



**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/22/1438**

**Re: Property at The Flat in the Barn, Ballhall Cottage, Menmuir, Brechin, Angus, DD9 7RW (“the Property”)**

**Parties:**

**Debby Ross, 8A Scotland Street, Edinburgh, EH3 6PS (“the Applicant”)**

**Ms Meg Mackie, Balhall Cottage, Menmuir, Brechin, Angus, DD9 7RW (“the Respondent”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant failed to establish liability on the part of the Respondent for payment and therefore dismissed the application.**

**Background**

1. The Applicant made an application to the Tribunal dated 8 May 2022 seeking an order for payment in terms of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules and Procedure) Regulations 2017 (“the 2017 Rules”).
2. This application previously came before the Tribunal for Case Management Discussions (“CMD”) on 16 August 2022 and 6 October 2022. Reference is made to the Notes and Notices of Direction issued following the CMDs.

3. On 23 November 2022, the Tribunal received written submissions from the Respondent.
4. On 28 November 2022, the Tribunal received the written submissions from the Applicant.

### **The Hearing**

5. The Hearing took place by telephone conference call. Both parties participated and represented themselves.
6. The Applicant indicated that she intended to give evidence but did not intend to call witnesses; the Respondent indicated that she intended to give evidence and call witnesses, Daniel Lynch, Barbara Anderson, Gary Coyle and Kate Skene.
7. The purpose of the Hearing was to determine whether the Respondent was liable to pay the Applicant in respect of the following heads of claim:-
  - a. £1,000 for emotional distress
  - b. £2,100 for 3 months' rent
  - c. £121 laundry costs
  - d. £100 mould damage
  - e. £100 hospitality
  - f. £50 stock fencing
  - g. £360 sheep hurdles

### **Summary of evidence**

#### Ms Debby Ross

8. The tenancy started in April 2021 and there were no issues at the outset. She agreed verbally with the Respondent that her stay at the property would be open ended until she could find a cottage. In June 2021, the Respondent served her with an invalid notice to leave, requiring her to leave by August 2021. In September 2021, she viewed a cottage and had a provisional move in date of 1 November 2021. The landlord of that cottage told her that

renovations would be carried out. She told the Respondent that she might be later in moving and the Respondent told her it was fine for her to remain in the property during November.

9. The relationship between the parties deteriorated. On 29 October 2021 she received a text message from the Respondent advising her that the washing machine would not be fixed and that she could move out on 1 November 2021. She incurred laundry costs because the washing machine was not working. She paid rent but made a deduction because of the laundry costs incurred.
10. On 3 November 2021, the Respondent served a notice on her, requiring her to leave by 17 November. The Respondent became hostile and aggressive. From mid-November the relationship between the parties deteriorated further. She had placed a number of sheep hurdles between the door of the property and the garden area so that her dogs could go outside. The Respondent removed the sheep hurdles.
11. The Respondent switched off the hot water and electricity supply to the property. On around 5 December 2021, the Respondent and her boyfriend removed her belongings from the garage and put them in the garden. She booked a removal van for 16 December 2021 to move all of her belongings to her new accommodation. She left the property early on 13 December because of the Respondent's aggression. She returned on 16 December to meet the removal team. She discovered that the Respondent had taken her 12 sheep hurdles and secured them away.
12. There is a storage unit above the property; the Respondent had secured the handle with a chain and put a padlock on it. One of the removal team unscrewed the door handle to gain access to retrieve her belongings. The Respondent tried to prevent the removal team from gaining access.
13. Under cross examination, she explained that she is claiming back 3 months' rent because she did not have peaceable enjoyment of the property from 29 October 2021 onwards because of the abuse she suffered at the hands of the Respondent. When asked if she reported the issued of mould in the

property to the Respondent, she could not recall when she mentioned it. In relation to the claim for £100, when asked why she pre-booked hotel accommodation on 12 December, she explained that she was forced out of the property as a result of the Respondent's aggression.

14. In relation to the fencing that she installed, she was unable to take that away because of the Respondent's aggression. She installed the fencing because the fencing was inadequate for the livestock. When she viewed the property, the Respondent agreed that she would fence the garden. She asked if she could fence the garden instead and the Respondent agreed.

15. She made a report to the police about theft of the sheep hurdles by the Respondent. Under cross examination, she agreed that the police told her that the sheep hurdles were at the property for her to collect along with her other belongings.

16. In relation to the hot water supply to the property, there was no hot water from 19 November 2021 onwards. She did not report that to the Respondent and she assumed that it had been done deliberately.

17. In relation to the power outages in the area in November 2021, the electricity to the property was switched off before the electricity cut out in other properties in the area. She contacted the police about power sockets being switched off and informed the Respondent about that.

18. She did not ask the Respondent for access to the storage unit above the property but she needed access to get her fridge from there.

Ms Meg Mackie

19. The agreement between the parties was that the Applicant would move into the property on a temporary basis. However, she now knows that in fact, a private residential tenancy had been created. The property has a double

bedroom, single bedroom, bathroom, kitchen and garden to the side of the property.

20. The Applicant has been abusive to her, calling her stupid and an arsehole. Copies of text messages between her sister and the Applicant confirm this (pages 52 and 53 of the Respondent's submissions). The Applicant also referred to her in communication with the Tribunal as "mad Meg". She is dyslexic and had assistance before responding to the Applicant's text communication; her communication was always polite.
21. She asked the Applicant to tidy the property but she failed to do so. She took pictures of the mess made by the Applicant (pages 21 to 25 of the Respondent's submissions). There was no discussion or agreement between the parties about the Applicant placing sheep hurdles outside the property. The hurdles blocked the access to the public toilet.
22. In relation to the electricity supply, there was a power outage in the whole area from 26 to 29 November 2021. SSE confirmed this (page 11 of Respondent's submissions). She did not switch the electricity supply off.
23. In relation to laundry costs sought by the Applicant, she disputes liability for this. The Applicant told her that she was leaving the property on 1 November 2021. When the Applicant told her that the washing machine in the property was broken, she told the Applicant that she could use the washing machine in the kennels. The Applicant told her that she had forced open the door of the washing machine in the kennels and that too was broken. That was at the end of October. She asked the Applicant for access to the property so that the washing machine could be examined. She gave the Applicant ample notice of the request for an inspection. The Applicant refused to allow access.
24. In relation to the sheep hurdles, she contacted the police because her access to areas surrounding the property had been restricted. The police told her that she could remove the sheep hurdles from the front of the property because the Applicant had no right to block access. She removed the sheep hurdles following the advice from the police. The Applicant did not attempt

to remove the sheep hurdles when she moved out of the property on 16 December 2021. The Applicant contacted the police to report theft of the sheep hurdles that day. The police attended in January 2022 and she showed them the sheep hurdles and other items belonging to the Applicant. The police told her that they would advise the Applicant that she should collect the sheep hurdles and the rest of her belongings. Collection has never been arranged.

25. She had secured the storage unit above the property with a padlock because she was storing some of her mother's belongings there. When the Applicant moved out of the property, one of her removal team removed the handle in order to gain access. The Applicant did not ask her for access to the storage unit. The Applicant left the property in a mess. There were broken items left at the property, cigarette ends and cat food (pages 13 to 19 of Respondent's submissions). She had to remove the mess and clean it up before being able to re-let the property.

26. There was hostility between her and the Applicant, but she was on the receiving end of the hostility. She did not want to leave her own house unless someone else was there. The Applicant made rude hand gestures towards her.

27. She was unaware of a number of issues the Applicant raised until the present application was made to the Tribunal. She was unaware of any issue with mould in the property. If she was not made aware of an issue, she could not do anything about it. Regardless of whether the Applicant thought she might be unreasonable, she should have been notified of any issues the Applicant had. The only matter the Applicant reported was the issue with the washing machine and that was shortly before she believed the Applicant intended to leave the property. She could not do anything about the electricity and hot water supply outage.

## Daniel Lynch

28. He is the partner of the Respondent and lives at the same address. The Respondent suffered from stress and anxiety as a result of her dealings with the Applicant. The Respondent was not abusive towards the Applicant. The Applicant regularly shouted abuse and called the Respondent derogatory names; she did this verbally and by text message. The Applicant's behaviour was not only directed at the Respondent but was also directed at him. The Applicant called him an Irish prick.

29. As far as he knows, the Applicant did not inform the Respondent of any issues she had with the property such as there being mould and no hot water or electricity supply. There was a power cut in the area which meant the electricity supply was down.

30. He removed the Applicant's sheep hurdles from outside the property on one occasion when the police gave advice that they could be moved. The sheep hurdles belonging to the Applicant were never locked away in the garage. He was there when the police attended and the police said that they would let the Applicant know that she could collect the sheep hurdles.

31. Under cross examination, he recalled that he removed the Applicant's belongings from the garage and explained that the Applicant was not permitted to use the garage.

## Barbara Anderson

32. She is a customer of the Respondent and has known her for 5 years. The driveway at the farm is normally always clean and tidy. She noticed that it got very scruffy at the top end of the drive near the entrance to the property. The first time she saw the Applicant was when her dogs were chasing sheep. The Respondent told the Applicant that the sheep were in lamb and the Applicant was very aggressive towards the Respondent.

33. She was visiting the Respondent one day and the Applicant told her that she was calling the police about the sheep hurdles being moved. As far as she knows, the police told the Applicant that the hurdles should not be there.

34. She was present on one occasion when the Applicant was making a rent payment. The Respondent's sister asked the Applicant about her kicking the Respondent's dog. The Applicant said that she used her leg to move the dog out of the way and she admitted hurting the dog. Under cross examination she maintained that this was her recollection and that the Applicant was speaking to the Respondent in an aggressive manner.

#### Kate Skene

35. She is the sister of the Respondent and often attends at the Respondent's property to tend to the sheep. She contacted the police in October 2021 to report verbal abuse of the Respondent by the Applicant, having witnessed the Applicant screaming at the Respondent because the sheep hurdles had been moved.

36. The Respondent is dyslexic and she assisted the Respondent in sending text messages to the Applicant. The relationship between the parties was good until the Respondent asked the Applicant to tidy up the mess outside the property.

37. She was aware of the text exchange between the parties and there was no mention of issues with the property such as mould. The Applicant was not shy and if there had been a problem, she would have expected her to say something.

38. The Applicant contacted her about the Respondent and made derogatory comments about the Respondent, calling her names and commenting on her mental health.

39. She witnessed the events on 16 December 2021 when the Applicant moved out of the property.



Following the evidence of Kate Skene, the Respondent indicated that she did not intend to call any further witnesses. The Tribunal adjourned the Hearing to consider its decision. It resumed consideration and having taken account of the parties' written submissions and the evidence led, the Tribunal found the following established:

### **Findings in fact**

40. The parties entered into a private residential tenancy which commenced 15 April 2021 and ended on 16 December 2021.

41. The Applicant did not notify the Respondent of issues with the tenancy, with the exception of a broken washing machine which was reported on 20 October 2021.

42. On or around 3 November 2021, the Respondent requested access to the property to carry out an inspection and the Applicant refused that request.

43. The Respondent did not switch off the electricity supply to the property during the Applicant's occupation of it.

44. The Respondent did not switch off the hot water supply to the property during the Applicant's occupation of it.

45. The Respondent did not steal sheep hurdles from the Applicant.

### **Reasons for decision**

46. The onus of proof rests with the Applicant to establish her claim for the various heads of claim referred to in the CMD note. Having considered each of those heads of claim in turn, in light of the evidence, the Tribunal was not satisfied that the Applicant has discharged the onus of proof.

47. The Applicant appeared to be anxious when giving her evidence. She was not focused in her evidence and at times veered onto matters which were not relevant to the heads of claim. She appeared to be defensive in cross examination and often did not allow the Respondent to finish her question before starting to answer. The evidence of the Respondent and her witnesses was consistent on material matters; their evidence on material points was coherent. Where the evidence of the Applicant was at odds with the Respondent or her witnesses, the evidence of the Respondent and her witnesses was preferred.

#### Emotional distress

48. Each party said in evidence that they felt harassed by the other. Although the Applicant said that she suffered from emotional distress, the Tribunal was not satisfied that any distress from which she was suffering was caused by the Respondent.

49. One example the Applicant gave was the concern she had for her dogs' safe passage into the garden after the Respondent had removed sheep hurdles. There was no evidence before the Tribunal to indicate that the Applicant had an entitlement to erect the sheep hurdles where she did; there was no evidence given about alternative methods of moving the Applicant's dogs into the garden. The Respondent's evidence was that she took advice from the police before removing the sheep hurdles and followed that advice. That evidence was unchallenged.

50. In their written submissions, both parties produced excerpts of text exchanges between the parties and between the Applicant and the Respondent's sister. The tone of the messages appears to have been quite friendly up to a point; the tone then changed and it appears that the Applicant viewed the messages from the Respondent as being harassment. The Tribunal does not agree; it is clear that latterly, the parties did not enjoy a good relationship, but there is nothing within the messages which amounts to harassment of the Applicant. The Respondent asked the Applicant when she intended to move. That does not seem unreasonable, given that the Applicant had already indicated an intention to move. The Respondent requested access to the property which was refused. The Respondent was

entitled to request access. The Respondent asked the Applicant to tidy the mess around the property. On the evidence of the Respondent, that does not seem unreasonable. If anything the Tribunal regards the Applicant's messages as being inflammatory. In her written submissions, the Applicant stated that she was "under siege and bombardment". She did not give evidence to explain what she meant by that.

51. The Applicant gave evidence about feeling harassed by the Respondent and forced out of the property but did not elaborate on that to describe *how* she was forced out. The Applicant was critical of the Respondent for moving sheep hurdles, removing the Applicant's belongings from the garage and for locking the storage unit above the property. However, the Applicant did not demonstrate that she had an entitlement to erect sheep hurdles or store her belongings in the garage. The Applicant accepted that she did not ask the Respondent for access to the storage unit above the property on the day that she left the property. It is possible that the relationship between the parties broke down as a result of a misunderstanding over what the Applicant was entitled to. However, there was no material before the Tribunal to suggest that the Respondent had breached a term of the tenancy which detracted from the peaceable enjoyment of the property.

#### Repayment of 3 months' rent

52. This head of claim proceeds on the same basis as the claim for emotional distress, namely the Applicant's contention that she was harassed by the Respondent. The Applicant maintains that she was harassed during the last 6 weeks of the tenancy. The Applicant did not establish that she was harassed by the Respondent for the last 6 weeks of the tenancy or at all. The Applicant made reference to invalid notices which were served on her by the Respondent. Service of invalid notices does not amount to harassment.

#### Laundry costs

53. The Applicant stated in her written submissions that the washing machine in the property stopped working in early October 2021. She notified the Respondent of that, but did not do so immediately. She stated in her written submissions "I had her down as a frugal non repairer". There was no evidence before the Tribunal to indicate why the Applicant reached that

view but in any event, she notified the Respondent about the issue on 20 October 2021. The Respondent gave the Applicant an alternative washing machine to use but that too stopped working. When the Respondent requested access to the property, the Applicant refused access. The Respondent was therefore unable to establish what the problem was with the washing machine in order to arrange repair. In her evidence the Applicant said that she had received a text message from the Respondent advising that the washing machine would not be fixed. The Tribunal has not had sight of a text message to that effect. The Applicant has already made a deduction from rent due and that was to pay for the laundry costs she incurred. The Tribunal was not satisfied that the Respondent has any liability to pay the Applicant's laundry costs.

#### Mould damage

54. The Applicant accepted that she did not notify the Respondent of any issue with mould within the property. The first notification the Respondent received was when she received intimation of the present application. The Applicant did not establish what the cause of the mould was and failed to establish that the Respondent was liable for the cost of items with mould damage. The Applicant did not provide any evidence of the value of the items she maintained had suffered mould damage.

#### Hospitality

55. In her evidence, the Applicant said that she had been forced out of the property on 13 December 2021. She did not say in what way she was forced out. There was no evidence that the Applicant had any problem accessing the property and no evidence of her being prevented from staying there until 16 December 2021. The Applicant may well have felt uncomfortable staying there, standing the hostile relationship that existed between the parties but there was no evidence before the Tribunal that she had been forced out of the property. The Tribunal was therefore not satisfied that the Respondent is liable to pay for the Applicant's hospitality costs.

#### Stock fencing

56. The parties were polarised in their evidence about the fencing. The Tribunal was not persuaded that there was any agreement between the parties about

the purchase and installation of fencing. The Applicant did not advance that there was a term of the tenancy to the effect that the garden would be fenced. The Respondent stated that the Applicant could have removed the fencing when she left. The Applicant said that she could not remove the fencing but did not say what prevented her from doing so. The Tribunal was not satisfied that the Respondent had any liability to make to payment to the Applicant in respect of fencing.

#### Sheep hurdles

57. The Tribunal believed the Respondent's account of her exchange with the police about the sheep hurdles. The Applicant accepted in her evidence that the police had told her that she could arrange to collect the sheep hurdles and her other belongings. Standing that position, the Applicant is not entitled to payment from the Respondent in respect of sheep hurdles. In any event, the Applicant claims £360 in respect of the sheep hurdles. In earlier submissions, the Applicant indicated that they were worth £120-£240. There was no evidence before the Tribunal as to the value of the sheep hurdles.

#### Hot water

58. There was no evidence of the Applicant reporting an issue about lack of hot water to the Respondent. There was no evidence that the Respondent switched off the hot water supply to the property.

#### Electricity

59. There was no evidence that the Respondent had switched off the electricity supply to the property. The Respondent produced a screenshot of a message from SSE which confirmed that the whole area had been affected by loss of power resulting from storm Arwen.

60. For all of the reasons set out above, the Tribunal refuses the application and makes no order for payment.

### **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.**

Nicola Irvine

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Legal Member/Chair

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Date 16 December 2022