



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 59 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/24/3825

Re: Property at The Cot House, Culligan Parks, Kilmunm Sandbank, Dunoon, Argyll, PA23 8QS (“the Property”)

Parties:

Allan Boyd Andrews, Care of Civil Legal Assistance Office, The Annexe, Migvie House, North Silver Street, Aberdeen, AB10 1RJ (“the Applicant”)

Culligan Parks Limited, 26 St George's Quay, Lancaster, LA1 1RD (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that that it would grant an order in favour of the Applicant against the Respondent for payment of TWO THOUSAND EIGHT HUNDRED POUNDS (£2,800.00) STERLING

BACKGROUND

1. An application had been received under Rule 110 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for wrongful termination.
2. The application contained the tenancy agreement, notice to leave and two affidavits.

3. This case called for a case management discussion on 12 May 2025.
4. In attendance were the applicant and the applicant's representative, Miss Reid, Civil Legal Assistance Office. There was no appearance from the respondent. The sheriff officer's certificate of service confirmed that the papers were served on 27 March 2025. The tribunal decided to proceed in the absence of the respondent.

THE CASE MANAGEMENT DISCUSSION

5. Miss Reid moved for an order for the maximum sum to be awarded to her client for wrongful termination. She submitted that she had lodged the tenancy agreement, notice to leave and affidavits in support of her client's position.
6. She advised that when the applicant and his family had moved in, the respondent had asked the applicant's wife to work on the caravan site, the pay would be £700 and this would pay the rent. The applicant's wife did not proceed to work for the respondent as she had been intimidated by him. The applicant had carried out the work instead, however he had only been paid £560. There was therefore a deficit to pay in terms of the monthly rental. It had not been feasible to continue work and pay the rent. A new member of staff was then employed in the applicant's place. Ms Bell was the new employee, and she told the applicant to move out of the property.
7. The applicant was then served with a notice to leave on 5 May 2022 advising that the landlord's family intends to live in the property.
8. The applicant believed that that they were told to leave due to malice. They were no longer working at the caravan park, and they were struggling to pay the rent. They were harassed by Ms Bell and the landlord and they eventually felt that they had no choice but to leave.

9. The landlord had raised proceedings in the First Tier Tribunal for eviction relying on the ground in the notice to leave, namely that a family member intended to move into the property. They had submitted affidavits that said that the landlord's son would live in the property. Although one said that the landlord wanted to move into property and live in it. There was a discrepancy in what was being said.
10. Since the applicant had left the property, no member of the landlord's family has moved into it. They have spoken with other persons who live on the caravan park and they had told the applicant that the property has been used for a short period for some workers to stay in, as a playroom for children, as a clubhouse, and also that Miss Bell intends to use it as spiritualist church.
11. The applicant was looking for an award of 6 month's rent, £4200, as the tenancy was unlawfully terminated.
12. The applicant's agent had spoken with the letting agent and she had been advised that the letting agent thought it was an unlawful eviction and they were no longer acting for the landlord.
13. She submitted that the applicant had been misled into ceasing to occupy the property based on the notice to leave and the fact that the eviction was raised on this ground. The landlord spoke to the applicant after the notice had been served and said that his son was moving into the property and the landlord continued to tell him that that until they moved out.
14. Mr Andrews left the property in mid-April 2023.
15. They had not moved out until April 2023 as they had gone to the council and they had been told to sit tight until they had somewhere to move to, no council property came up, the eviction proceedings were raised and then a private let became available. They decided to go then due to the notice to

leave and as we were being intimidated by the landlord and his employee, Miss Bell. Miss Bell was making up stories about them in the park which were not true. Anytime the applicant and his family left the property, they would be videoed. Miss Bell moved her caravan next to the property to watch them. The landlord and his employee had bullied the kids and told them they had no right to play in the park. They frequently called the police on the applicant and his family. When the landlord came to the park he would walk straight into the property without knocking, and tell them that he wanted them out. The applicant had four children living with them, 6,12,13 and 17 years of age. The children were scared to go out of the house themselves, his daughter would not go out to the park unless the applicant or mother was with her. The landlord phoned the police and told the police that there was a man in the park buying the applicant's daughter's underwear. The police spoke to their daughter, but it was not true. It was upsetting for their daughter.

16. The applicant had found the process of moving out very stressful. The new property costs £300 more per month in rent. They had to take out a more expensive electric contract. It took 6-7 months to get back on their feet. The house they moved into has a lot of steps, which is worse for the applicant as he has bulging discs in his back. There are a lot of steps to get up to the new house, the old house was mostly on ground level. The applicant had told his doctor that he had been depressed living in the property, but he felt better after he moved out. His wife was really stressed with the police coming all the time. The police would come and say that there had been a complaint that they were in the park causing grief and shouting at Miss Bell and putting their fingers up at her. The applicant denied that they had behaved in such a way.
17. The applicant submitted that the landlord had caused them undue stress, made up false allegations against him and his family, and threatened other tenants who are too scared to come forward.

18. Miss Bell called the applicant's agent and was aggressive to her over the phone and swore at her. She had said "take them to tribunal". The agent asked that the applicant's address not be disclosed. She asked that it be care of the civil legal assistance office. This was due to the way that the applicant and his wife had been treated and given the aggressive nature of Miss Bell on the phone. The agent had written to the landlord before they raised these proceedings and asking for settlement proposals. Miss Bell called the agent on receipt of their letter. She had been swearing at the agent. She said that the applicant "deserved everything that was coming to them", and she would be defending the case and she was legally qualified. The agent advised that Miss Bell had been quite threatening to her.

FINDINGS IN FACT

19. The tenancy agreement entered into is a private residential tenancy agreement
20. The tenants were Allan Andrews and Wilma Andrews
21. The landlord is Culligan Parks Limited, albeit the tenancy agreement stated that the letting agent Argyll Letting was the landlord.
22. The property is Cot House, Caravan Park, Sandbank, Dunoon
23. The tenancy commenced on 27 March 2021
24. Clause 8 of the agreement provides that rent is £700 a calendar month payable in advance.
25. On 5 May 2022 Argyll Lettings, the letting agent for the landlord served a notice to leave on the applicants.

26. The notice to leave stated that the landlord's family member intends to live in the property. It was dated 5 May 2022 and stated that proceedings would not be brought until 6 August 2022.
27. The applicant left the property in April 2023.
28. That since the applicant vacated the property no member of the landlord's family has moved into it.
29. The landlord raised eviction proceedings against the applicant, relying on the notice to leave.
30. The Applicant moved out because they had been served with the notice to leave.
31. The applicant and his family were harassed by the landlord and its employees before they moved out. The landlord entered the property without notice to the applicant. The landlord and their employee harassed the applicant and his family by moving her caravan beside the property and watching them. The landlord called the police frequently, making unfounded allegations against the applicant and his family. The conduct of the landlord had caused stress for the applicant and his family before they moved out.
32. The applicant has had to pay increased rent and electricity since they had moved to the new property. They have had to move to the new property with steps which are not so suitable for the needs of the applicant.

LAW

33. 50 Termination by notice to leave and tenant leaving

- a. A tenancy which is a private residential tenancy comes to an end if— (a) the tenant has received a notice to leave from the landlord, and (b) the tenant has ceased to occupy the let property.
- b. A tenancy comes to an end under subsection (1) on the later of—
 - i. the day specified in the notice to leave in accordance with section 62(1)(b), or (b) the day on which the tenant ceases to occupy the let property.
- c. For the avoidance of doubt, a tenancy which is to come to an end under subsection (1) may be brought to an end earlier in accordance with section 48.

34. 58 Wrongful termination without eviction order

- a. This section applies where a private residential tenancy has been brought to an end in accordance with section 50.
- b. An application for a wrongful-termination order may be made to the First-tier Tribunal by a person who was immediately before the tenancy ended either the tenant or a joint tenant under the tenancy (“the former tenant”).
- c. The Tribunal may make a wrongful-termination order if it finds that the former tenant was misled into ceasing to occupy the let property by the person who was the landlord under the tenancy immediately before it was brought to an end.
- d. In a case where two or more persons jointly were the landlord under the tenancy immediately before it ended, the reference to the landlord in subsection (3) is to any one of those persons.

35. 59 Wrongful-termination order

- a. In this section and in sections 57, 58 and 60, “a wrongful-termination order” means an order requiring the person who was the landlord under the tenancy immediately before it ended to pay the person who made the application for the wrongful-termination order an amount not exceeding six months' rent.

REASONS FOR DECISION

36. The applicant seeks an order for wrongful termination without eviction order.
37. An application for a wrongful termination order may be made by a tenant where the tenancy has been brought to an end in accordance with section 50 and the tenant was misled into ceasing to occupy the let property by the person who was the landlord. In this case, the parties were parties to a private residential tenancy, the tenancy was brought to an end in accordance with section 50. The tenant received a notice to leave from the landlord which provided that "your landlord's family member intended to live in the let property". The tenant had sought other property to move to and ceased to occupy the property. The applicant advised that he relied on the notice to leave as the reason for moving out, and proceedings had been raised against him seeking eviction based on the notice to leave. He advised that since he had moved out, no member of the landlords' family had moved into the property to live in it. He considered that he had been misled into leaving.
38. While the applicant gave evidence that he was harassed by the landlord and his employee after they had served the notice to leave, it was due to being served with the notice to leave that led to him and his family leaving the property. They would have moved out sooner had the council been able to provide accommodation to them. Matters had come to a head when they had received service of the eviction papers. The landlord had consistently told him that his family were moving into the property after they had served the notice.
39. The tribunal finds that the applicant was misled into leaving the property due to the service of the notice to leave. The tribunal is prepared to accept the affidavit evidence and oral submission made by the applicant in support of the application, and confirming that no one from the landlord's family had moved into the property after they left.
40. Turning to the second aspect of the case, section 58 provides that the tribunal may make an order, and section 59 states that any order is an amount not exceeding six months' rent.

41. It appears that the applicant has met the terms of section 58 and having regard to the circumstances of what happened after the notice to leave was served then the tribunal considers that it should make an order.
42. We consider that the conduct of the landlord was poor. The landlord appears to have served the notice to leave and then pursued a course of harassment against the applicant and his family to get them to leave. They finally left after eviction proceedings were raised against them. The eviction proceedings, the tribunal was told, relied on the notice to leave. Since they moved out they advised that no member of the landlord's family ever moved into the property.
43. The respondent did not appear at the case management hearing, but the papers had been served on it; in addition, there was evidence that the applicant's agent had received an abusive call from the landlord's employee about this matter. It appears that the respondent was aware of these proceedings.
44. The conduct of the landlord in terms of pursuing an ongoing course of harassment, and raising eviction proceedings, (which meant that on the face of it they were saying that they were willing to prove the notice to leave ground) and the fact that no one has moved into the property, leads the tribunal to find that any order imposed should be towards the higher end of the scale. We consider that those factors to be more serious and aggravating.
45. We also take into account that the applicant advises that he and his family were depressed, stressed and anxious due to the conduct of the landlord. We consider that this is an aggravating factor. We also consider that the additional costs that the applicant has incurred due to moving is an aggravating factor. The type of property they have moved to, which was not so suitable for the applicant is also an aggravating factor.
46. In addition the conduct of the landlord's employee calling the applicant's agent and being abusive to her is also an aggravating factor.
47. The tribunal has no mitigation to consider from the respondent.
48. A maximum award should be applied for the most serious cases. While the tribunal considers that this case is serious, we do not find that it is the most serious. There is no evidence of what the long-term impact on the applicant

of having to move was. There was limited evidence of impact on the health of the applicant and his family that having to leave had caused other than what was spoken to orally by the applicant. There was also a number of months before they left, and they had the benefit of residing there during that period, albeit it does appear that the landlord harassed them during that time.

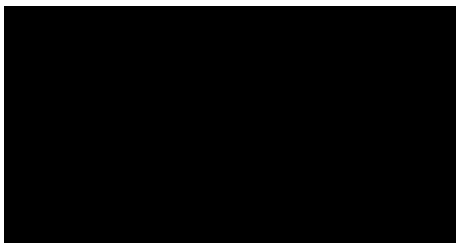
49. Balancing up all the factors, the tribunal determines that it will make an order four times the monthly rent. It makes an award of £2,800.

DECISION

50. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it would grant an order in favour of the Applicant against the Respondent for payment of TWO THOUSAND EIGHT HUNDRED POUNDS (£2,800.00) STERLING

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.



Melanie Barbour

12 May 2025

Legal Member/Chair

Date