

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act
2014**

Chamber Ref: FTS/HPC/PR/21/1636

Re: Property at 3 Portree Holiday Cottages, Portree, IV51 9LX (“the Property”)

Parties:

Mr Calum Munro, 11 Sconser (Foskett), Isle of Skye, IV48 8TD (“the Applicant”)

**Mr Kevin Hay, 2 Rosebank Terrace, Portree, Isle of Skye, IV51 9NQ (“the
Respondent”)**

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision (in absence of the Respondent)

In this application a Case Management Discussion (CMD) took place on Thursday 31 March 2022 at 10.00am by telephone conference. The Applicant attended. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29. The Tribunal was satisfied the CMD had properly been intimated to the Respondent

Prior to the CMD the Respondent had not responded to the application and no written representations were received from him.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that:-**

Background

Having regard to the terms of the application and the supporting paperwork and in the absence of any response from the Respondent the background is as follows:-

- i. On 25 February 2020 the Applicant and the Respondent entered into a tenancy agreement in respect of the Property.

- ii. The tenancy agreement was a Private Residential Tenancy Agreement in terms of the Private Housing (Tenancies)(Scotland) Act 2016 ("the PRT").
- iii. The PRT was due to commence on 25 February 2020 and the rent payable in terms thereof was £750 per month.
- iv. The PRT stated that 6 months rent was payable by the Applicant to the Respondent in advance.
- v. The Applicant made the following payments totalling £4,000 to the Respondent to account of the rent payable in advance in terms of the PRT:-
 - o £1000 on 19 December 2019;
 - o £1000 on 20 December 2019
 - o £1000 on 22 December 2019;
 - o £500 on 23 December 2019; and
 - o £500 on 30 December 2019.
- vi. The advance rent was paid to allow the Respondent to complete various refurbishments to the Property to allow the Applicant to move in.
- vii. On the date of moving into the Property the Respondent advised the Applicant that the Property had been condemned due to an electrical fault and entry could not be given.
- viii. The Applicant attended at the Property thereafter and found another couple to be living there under a tenancy agreement from the Respondent.
- ix. The Applicant could not move into the Property.
- x. The Applicant has tried to recover the sum of £4,000 from the Respondent without success.

The CMD

At the CMD the Applicant made the following submissions:-

- i. That the Applicant and his partner were desperate to find accommodation on the Isle of Skye.
- ii. Whilst discussing a lease of the Property to the Applicant, the Respondent stated that he had no money to complete the remaining refurbishment works required to the Property and the parties orally agreed that the Applicant would pay to the Respondent six months rent in advance to allow these works to be undertaken.
- iii. The Applicant visited the Property five or six times in advance of signing the PRT in around January 2020.
- iv. On viewing the Property the Applicant believed it to be unoccupied. Electrical works were required and the kitchen was only part fitted. Furniture was present but there were no obvious signs of anyone else living there.
- v. The PRT was signed by the Applicant at his place of work. The Respondent took the lease to him there.
- vi. On 25th of February 2020 the Respondent told the Applicant that the Property had been condemned. The Respondent sent to the Applicant a photograph of the electrical cabinet. He then became more distant and the Applicant was unable to get in touch with him.
- vii. The Applicant attended at the Property with his father and spoke to the family living there in early March 2020. It transpired that family had been living there for a year or two and were doing the renovations themselves. They had entered into a lease of the Property with the Respondent for a period of five years.
- viii. The Applicant has sought to recover the sums due back to him. The Respondent has made but not kept various promises to do so.

- ix. The Respondent continues to live locally and the Applicant has stopped him in the street from time to time. The Respondent has previously indicated that he is awaiting money from the estate of a deceased relative. That was over a year ago but nothing has happened.
- x. The Applicant seeks an order for payment by the Respondent of £4000.

Findings in Fact

- i. On 25 February 2020 the Applicant and the Respondent entered into a tenancy agreement in respect of the Property.
- ii. The tenancy agreement was a Private Residential Tenancy Agreement in terms of the Private Housing (Tenancies)(Scotland) Act 2016 ("the PRT").
- iii. The PRT was due to commence on 25 February 2020 and the rent payable in terms thereof was £750 per month.
- iv. The PRT stated that 6 months rent was payable by the Applicant to the Respondent in advance.
- v. The Applicant made payments totalling £4,000 to the Respondent to account of the rent payable in advance in terms of the PRT.
- vi. The advance rent was paid to allow the Respondent to complete various refurbishments to the Property to allow the Applicant to move in.
- vii. On the date of moving into the Property the Respondent advised the Applicant that the Property had been condemned due to an electrical fault and entry could not be given.
- viii. The Applicant attended at the Property thereafter and found another couple to be living there under a tenancy agreement from the Respondent.
- ix. The Applicant could not move into the Property.
- x. The Applicant has tried to recover the sum of £4,000 from the Respondent without success.

Findings in Law

- i. The Respondent having failed to give the Applicant occupation of the Property in terms of the PRT is in material breach of contract.
- ii. As a consequence of his material breach of contract the Respondent is liable to the Applicant for losses sustained by the Applicant, namely the sums paid by the Applicant in advance in a total sum of £4,000 being rent paid in advance.

Decision

The Respondent is liable to the Applicant in the sum of £4000.

Outcome

The tribunal grants an order against the Respondent for payment to the Applicant of £4,000.

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.



31st March 2022

Legal Member/Chair

Date