupar Angus, Blairgowrie, Perthshire, PH13 9JR (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application for an order under section 38 of the Housing (Scotland) Act 1988

- 1) This was an application by the Applicant under rule 69 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”), for damages for unlawful eviction in relation to an assured tenancy (said to be a Short Assured Tenancy). The application sought an award of the maximum of 36 times the monthly rent (totalling £30,420), plus a further award of costs of £3,200 said to be “costs resulting from the eviction”.
- 2) The application was dated 17 July 2023 and lodged with the Tribunal on 18 July 2023. Supporting papers, in particular the lease and correspondence between the parties, was lodged. In advance of the case management discussion (“CMD”), I issued a detailed request for further submissions and vouching and the Applicant lodged an Inventory of Productions and submissions in response. The Respondent’s agent also lodged written submissions in advance of the CMD.

The Hearing

- 3) The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 7 December 2023 at 14:00. I was addressed by the Applicant. The Respondent was represented by Kevin Lancaster, solicitor, Hodge Solicitors.
- 4) At the CMD, I asked the Applicant to provide further detail to respond to my request for information where I felt the information he had lodged remained incomplete. In particular, I sought clarity on the basis for the application itself.
- 5) The Applicant confirmed that he relied upon a claim for damages under section 36(2)(b) of the Housing (Scotland) Act 1988, in that he did not allege any attempts to remove him from the Property without a court order, and relied solely on conduct by the Respondent or those acting on his behalf (which conduct he said resulted in him choosing to give up the Tenancy and move out voluntarily).
- 6) I pressed the Applicant to explain the conduct relied upon and, after some discussion, the Applicant relied on a specific letter by the Respondent, signed by its principal, Nicholas Llewellyn Palmer, dated 20 December 2022 as the conduct on which he relied. The terms of the letter were, however, to be seen in the context of the letter to which it replied – the Applicant’s letter to the Respondent of 7 December 2022 - and in turn that relied on the context in which the 7 December 2022 letter had been sent. I review the Applicant’s submissions in more detail (in a chronology) below, but having pressed the Applicant for confirmation whether there was any other specific conduct on which he relied when making his decision to leave the Property, there was none that he could detail. (The Applicant’s fuller response was that he thought there may be other conduct issues which were part of the full background but that he was not in a position to specify them in greater detail.)
- 7) To place the letter of 20 December 2022 in context, there was much in the application and further productions and submissions which formed the background. I do not detail it all here. I also do not make findings in fact for two reasons. First, some issues of the condition of the Property have already been examined in a repairing standard application raised by the Applicant (RP/22/3316) prior to leaving the Property. A decision issuing a Repairing Standard Enforcement Order (RSEO) was made on 29 March 2023 and may be read for its terms. Further, there is a separate application for damages ongoing between the parties which is not conjoined with this unlawful eviction application and I do not seek to make any findings in fact that may pre-empt any part of that application. Second, I have approached this as might be regarded as a Debate (hearing on legal arguments) and considered the Applicant’s application at its highest, as if all were true, when making a decision on the legal basis for the application. This is not a decision on the facts but on the law. As for the matters to be considered at a CMD per Rule 17, this

decision is further to having identified the issues to be resolved and a consideration of whether or not a hearing was required.

- 8) A shortened chronology of the Applicant's position (from the papers and submissions, including oral submissions at the CMD) was as follows:
- a) He entered into a Short Assured Tenancy of the Property with a date of entry of 1 March 2016 ("the Tenancy").
 - b) The Property is in a rural estate setting. He lived in the Property with his partner and his daughters. One of his daughters has medical needs.
 - c) He regarded the Property as requiring repairs, in particular replacement of the windows.
 - d) Windows were replaced in the kitchen in July 2021 but there was a gap of over a year (until August 2022) until the Respondent proposed the next stage of replacement of windows, which were to be the living room windows.
 - e) The August 2022 work was proposed to be done by the same contractors as the earlier work and the Applicant requested from the Respondent that they not be done by those contractors, due to concerns about their conduct during previous repairs at the Property. The Applicant wished, at least, that if it was the same contractors then they undertook to enter only the certain areas of the Property where they were working (as their presence in other parts of the Property had been a cause of concern to his family on previous occasions).
 - f) He said that "within an hour" he received notification that his tenancy was to be ended. (Looking at the papers, the emails between the Applicant and the Respondent regarding the works look to be dated 18 July to 4 August 2022. An email was sent by the Respondent's agent on 11 August 2022 referring to notices being issued to bring an end to the Tenancy.)
 - g) The papers included a Notice to Quit and a Section 33 Notice both dated 10 August 2022 issued to the Applicant. These set out an end date of the Tenancy of 31 October 2022. (I noted that the Notice to Quit was in normal terms, and thus provided the Applicant with the information that he could not be evicted without an order for possession from this Tribunal.)
 - h) The Applicant sought advice from Shelter Scotland in August 2022, and in particular had a long conversation with them on 26 August 2022 (further to him having sent them the papers received on 10 August 2022). The Applicant's understanding of the advice from Shelter Scotland was:
 - i) The papers served by the Respondent were all in order.
 - ii) The Respondent could seek the Applicant's eviction from the Property.
 - iii) There was no reason eviction would not be granted.(On this I pressed the Applicant as to whether he was aware that, at that time, the "reasonableness" of any application for eviction to the Tribunal would require to be considered and that he could have argued that it was not reasonable. He said that he was unaware of such an argument being available to him until a reference was made to "reasonableness" in discussions before the Tribunal - in the separate damages application - after he had left the Property.)
 - i) No application was ever raised by the Respondent for possession. Instead, the parties continued to correspond about the planned work, and

the conduct of contractors and estate staff. The Applicant also raised his RP application.

- j) On 7 December 2022, the Applicant wrote a letter addressed to Mr Llewellyn Palmer on the issues and the notices of August 2022. It included a complaint about the Respondent's managing agent's handling of matters, restated some of the conduct concerns about estate staff (including issues of behaviour regarding the Applicant's daughters), and requested that a Private Residential Tenancy be provided to the Applicant in replacement of the Short Assured Tenancy. (It was thus implicitly a request that eviction should not be sought and that the Applicant be permitted to remain at the Property indefinitely.)
- k) The letter of 20 December 2022 by Mr Llewellyn Palmer acknowledged the Applicant's letter of 7 December 2022. The material text of the letter states:

I am fully aware of the matters contained in your letter and would note that I am in complete support of the Estate staff and our Factor's actions in this case. I take very seriously the position as landlord of Elmsley and believe we are responsible and fair in our actions.

I do not wish to comment on the specifics of your letter however understand that this is a difficult period for you and I hope matters can be resolved in due course in relation to the replacement windows ahead of the end of your tenancy agreement.

Going forward, please continue to correspond with Janice [the managing agent against whom the 7 December letter complained] and the Factor in the Estate Office. I speak regularly with them however I am very busy with my commitments elsewhere and therefore this is the best avenue to ensure a timeous response.

- l) The Applicant discussed the 20 December letter with his partner "at length" and found the phrase "ahead of the end of your tenancy agreement" to be "very hard-hitting". They took the view that there was no chance of resolution of the dispute that would result in them remaining at the Property and, in consideration that the Applicant could not countenance the possibility of his family requiring emergency homelessness accommodation (in general, and in regard to his work requirements, and in consideration of his daughter's needs), they took the view that they required to arrange alternative accommodation. Enquiries were made with the local authority. (As I understood the Applicant's submissions, enquiries with the local authority may have already commenced prior to 20 December 2022.)
- m) The Applicant received a firm offer of housing in March 2023 and provided his own notice to leave the Property to the Respondent around 31 March 2023 saying that he would leave by around 10 May 2023. By mutual agreement with the Respondent, it was then agreed that the Applicant would leave around 27 April 2023.
- n) It was a coincidence that the Applicant provided notice to leave within days of the RSEO being issued on 29 March 2023. The prompt for leaving was securing the alternative accommodation.

- 9) In regard to the above chronology, I asked the Applicant if he was able to answer the hypothetical question as to how he may have acted if he had been aware of the possibility of arguing against the reasonableness of eviction before this Tribunal (in the event of an application for eviction having been raised by the Respondent). He said that he would have preferred to have challenged eviction on the grounds of reasonableness and the followed the decision of the Tribunal on eviction, rather than leave voluntarily (in advance of an application being lodged) as he did.
- 10) The Respondent's agent's submissions were brief. He said that the letter of 20 December 2022 was a very reasonable letter by a landlord setting out the landlord's intention to follow a legal course of conduct. It was not the basis for a claim under section 36(2)(b) of the 1988 Act.
- 11) No motion was made for expenses.

Reasons for Decision

- 12) I was satisfied that sufficient evidence was provided by both parties to allow me to analyse the issues in full without a further hearing.
- 13) In regard to damages for unlawful eviction, the relevant provision is at section 36 of the 1988 Act:
 - (1) *This section applies if, at any time after 3rd December 1987, a landlord or any person acting on his behalf unlawfully deprives the residential occupier of any premises of his occupation of the whole or part of the premises.*
 - (2) *This section also applies if, at any time after 6th July 1988, a landlord or any person acting on his behalf—*
 - (a) *attempts unlawfully to deprive the residential occupier of any premises of his occupation of the whole or part of the premises;*
or
 - (b) *knowingly or having reasonable cause to believe that the conduct is likely to cause the residential occupier of any premises—*
 - (i) *to give up his occupation of the premises or any part thereof; or*
 - (ii) *to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof,*
does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, and, as a result, the residential occupier gives up his occupation of the premises as a residence.
- 14) I am satisfied that the letter of 20 December 2022 does not fit within any of the types of action or inaction by a landlord (or those on its behalf) that section 36(2)(b) covers. Moreover, the Applicant's decision – to move out – arose because the Respondent sought to bring the Tenancy to an end, and the

Applicant's belief that the Respondent was entitled to insist on eviction and the Applicant was unable to resist eviction. That belief was not induced by the Respondent. The Respondent appears to have been entitled to issue the notices he did under the Tenancy, and the Respondent provided no misleading information as to the parties' respective rights. The Respondent in fact showed forbearance by not lodging an application for an order for repossession. Following the Notice to Quit and Section 33 Notice, the Applicant made arrangements to leave voluntarily and then left. There is nothing that brings this application close to a claim for damages in terms of section 36. The letter of 20 December 2022 on which the Applicant specifically (and solely) relies is nothing more than the Respondent restating that he regards the occupancy as coming to an end, further to the notices already issued, while also stating an intention to abide by repairing requirements (though I note the works were not then done, hence the RSEO of March 2023).

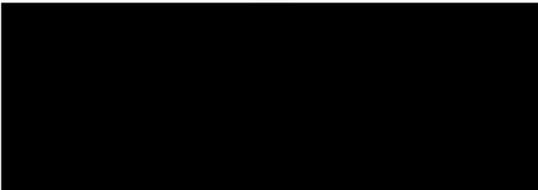
- 15) The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. I was thus satisfied to make a decision at the CMD and refused the application in full.

Decision

- 16) In all the circumstances, I refuse the application.

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.



8 December 2023

Legal Member/Chair

Date