



**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/23/2856

Re: Property at 5 Gallowden Road, Arbroath, DD11 3HL (“the Property”)

Parties:

**Miss Lynn Petrie, Mr Daniel Whitley, 82 Nolt Loan Road, Arbroath, DD11 2AA
 (“the Applicant”)**

**Mrs Fiona Jamieson, Mr Michael Jamieson, Schulstrasse No 1, Uttenreuth,
Bavaria, 91080, Germany (“the Respondent”)**

Tribunal Members:

Mary-Claire Kelly (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to dismiss the application.**

Background

1. By application dated 18th August 2023 under rule 69 of schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 the applicants seek damages for unlawful eviction. The amount sought is £10,000. The present application was heard alongside application reference FTS/HPC/PR/23/2857 under which the applicants sought a separate award under the tenancy deposit regulations.
2. The applicants lodged the following documents in support of the application:
 - Copy tenancy agreement
 - Notice to quit

- Copy emails spanning the period from 22nd January 2023 to 4th July 2023
 - Documents relating to a German registered company
3. The respondents lodged written submissions and additional copy emails between parties.
 4. A case management discussion “cmd” was assigned for 8th January 2024.

Case management discussion – 8th January 2023 – teleconference

5. All parties were in attendance at the teleconference.
6. From the information provided by parties in their written submissions and oral representations there was no dispute in relation to the following matters:
 - Parties entered into an assured tenancy agreement which commenced on 1st March 2013.
 - The property is a five bedroom detached house.
 - The applicants resided in the property with their two children.
 - The respondents are the owners of the property.
 - The respondents emailed the applicants on 22nd January 2023 advising them that due to a change in personal circumstances they were terminating the lease on 30th June 2022.
 - Ms Jamieson emailed Ms Petrie on 10th March 2023 advising her that she would be in Arbroath from 19th March for a short visit until 23rd March and asking if she could briefly visit the property whilst they were in the country.
 - Ms Petrie emailed Ms Jamieson on 17th March 2023 advising that as she had family visiting it would not be possible for Ms Jamieson to visit the property.
 - Ms Jamieson emailed Ms Petrie on 18th March 2023 asking for a short 15 minute visit as this was the only time she would be in Arbroath before the lease ended.
 - Ms Petrie emailed Ms Jamieson on 19th March 2023 reconfirming that it was not convenient for Ms Jamieson to visit the property.

- On 22nd March 2023 the respondents posted a letter through the letter box of the property asking the applicants to confirm if the proposed termination date of 30th June 2023 was agreeable. The letter was accompanied by a formal notice to quit.
- On 19th April 2023 Ms Jamieson emailed Ms Petrie to ask if the date of 30th June 2023 was agreeable to end the tenancy.
- On 22nd June 2023 Ms Petrie emailed Ms Jamieson advising that she had stopped responding due to the letter which demanded she confirm in writing that she would leave by 30th June 2023.
- The respondents reside in Germany.

Statutory provisions

7. Section 22 of the Rent (Scotland) Act 1984 states:

22.— Unlawful eviction and harassment of occupier.

(1) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof or attempts to do so he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(2) If any person with intent to cause the residential occupier of any premises—

(a) to give up the occupation of the premises or any part thereof: or

(b) 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, he shall be guilty of an offence.

(2A) Subject to [subsection \(2B\)](#) below the landlord of any premises or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household; or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

8. Sections 36 and 37 of the 1988 Act make provision for statutory damages for unlawful eviction. Section 37 states:

37 Determination of damages

(1) For the purpose of [section 36\(3\)](#), the damages that the court or, as the case may be, the First-tier Tribunal may determine as payable are to be an amount which is—

(a) not less than 3 months' rent, and

(b) not more than 36 months' rent,

taking into account the manner of the unlawful eviction and the impact that it has had on the tenant.

9. At the cmd Ms Petrie gave evidence on behalf of the applicants:

Ms Petrie stated that initially when the family moved into the property in March 2013 the lease was handled by letting agents, Vista Properties. She advised that her family had enjoyed living in the property. She advised that prior to the respondents emailing on 22nd January 2022 giving them notice that they wanted to terminate the lease relations between parties had been cordial. Ms Petrie advised that she had previous experience of being a tenant of other properties but in those cases she had been the party to terminate the lease. She confirmed that the applicants had themselves been landlords of a property during the period of the lease between parties. They had to remove their tenants as a consequence of the respondents serving notice but as the lease was informal

and with friends no formal procedure was required. Ms Petrie referred to the copy emails which had been lodged. They showed that Ms Jamieson had emailed her on 5th, 21st, and 29th May and also 30th June 2023. She advised that after she received a written letter of notice through the letter box on 19th March 2023 she had not responded to the respondent's emails until 22nd June 2023 when she emailed Ms Jamieson. Ms Petrie advised that prior to sending that email she had received advice from Shelter Scotland. They had advised her that her landlords required to obtain a court order to evict her from the property. Ms Petrie stated that by that stage it was too late for her to decide to stay on in the property as she had already made arrangements to move to a new property. Ms Petrie stated that the applicants hadn't sought advice at an earlier stage as they knew the personal circumstances of the respondents were difficult and she did not want to make things worse. Ms Petrie explained that she felt that the respondents' behaviour in March when they posted the written letter of notice through the letter box was when she began to feel harassed. She explained that she felt the respondents were not taking her and her family into account in pressing them for an agreement regarding the proposed termination date of 30th June 2023. Ms Petrie stated that the respondents had failed to tell the applicants that they needed to obtain an order from the Tribunal prior to eviction and their failure to do so had meant that the applicants had moved out of the property when they may have been able to stay. Ms Petrie viewed the emails from the respondents and the letter of notice dated 19th March 2023 as a form of harassment and stated that they showed a lack of support from the respondents. Ms Petrie was devastated to have to leave the property and felt that the landlord had betrayed the applicants trust by sending emails asking them to agree to a removal date and failing to tell them that a tribunal order was required.

10. Ms Petrie also raised that she felt the respondents had been dishonest about the reasons they gave in the notice to quit for wanting to recover possession of the house. She stated that the applicants had understood that Mr Jamieson had lost his employment and the respondents may be moving back to the property but they had not done so and to her knowledge Mr Jamieson was still in employment in Germany.

11. Ms Petrie stated that the notice to quit had been served whilst there was a ban on evictions – something she had become aware of prior to moving out of the property.
12. Ms Petrie confirmed that her family purchased a new property which they had now moved into. Ms Petrie explained that there were limited options in terms of property to buy as her family wished to stay in the same area to remain close to school and friends. As a result the property they bought required renovation works as it was the only property available with enough space in the right area.
13. In relation to the amount of compensation being sought the application stated that the applicants sought £5,850 representing statutory damages of six times the monthly rent. The applicants sought an additional sum of £5,000 in respect of costs incurred in relation to work that required to be carried out to their new home. The applicants stated that had they not required to move out of the property rented from the respondents on 4th July 2023 they would have not had incurred this additional outlay. No vouching was lodged in respect of the £5,000 in advance of the cmd.
14. At the cmd Ms Petrie explained that the six months rent figure was sought under section 37 of the Housing (Scotland) Act 1988. She was unclear as to the exact amount being sought and stated that she wished to reduce the overall figure being sought to £10,000 however the reasons for the reduction were unclear.

Evidence from the respondents

15. Mr Jamieson spoke on behalf of the respondents. He stated that the respondents had always tried to be open and honest. They tried to keep communication open and were very sad to hear that the applicants thought that was harassment. Mr Jamieson advised that in January 2023 due to a change in his employment the respondents had to take steps to recover their property. He stated that he disputed that the content and frequency of the emails constituted harassment. He stated that prior to giving notice to the respondents by email dated 22nd January 2023 the respondents spoke with the letting agent and also consulted the relevant Scottish government website for advice on procedure. The respondents thought they were doing the right thing in providing 5 months' notice. The communication was intended to try and reach agreement

with the tenants about what would suit them. Mr Jamieson explained that the period after he lost his job was uncertain and a stressful time for his family. Both respondents are originally from Arbroath and have been living abroad for 19 years. The property was their family home before moving abroad. The respondents return to Arbroath frequently to visit family. Recently they have been returning more frequently to visit elderly relatives. Mr Jamieson advised that since the applicants moved out the property has been fully refurbished and the respondents have stayed there when visiting relatives in Arbroath.

16. Mr Jamieson disputed that there had been an unlawful eviction. He highlighted that when the applicants had contacted the respondents to ask for an extension of the termination date by 4 days until 4th July 2023 to allow moving arrangements to be put in place that had been agreed. He stated that the applicants could have requested a longer extension to the notice period at an earlier date. He stated that the respondents would have been open to agreeing an extension which would have avoided the additional costs of the move referred to by Ms Petrie. Mr Jamieson said that the reason Ms Jamieson emailed the applicants a number of times was not to harass them but was a response to the tenants failure to respond to the communication. Mr Jamieson stated that during the notice period the respondents had been living in Germany. He stated that living abroad had added to the stress of recovering the property as the respondents had to travel from Germany to make appropriate arrangements when the applicants were moving from the property.

Findings in fact

17. The Tribunal already noted at paragraph 6 above, the issues that were not in dispute. In addition, and on the basis of evidence the Tribunal makes the following additional further findings in fact:
- a) Ms Jamieson contacted Ms Petrie by email approximately 10 times between 22nd January 2023 and 4th July 2023 when the respondents moved out of the property
 - b) The tone and content of emails sent by Ms Jamieson was polite
 - c) Mrs Jamieson visited the property 3 times between 22nd January 2023 and 4th July 2023 however she was not permitted to access the property

- d) Mrs Jamieson's behaviour during those visits was polite
- e) The applicants sought advice from Shelter in June 2023 in relation to their housing rights
- f) The applicants were advised that if they did not remove from the property on 30th June 2023 then the respondents would require to obtain an eviction order to recover possession of the property
- g) The applicants purchased a property to move into after notice expired
- h) The applicants were advised in the notice that was put through their letter box dated 19th March 2023 that their landlord required to obtain an order from the Tribunal if the applicants did not remove from the property.
- i) The respondents continue to reside in Germany, staying in the property when they return to Arbroath on a regular basis to visit their ageing parents.

Findings in fact and law

18. The Tribunal found in fact and law

- a) Neither respondent took any action intended to interfere with the applicants' peaceful occupation of the property in terms of section 22 of the Rent (Scotland) Act 1984
- b) Neither respondent behaved in a way that harassed the applicants by acting in a manner intended to interfere with their peace and comfortable occupation of the property.
- c) The applications were not unlawfully evicted from the property.
- d) As no unlawful eviction has taken place it is not necessary to consider the amount of an award of damages in terms of section 37 of the Housing (Scotland) Act

Reasons for the decision

19. The Tribunal took into account the written submissions by parties, copy emails and other documents lodged in advance of the cmd and the oral submissions by parties at the cmd. At the cmd parties were asked if they had any further information that they would seek to place before the Tribunal prior to a decision being made. The applicants indicated that they would be able to provide

vouching for the amount of damages sought for renovation works at their new property. As the Tribunal first required to determine whether an unlawful eviction had taken place before determining the level of award the Tribunal was satisfied that it had all the information necessary to do so.

20. The Tribunal noted from the contents of the emails lodged by parties that the language used by the respondents was at all times polite and respectful. The Tribunal accepted the evidence of the respondents that they had all times acted in good faith and had contacted the applicants by email primarily to maintain good communication and if possible reach agreement that the proposed termination date was acceptable to them. The Tribunal gave weight to the undisputed fact that there had been cordial relations between parties throughout the tenancy until notice was served. The Tribunal noted that there was no requirement for a tenant to agree to a proposed termination date and the respondents were going beyond their statutory duties in attempting to obtain agreement.
21. The Tribunal took into account that the respondents first gave notice to the respondents 5 months before the date when they sought to terminate the tenancy which was in excess of the 2 month maximum period set out in section 19 of the Housing (Scotland) Act 1988.
22. The Tribunal noted that the format of the notice first given to the applicants via email on 22nd January 2023 did not comply with the statutory requirements of a notice to quit as the email did not contain the prescribed information. However, the Tribunal noted that the written notice served on the applicants dated 19th March 2023 did state clearly that if the tenants did not leave the property then the landlords would have to apply to the Tribunal to obtain an eviction order. This was contrary to the evidence provided by Miss Petrie that the landlords had failed to advise the tenants that they required to obtain an eviction order if the tenants did not leave the property.
23. The Tribunal took into account that the applicants had sought advice from Shelter prior to leaving the property. The Tribunal considered that the applicants would have had no difficulty in accessing advice at an earlier date. The Tribunal concluded that the applicants would have been aware of their rights to remain in the property prior to moving out.

24. The Tribunal noted that the applicants had referred to the eviction ban introduced as a result of the covid pandemic being in place when notice was served. The applicants did not provide any additional detail. The Tribunal noted that as at the date of service the provisions in the Coronavirus (Scotland) Act 2022 containing temporary modifications to the law on eviction including extended notice periods were not in force and accordingly this point was not relevant. In any event the respondents had received advice from Shelter Scotland which would have covered this issue.
25. The Tribunal had some sympathy with the applicants' objection to the respondents contacting them by email multiple times during the notice period. This was inconvenient and may have been upsetting to the applicants, particularly as the notice to leave the property was unwelcome and they were upset at having to leave their home of many years. However, the Tribunal determined that nothing in the respondents' behaviour, nor their written communications was intended to interfere with the applicants enjoyment of the property or to result in their leaving the property without due process. The Tribunal determined that the applicants' took exception to the service of notice and their upset at having to leave their home of many years was understandable however, there was no evidence of harassment or unlawful eviction on the part of the respondents.
26. As it had determined that no unlawful eviction had taken place the Tribunal did not require to make any further determination in relation to the level of damages awarded and determined to refuse the application.

Decision

The Tribunal determined to dismiss 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 January 2024

Legal Member/Chair

Date

*Insert or Delete as required