



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/23/0348

Re: Property at Flat 4, 31 Huntly Gardens, Glasgow, G12 9AX (“the Property”)

Parties:

Miss Kate Edmonds, C/O Legal Services Agency Ltd, Fleming House, 134 Renfrew Street, Glasgow, G3 6ST (“the Applicant”)

Mr Lindsay Bowman, Victoria Cottage, Eastgate, Moffatt, DG10 9AA (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

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

- **Background**

1. This is an application brought in terms of Rule 69 (Application for damages for unlawful eviction) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) as amended. The Applicant seeks damage in respect of an alleged unlawful eviction by the Respondent, and provided with her application copies of a private residential tenancy agreement and various electronic correspondence which had been transcribed.
2. A Case Management Discussion was held 24 July 2023 by Tele-Conference. The Applicant did not participate, but was represented by Mr Christman. The

Respondent did not participate, and was represented by Mr McKeown. The Tribunal had a helpful discussion with the parties' representatives, who to their credit, had engaged in detailed discussions in advance of the Case Management Discussion. As a result, they were able to advise the Tribunal that parties were agreed that a hearing would be required as a result of a dispute between the parties on the facts relating to what the extent of the subjects of the tenancy agreement encompassed. Parties were agreed that thereafter, there was also a clear dispute on the law to be applied to those facts, which would require detailed written submissions.

3. The Tribunal set a Hearing, and issued a direction regarding the provision of written legal submissions in advance thereof.

- **The Hearing**

4. A Hearing took place by way of Tele-Conference on 24 June 2024. The Applicant was personally present and represented herself. The Respondent was personally present and represented by Mr McKeown (solicitor) and Mr Sanders (counsel).
5. An application (under case reference FTS/HPC/CV/23/2843) raised by the Respondent against the Applicant under Rule 111 of the Rules, seeking an order for payment of rent arrears accrued under a Private Residential Tenancy Agreement, was also considered as part of the Hearing.
6. As a preliminary issue, the Applicant advised that she was no longer represented by her former agent and was now representing herself. The Applicant submitted that she wished to make a motion to withdraw all productions previously lodged by her former agent. This motion was opposed by the Respondent who submitted that there was no evidence before the Tribunal to suggest that these productions had been lodged without the Applicant's consent. The former agent was acting as an authorised agent and the Respondent is entitled to assume that they were acting as authorised agent

on the Applicant's instructions. The Tribunal determined that the Applicant's motion was refused.

7. The Applicant requested permission to utilise assisted technology to read out her written submissions during the course of the hearing, to accommodate for her sight issues. The Tribunal was agreeable to this technology being utilised to aid the Applicant's ability to participate fully in the hearing and represent herself.

- **The Applicant's evidence**

8. The Applicant submitted that there had been an unlawful eviction. The Respondent rents out nine properties within the building which the Applicant submitted had been converted without appropriate planning consents. The Applicant described the property leased by her as being approximately 4 metres by 4 metres with a kitchen and a bathroom. This property is hereinafter referred to as "the Bedsit." The Applicant submitted that from August 2022, the Respondent had carried out acts of harassment and intimidation towards her in order to force her from the Bedsit. It was submitted that the Respondent had attempted to change the locks on the front door of the building, on the front door of the Bedsit and on the front door of the Bothy without authority to do so.
9. The Applicant submitted that following this, she suffered a mental health crisis and was unable to sleep. She obtained emergency assistance and as a result, was allocated a property with a housing association in Edinburgh in which she currently resides.
10. The Applicant submitted that the building comprises three stories, and planning was given for an HMO for 15 people. This building was subsequently converted by the Applicant into separate flats and bedsits without appropriate planning permission from Historic Scotland. It was submitted that in doing so, the Respondent had acted in bad faith.

11. The Applicant submitted that she entered into a private residential tenancy agreement (hereinafter referred to as “the Agreement”) on 10 November 2020 for the property at flat 4, 31 Huntley gardens, Glasgow (hereinafter referred to as “the Bedsit”). Subsequently, on 8 June 2022 the Respondent and the Applicant entered into an agreement to occupy the property known as the bothy (hereinafter referred to as “the Bothy”). Rent had been agreed and the Bothy had been let to her for residential purposes. Within the Bothy there was a sofa bed, a kitchenette, running water, a separate bathroom with a sink and toilet. It had been recently renovated for habitation. It was submitted that the Respondent’s wife had stayed in the Bothy previously. The rent for the Bothy had been agreed at £220 per month and that no separate commercial lease was entered into. It was submitted that it had been agreed to be let to the Applicant for residential purposes and not solely for storage. The Applicant submitted that the terms of the original Agreement were varied to incorporate the lease of the Bothy by agreement between the parties. The Applicant submitted that at all times the subjects of the tenancy were clearly identified and the Bothy was integrated within the description of the Property in the original tenancy agreement. The Applicant asked the Tribunal to recognise the legitimacy of the nature of the agreement.

12. The Applicant submitted that there had been repeated and calculated harassment by the Respondent against the Applicant. These acts were deliberate and persistent and in contravention of the Housing (Scotland) Act 1988 (hereinafter referred to as “the 1988 Act”). It was submitted that from August 2020 there had been a systematic campaign of harassment by the Respondent, causing the Applicant fear and distress. There were unjustified attempts of entry to the Bedsit and unauthorised lock changes.

13. On 17 November 2023 the Applicant changed the locks on the main building door and on the Bothy door. The Respondent also tried to change the locks on the Bedsit but the Applicant had already changed those locks for her own security. It was submitted that the Respondent left notes at the Bedsit and warned the Applicant about ghosts within the building to induce fear and distress. The Applicant wrote to the Respondent and asked him to desist. It was

submitted that the Respondent's behaviour severely disrupted the Applicant's sense of peace and security at the Bedsit, and caused her significant emotional and mental strain.

14. In November 2022 the Applicant suffered a mental health crisis, which caused insomnia, nausea-induced anxiety and suicidal thoughts. The Applicant wrote to the Respondent setting out her legal rights but his behaviour did not cease. It was submitted that the Respondent's behaviour forced the Applicant to move to Edinburgh, away from her health and professional support network. The Respondent thereafter continued to write to the Applicant at her new address in Edinburgh and violated her right to quiet enjoyment of her home. The Applicant referred to caselaw dealing with examples of unlawful eviction to support her position.

15. It was submitted that everyone has a right to housing as a fundamental human right, and everyone has a right to adequate standard of living and the Respondent's actions not only breached the terms of the 1988 Act but violated the Applicant's human rights, and as a result, the Respondent should be held accountable for his unlawful and unethical behaviour.

16. The Applicant submitted that the Respondent had falsely stated that the rent agreed for the Bothy was £110 per month for a storage facility. It was submitted that the agreed rent was £220 per month and the lease was for habitation of the Bothy. It was submitted that the Bothy has only ever been referred to as "the Bothy" or as a "flat", and never referred to as "storage". The Applicant submitted that she met the Respondent's wife at the Bothy and begged her and her husband to stop their behaviour against her.

17. The Applicant submitted that the Respondent's behaviour had disproportionately impacted on her due to her medical conditions, which include PTSD and sight issues. The Applicant referred to case law which she submitted supported her argument that the Respondent was fully liable for the extent of the harm caused and the profound consequences on her due to her medical conditions. She was forced to move to an unfamiliar city and lost nearly all of

our possessions which she had been deprived of access to, after the locks had been changed. She was forced to move into an unfurnished flat and the reinstatement of in-person support services at her new property took months. She questioned her will to live during this time.

18. The Applicant confirmed that the date of entry on the Agreement was 10 November 2020 and with a monthly rent of £560. The Applicant confirmed that she paid her rent on time, on the first of every month by bank transfer, for two years.
19. When asked if she was happy living in the Bedsit, the Applicant submitted that she wasn't happy in general terms and her relationship with the Respondent had changed over those two years and had deteriorated. The Applicant submitted that had to be moved out of a high tower because of the Covid pandemic. She had no support services and had to move into a bedsit. This meant that she was not happy. However, the Applicant confirmed she was prepared to live there.
20. The Applicant submitted that she had been interested in renting out another property in the same building. She had seen a Gumtree advert for a coffee machine posted by the tenant on the top floor. She spoke to the tenant about it who advised her that she was selling her belongings because she was coming to the end of her PhD and moving back to Canada. The tenant was paying £690 per month for a full one bed flat. The Applicant at the time was paying £560 per month for the Bedsit plus £220 per month for the Bothy. The Applicant asked the Respondent for first refusal when she heard that the tenant wished to leave the one-bedroom flat. The Applicant submitted that the Respondent told her that she could view the one-bedroom flat and that when she did, he told her that the rent would be increasing to £1000 per month. The Applicant submitted that the Respondent told her that she could not afford it. The Applicant submitted that they were unable to agree on terms for the one-bedroom flat due to the Respondent's proposed increase in the rent being unreasonable and designed to prevent her from being able to rent it. The Applicant submitted that thereafter the harassment started against her by the Respondent.

21. The Applicant confirmed that there was no formal written amendment to the original Agreement entered into. Instead, agreement was reached with the landlord for a rent of £220 per month for the Bothy and this was agreed by text message. The Applicant submitted that there had been no requirement to enter into a written agreement and that the agreement reached with the Respondent was an amendment to the original Agreement to incorporate the Bothy alongside the Bedsit as being the leased "Property". The Applicant submitted that they had talked about the rent and electricity charges and she had advised the Respondent that she intended to use her sewing machine in the Bothy. The Applicant submitted that it was never referred to as being for storage. The Applicant submitted that had the intention been for the Bothy to be leased as storage, that there should have been a separate agreement entered into for that commercial arrangement.
22. The Applicant confirmed that the Bothy and the Bedsit were not physically connected and in terms of their situation within the building, they sat on top of each other. They were two physically separate properties. The Applicant required to exit the Bedsit by the front door, and descend a common staircase to access the Bothy through its separate front door. The Applicant submitted that she was desperate to have a bed as she did not have the use of a proper bed in the Bedsit. It had a pull-down bed. The Bothy had a sofa bed.
23. The Applicant submitted that she would not have rented the Bothy at that rental price for storage, as she could have had storage elsewhere at a lower cost and without having to pay for electricity. The Applicant denied that she was storing any items within the common parts and cluttering up the building.
24. The Applicant submitted that her rent was up to date on the Bothy, and her rent was 17 days late on the Bedsit, at the point at which the Respondent ended her agreement to lease the Bothy. The Applicant submitted that at the time she was considering killing herself.

25. The Applicant submitted that she moved out of the Bedsit on 16 November 2022 and signed her new tenancy in Edinburgh on the 18 November 2022. The Applicant submitted that the Respondent changed the locks on the Bothy and the front door of the building and notified her by text telling her that she was evicted with immediate effect. The Applicant submitted that she does not know what happened to her contents which were contained within the Bothy.
26. The Applicant submitted that there was a brand new gas boiler installed in the bedsit in March 2021 and she had no issues with same.
27. The Applicant submitted that the letter issued by her former agent to the Respondent on 8 December 2022 was issued without her instruction and is the subject of an ongoing complaint that she has raised against the former agent. The Applicant submitted that she engaged the Legal Services Agency (“LSA”) when the Respondent was harassing her. When the locks were changed, she called her former agent at LSA and asked for their help her secure her possessions. She asked her former agent to let the Respondent know that the agent was acting on her behalf as she was desperate for her belongings not to be disposed of. The Applicant submitted that the letter was written outside the terms of her instructions. The Applicant submitted that she did not want to extend the term of the tenancy and she did not live there. The Applicant confirmed that whilst the letters issued by LSA are the subject of a formal complaint, she understood that the Respondent could seek to rely on them and that she could not dispute that.
28. The Applicant submitted that she was not aware of any parcels having been sent to the building for her following her departure nor did she order a dishwasher to be delivered there.
29. The Applicant submitted that she received a text message from the Respondent which set out that as her rent was 17 days overdue, the Respondent had to reconsider the agreement to lease the Bothy to her. The Applicant submitted that she thereafter accessed emergency support for her mental health, called

her occupational therapist and got an appointment with a psychiatrist on an emergency basis.

30. The Applicant confirmed that she would like the opportunity of inspecting the Bothy and removing her belongings and that she would arrange support to be able to do that. The Applicant confirmed that photographs lodged in productions appeared to show the Bothy, with its blue walls, and with items belonging to her such as a grey dog bed contained therein.

31. The Applicant denied that there was any agreement to share the Bothy with the Respondent for storage. Applicant submitted that she would not have agreed a rent of £220 per month if she did not have exclusive access.

- **The Respondents evidence**

32. The Respondent confirmed that he owned the building at 31 Huntly Gardens and has done so since 1972. The building is split into separate flats. He does not own any other buildings that he rents out. The Respondent denied that there had been any illegality in the way that the building had been divided up.

33. The Respondent submitted that the Applicant had previously lived next door at number 32 and she had been very upset when her dog had passed away and she said that she had wanted to move into a south-facing warmer flat. When the Bedsit came up, the Respondent offered it to the Applicant. The Respondent described relations with the Applicant at the time as being “fantastic”. The Respondent described being able to call the Applicant late at night to ask if there were any issues with deer or foxes in the gardens.

34. The Respondent submitted that he entered into a private residential tenancy agreement (“the Agreement”) with the Applicant for the Bedsit with the date of entry of 10 November 2020 and a monthly rent of £560. The Respondent confirmed that there were no initial problems with any payment of rent and the Applicant paid on the 1st of the month every month for two years and was an excellent tenant.

35. The Respondent submitted that the Applicant had discovered that a larger flat was becoming available. He didn't know this at the time as the other tenant hadn't given him notice yet, and the Applicant asked if she could view it. The Respondent told her that he'd require to look at the property and review the rent. The Respondent described the Applicant as "blowing up" at that point and that this marked the end of their relationship. The Respondent described the Applicant as shouting at him and saying that he was not allowed to increase the rent because of new laws which had come in. The Respondent submitted that the Canadian tenant had been in the property for five years and if he had been able to agree an increased rent with the Applicant, she could have had the property. It was thereafter that the Applicant stopped paying her rent. The Respondent submitted that the Applicant did not pay rent in October 22 through to July 2023 and the sum of £5,168.87 remains outstanding.
36. The Respondent described the Bothy as being the old wash house for the building. It is situated directly underneath the Bedsit on the ground floor and is accessed from the Bedsit by going down the back stair to the back door. The two properties are not attached and have no internal access between them. The Respondent submitted that he uses the Bothy but there is very limited space because the Applicant's belongings are still in it. The Respondent submitted that he has always used the Bothy for storage of items required for other properties in the building, and for items left by tenants, and his workmen use it to make cups of tea and use the bathroom etc when working in the building.
37. The Respondent submitted that the hallway had become cluttered with items delivered to the Applicant. There had been industrial wooden pallets sitting at the front door and that half of the hallway was being cluttered by the Applicant's belongings. The Applicant had said she was looking for storage space and the Respondent said that he was prepared to share the Bothy with her for two months to give her time to find somewhere else. The Respondent submitted that he received cash from the Applicant and thought that this was £120 per month. There was no written agreement and it did not form part of the original

Agreement as it had nothing to do with the Bedsit. It was simply shared storage with the Applicant for a couple of months. The Respondent submitted that items belonging to the Applicant were mounting up in the Bothy and he told the Applicant that he was changing the locks, but that the Applicant's belongings are still there and are available for her to collect. The Respondent submitted that he wanted the Applicant to collect her belongings because he is unable to use the Bothy properly whilst they're still there.

38. The Respondent denied having ever harassed the Applicant and stated that it was not in his nature. He hoped that the Applicant would change her attitude and that he had never tried to make the Applicant move out of the Bedsit. The Respondent submitted that he was unaware of the Applicant's health issues and she always appeared to be in perfect health right up until the end of the first two years when the relationship deteriorated, when she was upset that she couldn't afford to rent the bigger one-bedroom flat.
39. The Respondent submitted that a dishwasher was delivered to the Property which was addressed for the attention of the Applicant, as well as other parcels in her name. These are still there and required to be uplifted by the Applicant.
40. The Respondent submitted that he thought it strange when he received the letter from the LSA of 19 May 2023, as he would usually receive a notice to quit from a tenant who wished to move out of a property.
41. The Respondent submitted that the gas supplier, SGN, had attended the building as they had thought that there was a gas meter missing or not working. They found that the meter was present and closed their enquiry in December 2022. The Respondent confirmed that he installed a new boiler in the Bedsit in March 2021.
42. The Respondent confirmed that he purchased a £500 sofa bed but it was not kept in the Bothy all of the time as it was used for another flat on occasions. The Respondent was unable to confirm specific dates when the sofa bed was present within the Bothy. The Respondent accepted that the Applicant had paid

£220 for rental of the Bothy, with £20 of that included for electricity. The Respondent confirmed that he would charge for electricity even if it was just for storage, as there would still be electrical costs for heat and light. When referred to the text messages between the parties lodged in process, the Respondent submitted that he could not recall why he had highlighted to the Applicant that there was no hot water within the Bothy or why reference was made to needing a coin prepayment meter fitted. The Respondent was unable to explain why he referred to the Bothy as not being clean, when it was simply being let for storage.

43. The Respondent confirmed that his wife had occasionally stayed in the Bothy. The Respondent confirmed that a proper bathroom was installed within the Bothy for use by his workmen, so that they did not have to ask to use a tenant's flat when they were working there. The Respondent submitted that the bathroom is not fit to be used, except for the toilet. The Respondent submitted that he and the Applicant were sharing the Bothy and that was what had been agreed in terms of its use. The Respondent accepted that the Applicant was up to date with the rent for the Bothy and that she was 17 days late with her rent for the Bedsit. The Respondent submitted that the agreement had always been that the Applicant would only have use of the Bothy for two months, and this was to enable her to remove her stuff from the public hallway and find alternative storage going forward. When asked why he would end the agreement to the Bothy because of the Applicant being 17 days late with her rent for the bedsit, the Respondent replied "I have no idea".

44. The Respondent submitted that he changed the lock on the building's main door because it was not working properly. A dozen keys were made for all of the tenants but the Applicant had blocked him on her phone and therefore he could not tell her that the lock had been changed. The Respondent denied having tried to change the lock on the Bedsit on the same day.

- **Findings in Fact**

45. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) over Flat 4, 31 Huntly Gardens Glasgow (“the Bedsit”) which commenced 10 November 2020 and ended 16 June 2023;
- (ii) The agreed monthly rent for the Bedsit was £560 per month;
- (iii) The parties thereafter entered into a separate agreement to lease the property known as “the Bothy” at a rate of £220 per month;
- (iv) The purpose of the use of the Bothy by the Applicant was for residential purposes;
- (v) The Applicant has failed to pay rent due on the Bedsit and has accrued arrears of rent amounting to £5,040;
- (vi) The Respondent changed the locks on the Bothy and in doing so deprived the Applicant of access to the Bothy.

- **Reasons for Decision**

46. The Tribunal had considerable sympathy with the Applicant and the health issues that she has suffered from, and which she continues to suffer from. It was clear that there had been a significant breakdown in the relationship between the parties over time. The Applicant presented herself as a vulnerable and emotional individual and was clearly very upset at what she believed to be unreasonable behaviour by the Respondent. It should be noted that there was no evidence before the Tribunal as regards the Applicant’s medical issues.

47. It was not in dispute by either party that the Bedsit and the Bothy were two entirely distinct properties and which were not physically connected. The Bothy was situated directly below the Bedsit within the building. It was a matter of agreement that the Applicant required to leave the Bedsit, descend a flight of stairs and thereafter access the Bothy situated on a separate floor through a separate front door.

48. It was not in dispute that the original written private residential tenancy agreement (“the Agreement”) was not amended in writing to incorporate the Bothy as being part of the defined leased Property under that Agreement. The terms of the agreement to lease the Bothy were in dispute, as regards the nature of the occupation of same. The Applicant's position was that there had been an agreement to lease the Bothy to her for residential purposes at a rent of £220 per month. This was payable in cash to the Respondent, as opposed to the £560 per month rent for the Bedsit which was payable by bank transfer on the 1st of the month. The Respondent's position was that the Bothy had been leased to the Applicant for a two month period only, at a rent of £110 per month, for storage purposes and which Bothy was to be shared with the Respondent. There was no evidence of any agreement between the parties to charge a global rent for both properties. The text communications lodged as evidence showed agreement to charge a separate rent payment for the Bothy, and which was payable by a different payment method. The Tribunal is satisfied that on the basis of the evidence before it, that there were two separate agreements between the parties. Firstly, an agreement to lease the Bedsit (being the original Private Residential Tenancy Agreement) and secondly a separately lease to rent the Bothy under different rental terms. The Tribunal was not satisfied on the evidence before it that there was agreement between the parties to amend the original Agreement to incorporate the Bothy as part of the defined Property under that Agreement.

49. The Tribunal found the evidence of the Respondent to be somewhat evasive when answering questions in relation to the use of the Bothy, the creation and purpose of the installation of a bathroom within the Bothy and the use by the Respondent and his wife over the years. The Tribunal was satisfied as to the reliability of the Applicant's evidence, insofar that she was being leased the use of the Bothy for residential purposes, and that this was not for shared use with the Respondent nor for use solely for the purposes of storage. The Tribunal preferred the evidence of the Applicant in this regard.

50. Whilst it was accepted by the Respondent that he did change the locks to the Bothy, the Tribunal was not satisfied that this created the situation of an unlawful eviction from the Bedsit. The Applicant had, by her own admission, already changed the locks on the Bedsit herself and therefore was secure from any unauthorised access being taken by the Respondent to the Bedsit.
51. It should be noted that whilst the Applicant made a number of references throughout her evidence and submissions relating to the alleged unlawful conversion of the building to form the current separated bedsit flats, the Tribunal did not consider that this had any relevance to the applications being considered. It should also be pointed out that there was no evidence before the Tribunal in relation to the planning requirements of such a conversion of a building, nor any evidence of the status of any consents in place in relation to any of the parts of the building currently.
52. In relation to the Applicant's position that the Respondent had behaved unreasonably in refusing to lease to her the one-bedroom flat which had become available following the departure of the Canadian tenant, the Tribunal was not persuaded that (i) this had any relevance to the application at hand nor (ii) that the Respondent had behaved in an unreasonable manner. The Tribunal was satisfied with the evidence of the Respondent that he was entitled to review the rent upon departure of the outgoing tenant. Whilst it is unfortunate that the rent increase was beyond the affordability of the Applicant, the Respondent was under no obligation to consider a lower rental in order to enable the Applicant to move into that property. The Tribunal considered that the Applicant reacted somewhat unreasonably to this decision by the Respondent.
53. The Tribunal considered the Applicant's position that she had dispensed with the services of her former agent and was in the process of pursuing a complaint due to the way that her representation had been handled. The Tribunal noted the Applicant's position that her former agent had issued letters on her behalf, outwith the scope of her instruction. The Tribunal was satisfied that it would be entirely unreasonable to expect the Respondent or the Respondent's agents to question the content of a letter received from a practising solicitor purporting to

act on behalf of a tenant and that it was entirely reasonable for a landlord and his agent to rely on the terms of any such correspondence. The Tribunal considered the terms of the letter issued by LSA to the Respondent of 19 May 2023 which stated *“for the avoidance of doubt, and without prejudice to our clients position, please treat this letter as the requisite notice to end any tenancy agreement.”* On that basis the Tribunal was satisfied that the Respondent was entitled to take from the terms of that letter that notice was being given in relation to ending the Applicant's tenancy from 19 May 2023. As the Private Housing (Tenancies) (Scotland) Act 2016 requires a tenant to provide a landlord with 28 days' notice of their intention to vacate a property and end a tenancy agreement, the Tribunal considers that it can be taken from said letter that the Applicant's proposed end date of the tenancy for the bedsit was 16 June 2023. The Tribunal was satisfied that it can be taken from that letter that the Applicant continued to be a tenant under the Agreement to let the Bedsit on the date that the letter was written. Whilst the Tribunal is satisfied from the evidence of the Applicant that she entered into a new tenancy agreement for her current property in Edinburgh which commenced on or around 18 December 2022, on the basis of the letter issued by the Applicant's agent, and on which the Respondent is entitled to rely, the tenancy for the Property at 31 Huntly Gardens continued to run until 16 June 2023 when her notice to quit ran out.

54. The Tribunal also considered the e-mail correspondence between the parties' respective agents between 26 July and 21 August 2023 in relation to arranging access for the Applicant to remove her belongings. The Tribunal noted that despite access being afforded to the Applicant's former agent on 27h July 2023, the Applicant failed to arrange for the removal of all items and a number of items remained in the property. The Tribunal did not consider that this was a reasonable position for the Applicant to take and that seven months after entering into a new tenancy at her property in Edinburgh, she had still failed to make reasonable arrangements to remove all items left in the Bothy, despite the Respondent affording reasonable access for this to take place.

55. It is clear from the text messages lodged, that the Respondent purported to terminate the agreement in relation to the lease of the Bothy due to unpaid rent relating to a separate agreement, being the lease of the Bedsit. The Tribunal did not consider that the Applicant had any legal basis for ending the agreement to lease the Bothy, when the Bothy rent was up to date. The Bothy rent being up to date was not a matter in dispute. The Tribunal was satisfied that the Bothy had been leased to the Applicant for residential purposes, but under a separate agreement to that original Agreement entered into to lease the Bedsit. However, the lease of the Bothy could not fall under the definition of being a Private Residential Tenancy under the said 2016 Act, because in order for a property to be leased as a Private Residential Tenancy, an essential element under section 1(1)(b) of the said 2016 Act is that the tenant must occupy the property as their only or principal home. For the reasons outlined above, the Tribunal considers that there were two separate agreements entered into between the parties, one for the Bedsit and one for the Bothy. The Applicant can only occupy one of these properties as her only or principal home. The Tribunal was not satisfied on the basis of the evidence before it that the Bothy was leased to the Applicant to occupy as her only or principal home. The Tribunal was satisfied on the basis of the evidence before it that the Applicant's only or principal home was the Bedsit, which comprised the property under the original Agreement entered into. The Bothy was leased to provide additional living space. For example, the Applicant referred to intending to use her sewing machine in the Bothy. On that basis, the Bothy could not be leased under the terms of a Private Residential Tenancy. The provisions of s36 of the said 1988 Act are not limited to a Private Residential Tenancy, nor are they limited to a property which is occupied on the basis of it being someone's only or principal home. Section 36 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."* The Tribunal is satisfied that (i) the Bothy was leased to the Applicant for residential purposes and (ii) the Applicant was deprived of access to the Bothy. However, the Tribunal has no jurisdiction to determine whether there was an unlawful eviction in relation to that separate lease pertaining to the Bothy. The Tribunal, in terms of s16 of the Housing (Scotland) Act 2014, only has jurisdiction (over

and above actions arising from private residential tenancies under the said 2016 Act) insofar as actions arising from (a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)), (b) a Part VII contract (within the meaning of section 63 of the 1984 Act), and (c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988)., The lease over the Bothy does not fall within any of those types of tenancy agreements.

56. By her own admission, the Applicant was not deprived of physical access to the Bedsit, which was secured following her own change of locks (which, it should be noted, appeared to have been done without the Respondent's knowledge or consent.) The Tribunal was not satisfied on the basis of the evidence before it, that there had been a sustained campaign of harassment and intimidation by the Respondent against the Applicant. Whilst it was clear to the Tribunal that the relationship between the parties had broken down, on the basis of the evidence before it, the Tribunal was not satisfied that there had been unreasonable behaviour by the Respondent and which could be said to have forced the Applicant to remove from the Bedsit. The Tribunal considered that the Applicant's own behaviour following the Respondent's decision to review the rent of the alternative one-bedroom property and which review rendered it unaffordable to the Applicant, was entirely unreasonable. The Tribunal was persuaded by the Respondent's evidence that this was a catalyst to the breakdown of the relationship between the parties. The Tribunal was also persuaded, on the basis of the letter of LSA of 19 May 2023, that the Applicant, despite entering into a new lease at her current property in Edinburgh in December 2022, sought to end the tenancy of the bedsit with the Respondent 28 days following the date of that letter. She remained a tenant of the Bedsit at that point in time. On that basis, the Tribunal considered that the Applicant was liable for payment of rent to the Respondent for the period until 16 June 2023.

- Decision

57. The Tribunal determined that the application is refused.

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.

F Watson

Legal Member/Chair

Date: 24 July 2024