

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 (“The Act”).

Chamber Ref: FTS/HPC/PR/23/1957

Re: Property at 7 Plover Crescent, Dunfermline, Fife, KY11 8FZ (“the Property”)

**Parties:**

Ms Lindsay Graham, Mr Colin Dalgity, 5 Muir Place, Lochgelly, KY5 9HJ (“the Applicant”)

Mr Paul Robson, 23 Queens Gate, Consett, Durham, DH8 5FB (“the Respondent”)

**Tribunal Members:**

Andrew McLaughlin (Legal Member) and Helen Barclay (Ordinary Member)

**Decision**

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refuses the Application.

## **Background**

[2] The Applicants seek an Order for damages under Section 36 of the Housing (Scotland) Act for unlawful eviction. The Application had called for Case Management Discussions which had set out Directions regulating the production of documentation. These had also been continued to establish if any criminal proceedings would be brought against the Respondent for the alleged unlawful eviction. By the date the Tribunal heard evidence any such prosecution against the Respondent would have been time-barred under any summary prosecution. The Respondent had not been arrested. The Applicants had complained about the police investigation into the Respondent's actions and certain of these complaints appear to have been upheld by the Scottish Police Authority. However, there was nothing to suggest that the Respondent may yet be subject to any prosecution on Indictment.

## **The Hearing**

[3] The Application called for a Hearing at the Vine Conference Centre, Dunfermline at 10 am on 30 June 2025. The Applicants were both personally present. The Applicants explained that only Mr Colin Dalgity would give evidence and that Ms Lindsay Graham did not wish to give evidence and was only in attendance to observe. The Respondent was present together with his solicitor, Mr R. MacDonald. The Respondent also brought one witness -Mr Craig Gammack.

[4] The Tribunal began by ensuring that everyone understood the format of the Hearing and that everyone was familiar with the documentation which had been submitted to the Tribunal. Thereafter, the Tribunal began hearing evidence. After each party or witness gave evidence, the other party had the right to cross-examine the witness. After the conclusion of evidence, each party had the opportunity to make closing submissions.

[5] The Tribunal comments on the evidence heard as follows.

*The First Applicant -Mr Colin Dalgity*

[6] Mr Dalgity is 43 years of age and is currently unemployed. Mr Dalgity moved into the Property around ten years ago. He lived there with his now ex-partner, Ms Lindsay Graham and their two children. The Applicants' monthly rent was £800.00. It appeared that all relevant communications between the parties were conducted by WhatsApp messages. In that regard the Tribunal had before it a complete transcript of all the correspondence between the parties which was of assistance. The Tribunal considers it necessary to refer to certain of these messages in detail.

[7] Mr Dalgity appeared at the Hearing to have no paperwork or documents with him. When the Tribunal asked Mr Dalgity to direct the Tribunal to a particular document or message being referred to in his evidence, Mr Dalgity would take out his phone and try and find it. Quite often he would confidently say that things happened on a particular date, but when challenged by the Tribunal about the precise details he would acknowledge that they actually occurred on often quite different dates once he looked at the relevant documents.

[8] The Tribunal attempted to make sure that Mr Dalgity was only looking at documents which had already been submitted to the Tribunal, as the approach of taking out a phone and searching through it naturally made the Tribunal cautious to ensure that no extraneous materials were being referred to.

[9] There appear to have been no issues between the parties until early 2023 when the story effectively begins. At that point, the Respondent contacted the Applicants and began a fairly dignified discussion about increasing the rent. This was good natured at first and parties seemed to have agreed a date by which the rent would increase to

£1,200.00 per month. The atmosphere then appeared to change in the messages on 28 March 2023 when Mr Dalgity messaged the Respondent asking him to confirm his landlord registration number. Whilst this is of course a legitimate line of enquiry, it clearly marked a shift in the atmosphere in the messages. The Respondent explained that “... my application is in but it's on hold as they are waiting for some more info of me but I did not know they wanted more info. I don't understand what you are getting at Colin?

[10] The response from Mr Dalgity then seemed to mark a sudden and unexpected negative shift in the dynamic between the two:

*“ What I'm getting at, is we've been in a property for nearly 10 years, paying nearly 100 grand in rent in that time and tens of thousands on improvements and you're not registered! With that and the illegal 70% rent increase, we'll be leaving. You can either pay back the last six months rent and we'll leave and leave the house as it is, with kitchen, the fitted blinds and luvanto flooring or I'll report you to the council and HMRC and we'll stay until you get a court order, which you cant, as you've not got the paperwork. This will land YOU in court where you'll be fined and unable to let the house for the next five years. Don't call, don't come to the house and don't attempt to change the locks, cos that's illegal too. This is where greed has got you. Transfer can be made to the account that has paid you every month.*

[11] The Respondent appears to have been prepared to entertain this scheme:

*“Hi Colin in response to the above msg I've resent you back I'm sorry it's came to this what I propose to keep it right on both party's I agree with a solicitor to hold the months rent in a holding account total £4,800 once you move out I can check the house within the hour and then the money can be realised from the solicitor to yourselves instantly if you leave an invoice for fixtures and fittings for the amount and the keys in the house. This is in no way of admitting in any wrongdoing as the rent goes into the bank in a rent account and my accountant does a tax return with my bank statements and as far as the registration goes I have emails from the council from my last registration and my renewal was in months ago they are just waiting for some more additional information so they can process it and I have emails from them saying so. Like I say I'm sorry its came to this so hopefully we can get this all done asap.”*

[12] The parties then seemed to settle on this proposal and agreed that the Applicants would move out of the Property on these terms on 7 May 2023. This was clarified by the Respondent asking *“it’s getting confusing texting So you move out on the 7<sup>th</sup> then you send me the video then I transfer the money?”*

Mr Dalgity responded *“Yes”*. The Respondent then responded *“OK go for it”* with a thumbs up emoji.

[13] The arrangement seemed settled. Mr Dalgity also gave evidence that he understood that Ms Graham had paid a deposit of six months rent at the start of the tenancy and he said in his evidence that he had this in his mind when justifying the sum to be paid back to him by the Respondent in order to end the tenancy. Mr Graham could refer to no documentation that supported the contention that such a payment has ever been made. The messages exchanged between the parties similarly did not justify the sum sought as being anything to do with the return of any deposit. In fact, in a message of 2 May 2023, the Respondent directly asked Mr Dalgity why he felt entitled to a payment of six months rent and Mr Dalgity made no mention of any deposit- instead stating that *“Because you’ve been taking rent whilst not registered as a Landlord!”*

[14] In advance of the scheduled date, Mr Dalgity informed the Respondent on 26 April that he was due to *“sign for a new place this Friday”*. It should be noted that this turned out to be untrue and in fact that the Applicants had entered into another tenancy much earlier, around 4 April 2023. There was then some back and forth between the parties about when the money and the video should be exchanged with each expressing concern that the other might effectively double cross the other. Mr Dalgity sent a message in an effort to resolve the matter by saying *“not going to happen, I’ve got no desire to stay.”*

[15] The Respondent appears to have reflected on the rights and wrongs of the arrangement he was supposed to be entering into. On 1 May 2023, Mr Dalgity sent the

Respondent a message which included "... *that payment needs to be paid to the account that the rent was paid to, by tomorrow, paul, otherwise we'll just stay...*" . The Respondent sent a message on 2 May 2023 challenging why Mr Dalgity might be legitimately entitled to 6 months rent as referred to above and also stated "... *I have logged this with the police because I will not be threatened or blackmailed, it is after all my house...*"

[16] The communications continued on in this vein until Mr Dalgity then sent a message to the Respondent on 3 May 2023, saying " *Paul, I'm just letting you know, we no longer plan on leaving, so will be keeping the keys, you may want to have a look at the Scottish law regarding the eviction ban along with the rent increase limit.*" The Respondent responded to this "No bother"

[17] On 11 May 2023, the Respondent then sent a message to Mr Dalgity, "*Hi Colin I hear you have moved out at the weekend is that you totally moved now? If anything is left at the property is that just for me to dispose of?*" The response was sent soon thereafter:

*"I've not moved put Paul. Lindsay and the kids have. Out \**

*You realise how fucked you are by changing the locks?"*

*I've just been around, after, 2 days away and cant get in Paul. Someone has tried to break in btw."*

[18] The Respondent replied: "*I had the locks changed to secure the property as you said you were moving out on the 7<sup>th</sup> you put on Facebook and I was told you had removal vans moving and looking in the windows the house was empty. If someone has tried to break in lucky I secured it. Thanks for letting me know I will inform the police.*" Mr Dalgity responded saying that he was already on the phone to the police and made reference to this being an illegal eviction.

[19] The Tribunal noted some anomalies in Mr Dalgity's evidence. It was clear that he and Ms Graham had separated and they no longer intended to reside together as a family. Mr Dalgity however actually appeared to have signed a tenancy agreement

elsewhere. His evidence on this point was vague and he was reluctant to provide much information about this. When asked about it by the Tribunal, he questioned the relevancy of this point and was defensive. That was notwithstanding that it was actually Mr Dalgity who had at that point mentioned the existence of this other tenancy. Mr Dalgity appeared reluctant to talk about it, but he ultimately did appear to admit that he had signed a tenancy as a joint tenant together with Ms Graham for another Property on or around 3 April 2023. Mr Dalgity said he had only “gone on the tenancy” because of affordability reasons for Ms Graham who he said would not have had a sufficient good credit rating to secure the tenancy in her own name. Later on in this passage of evidence Mr Dalgity then appeared to say that he was the guarantor on this tenancy but he had previously said he was on the tenancy and Mr MacDonald put to Mr Dalgity that this is also what had been recorded in the police complaint documentation.

[20] Mr Dalgity also accepted that he was friends with this new landlord and referred the Tribunal to a brief undated letter from the landlord in the Tribunal papers which said that Ms Graham moved into the Property in May 23 and that Mr Dalgity was only named as the financial guarantor. The Tribunal however was struck by how vague Mr Dalgity was about this other tenancy and in particular his claim to be ignorant of whether he was listed in the tenancy as a tenant or as a guarantor. The whole thing seemed odd. The Tribunal was doubtful that it was getting the full story about the issue and Mr Dalgity’s reluctance to discuss it did little to alleviate that fear.

[21] The Tribunal also found another aspect of Mr Dalgity’s evidence that aroused suspicion. He stated in his evidence that he didn’t consider his relationship status with Ms Graham to be any of the Respondent’s business. That was understandable of course to a degree. However, it appeared that Ms Graham and the children had planned to move out of the Property and live apart from Mr Dalgity. The Tribunal imagined that moving house with two children would naturally take some planning. The Tribunal considered this against the message sent by Mr Dalgity on 3 May when he wrote “Paul, I’m just letting you know, we no longer plan on leaving, so will be keeping the keys, you may

*want to have a look at the Scottish law regarding the eviction ban along with the rent increase limit."*

[22] The Tribunal observed that this message, as a matter of fact, was inaccurate. Ms Graham and the children did move out of the Property and clearly would have intended to move out beforehand. So when Mr Dalgity wrote that *"we no longer plan on leaving"*, that was not accurate. Separately the Tribunal finds it very hard to imagine that Mr Dalgity would not have known that Ms Graham and the children were moving out because as previously mentioned, he knew they had signed another tenancy agreement and would have had to plan to move out. Mr Dalgity had also accepted that he had not informed the Respondent of his separation from Ms Graham. It seemed likely that this message of 3 May was deliberately misleading. The majority of the household were moving out as per the initial agreement. If Mr Dalgity's position was that he was staying in the Property and Ms Graham and the children were moving out, then that was not what he wrote. Mr Dalgity's explanation of why he said *"we"* was that it he simply used the wrong word. The Tribunal did not accept that it was as straightforward as that and considered that Mr Dalgity was deliberately misrepresenting the situation to the Respondent. This is important as the Respondent's subsequent evidence and that of his witness was that on 7 May 2023, removal vans then arrived at the Property and the occupants packed up their belongings and left the Property.

[23] Mr Dalgity's parole evidence was that from 7 May 2023 he was away from the Property around that time for *"about 4 days- helping Lindsay's (Ms Graham's) dad- working long hours there."* The Tribunal noted that Mr Dalgity had originally said in one of his messages on 11 May that: *"I've just been around, after two days away and can't get in"*. This message obviously contradicted the four days away Mr Dalgity stated in evidence.

[24] The message also carried an implication to the Tribunal that Mr Dalgity had been away from the Property for two days meaning that he had not returned there at night to sleep. However, Mr Dalgity's parole evidence was that he was away from the Property



for four days, working long hours but returning to the Property each night. The Tribunal found that Mr Dalgity's evidence was therefore contradictory to the messages. The truth about where Mr Dalgity was and how long he was away for and whether he came back to the Property at night or not seemed far from clear.

[25] Mr Dalgity gave evidence about a list of items which were supposedly left in the Property and which he claims were unlawfully retained or disposed of by the Respondent. These items were listed in an email sent from Lindsay Graham's email account to the Tribunal dated 16 August 2025. This included a long list of items said to have been left at the Property. It included a "*Bermuda plug 'n 'play hot tub*".

[26] Mr Dalgity gave evidence that this was in the garden on 7 May 2023 when the locks were changed. The Respondent subsequently gave evidence that there was no such hot tub in the garden when he attended at the Property. A neighbour, Mr Craig Gammack would later give evidence that he had previously seen such a hot tub in the garden months previously, but that it had long since disappeared. He would give evidence that it was expressly not in the garden at the alleged time of the unlawful eviction.

[27] The Tribunal considered that one party was deliberately misleading the Tribunal about the hot tub. Whether a hot tub was in the garden or not was a black and white matter. It either was or it wasn't in the garden. The Tribunal had doubts about Mr Dalgity's credibility and reliability. Mr Dalgity's attempts to secure a large cash payment from the Respondent appeared tantamount to blackmail. It came with a threat to report the Respondent to the tax authorities for what Mr Dalgity considered to be wrongdoing. For the avoidance of doubt, the Tribunal has no evidence or reason to attach any weight to any such accusation against the Respondent. The Tribunal preferred the evidence of those who said that there was no hot tub in the garden and did not accept Mr Dalgity's evidence on that point. This also applied to the other long list of items alleged to have been left in the Property. The Tribunal also noted that Mr Dalgity was generally unreliable in his evidence about dates and when challenged about when things

happened frequently accepted that they had happened at different times, sometimes months later.

[28] The Tribunal also had other concerns regarding Mr Dalgity's credibility. These were in respect of the misleading message of 3 May, the vague responses regarding him signing another tenancy, the inconsistency about where he was and how long he was away for after 7 May and his very clear desire to secure a financial payment from the Respondent for less than legitimate reasons. These items weighed in the balance firmly against Mr Dalgity's account as being truthful and instead made the Tribunal prefer the evidence of the Respondent and his witness about the presence of the hot tub. Having come to that conclusion, the Tribunal therefore considered that Mr Dalgity was attempting to mislead the Tribunal regarding the existence of a hot tub. Clearly that was something which made the Tribunal careful in accepting any of Mr Dalgity's other evidence.

[29] Mr Dalgity also addressed the issue of a Facebook post made on an account closely associated with him at the relevant time which included the following: *"What a day yesterday. House moving day"*.

Mr Dalgity explained that this was a post on his business account and that it had actually been composed and posted by Ms Graham. This explanation again appeared odd to the Tribunal as it clearly seemed to imply that it was the business owner who had moved house rather than his estranged partner who supposedly helped with social media. The Tribunal took the view that anyone reading the post would most likely have thought that the owner of that business had moved house. That was Mr Dalgity.

[30] Mr Dalgity's position was that he had been unlawfully evicted and deprived of his home and possessions. Thereafter Ms Graham declined to give evidence. It seemed immediately apparent that Ms Graham's own claim must fail as there was no dispute that she had moved out of the Property voluntarily. However, as Ms Graham did not

give evidence, the Tribunal could not ask for her own evidence about the issues remaining in dispute.

[31] Thereafter the Tribunal heard evidence from the Respondent and his witness. The First witness for the Respondent was Mr Craig Gammack.

*Mr Craig Gammack*

[32] Mr Craig Gammack is a 48-year-old man employed as a packing sealer operative. He has lived at 8 Plover Crescent, next to the Property for seven years. He explained that on 7 May 2023, removal vans were at the Property and belongings were being removed from the Property by the occupants into the removal vans. He saw this himself. The vans were there for maybe an hour or two. It was either a Saturday or a Sunday. The occupants then drove away with the vans and were not seen again at the Property until he saw Mr Dalgity return to the Property and try and “force entry” as further described below.

[33] After the event on 7 May 2023, Mr Gammack met the Respondent for the first time when he knocked Mr Gammack’s door on the following Thursday morning. They had never met each other prior to that or known anything about each other. The Respondent asked Mr Gammack if he knew what was happening at the Property. Mr Gammack informed the Respondent of what he had seen with the removal vans. Mr Gammack explained that he can clearly see the Property’s garden from his own property. He explained that they did have a hot tub previously but this had been removed a number of months earlier. He explained that the Respondent came back and met him again after that date. The Respondent had mentioned that there was rubbish in the house and he asked if he could leave his number because the Property was going to be emptied. Mr Gammack was asked if he saw any further activity at the Property. He said that later that week Mr Dalgity came back to the Property and was trying to force entry into the Property. Mr Gammack phoned the Respondent and told him what had happened.

[34] Mr Gammack was asked to describe his relationship with Mr Dalgity. He said they occasionally would greet each other. The Tribunal imagined them as nodding acquaintances. Mr Gammack described it as pretty unremarkable that Mr Dalgity didn't tell him he was moving out. Mr Gammack said he would have felt weird asking Mr Dalgity what was happening when the removal vans were there. They didn't have that sort of relationship.

[35] The Tribunal had no reason to suspect that Mr Gammack was being anything other than honest with the Tribunal. The Tribunal considered that Mr Gammack was a credible and reliable witness. He seemed to have no reason to say anything other than the truth and his evidence was given in a natural and straight forward manner.

[36] Thereafter the Tribunal heard evidence from the Respondent.

*The Respondent- Mr Paul Robson*

[37] Mr Robson is 54 years of age and is a carpet fitter. He used to live in the Property and became a landlord when he moved out of the Property and relocated to England in about 2014. The Applicants were the first and only tenants in the Property. The Respondent explained that he registered as a Landlord with Fife Council. The original tenancy provided for a contractual monthly rent of £800.00 a month. The Respondent explained that he had never increased the rent during the currency of the tenancy. He explained that the Applicants were good tenants in that there were no issues with payment and no problems with the tenancy.

[38] He described how in March 2023, he instigated discussions about increasing the rent. He considered that £800.00 per month had been a fair rent at the time but time had moved on. The Respondent spoke to the messages exchanged by the parties. The Respondent described how he had come into information that the Applicants actually

had moved out on the date originally agreed. He described his conversation with Mr Gammack which corroborated Mr Gammack's own evidence. He hadn't previously known Mr Gammack but relayed the conversation between the two previously described. The Respondent said that the reason he travelled up to the Property from Durham in the first place was that he had seen the Facebook post referred to previously. He looked through the windows and the Property appeared empty.

[39] The Respondent returned to the Property a second time and had the locks changed and examined the Property. He described it as being empty apart from around 15 bin bags full of rubbish including empty bottles and cans which had been left. He inspected all the rooms. There was no food in the fridge or cupboards. There were no toiletries of any sort in the bathrooms. There was a damaged wardrobe in one of the bedrooms. There were no clothes in any of the rooms. He came to the conclusion that nobody was living in the Property. The Tribunal was taken through photographs taken by the Respondent showing what he said to be the empty rooms of the Property. He took these photos on 13 May 2023. He described how there was a trampoline left in the garden and some old tins of paint in the shed. The Respondent described how when he got the message from Mr Dalgity saying that he hadn't moved out, he thought he must have been lying because the Respondent had just seen the Property which he thought was clearly unoccupied. The Respondent described how he came back to the Property a few days later to board it up. None of the items claimed by Mr Dalgity were visible in these photographs.

[40] The Respondent also explained that he had subsequently been a witness for the Prosecution of Mr Dalgity who was accused of breaking into the Property.

[41] Mr Dalgity explained that the reason he thought the Applicants had left the Property was as follows: he had seen the message on Facebook suggesting the Applicants had moved house; he had been told by a neighbour that removal vans had been at the Property and the occupants had loaded their belongings into the vans and

thereafter left and not returned; when he looked through the windows of the Property it looked empty and then finally when he entered the Property, it was clearly empty with no food, clothes, toiletries or any personal items of any sort in the Property apart from bags of rubbish and a damaged wardrobe. The Respondent also mentioned how the Applicants hadn't paid the rent for the month of April which was due at the start of the month.

[42] The Tribunal asked the Respondent why he attempted to serve "*an abandonment notice*" dated 22 May 2023 on the Property when he knew he had already changed the locks and was in text communication with Mr Dalgity. The Tribunal queried with the Respondent whether this notice was some sort of sham. The Respondent replied that he had received advice from Fife Council about serving such a notice but he was rather vague about who gave that advice and when. It also did appear wholly pointless to send a notice to the Property when he knew the tenants could no longer access the Property to read it.

[43] The Respondent denied that the Applicants had paid a six-month deposit at the start of the tenancy. He said that simply wasn't true and there was no evidence that might support such an allegation.

[44] The Tribunal found the Respondent to be largely credible and reliable. The Tribunal did have some concerns regarding certain aspects of the Respondent's handling of the situation. He had accepted that he had already changed the locks of the Property by the time he sent Mr Dalgity the following message on 11 May 2025.

*"Hi Colin I hear you have moved out at the weekend is that you totally moved now? If anything is left at the property is that just for me to dispose of?"*

[45] It seemed slightly odd to send this message after having already changed the locks. But it was not totally inconsistent with the facts or wholly misleading. Similarly, the

Tribunal was not impressed with the service of an abandonment notice on 22 May 2025 when the Respondent already knew the Applicants could no longer access the Property and were challenging the Respondent to allow them to access the Property via text message.

[46] However, the Tribunal did recognise that ultimately the Respondent had simply attempted to increase the rent on the Property for the first time since the tenancy started in 2014. The Tribunal had some sympathy as the Respondent then appeared to find himself being pressured by Mr Dalgity into making him a substantial cash payment under threat of being reported to the tax authorities. The Respondent's exchanges of messages to the Applicants seemed surprisingly tolerant given the circumstances. The Tribunal cannot help but conclude that the Respondent was being played by Mr Dalgity who considered him as a legitimate target for financial pressure. The sole reason these events came about was because the Respondent attempted to increase the rent. Whilst the increase itself was significant and indeed unlawful at the time, there is nothing to suggest that the Respondent was not open to reasonable discussions about the matter. In any event, the rent was not ever actually increased. Mr Dalgity's messages displayed a clear sense of bitterness that the Applicants required to pay their living expenses as rent to the Respondent and there was a clear desire to pressure the Respondent to pay six months of this money back.

[47] Having heard evidence and having considered all the documentation before it, the Tribunal made the following findings in fact.

### **Findings in Fact**

1. *In 2014, the parties entered into a tenancy agreement whereby the Respondent let the Property to the Applicants.*
2. *The contractual monthly rent was £800.00 per month.*
3. *Relations between the parties were uneventful until early in 2023.*

4. *The Respondent suggested a rent increase which the Respondent considered to be excessive and unlawful.*
5. *Mr Dalgity proposed a deal whereby the Applicants would leave the Property and the Respondent would pay the Applicants the sum of £4,800.00.*
6. *Mr Dalgity suggested that if the payment was not made, then he would report the Respondent to the tax authorities for alleged wrong doing.*
7. *Parties initially agreed to these terms and it was agreed that the Applicants would move out on 7 May 2023.*
8. *The communications between the parties broke down and Mr Dalgity sent a message to the Respondent on 3 May 2023 saying " We no longer plan on leaving".*
9. *That message was not accurate as Ms Graham and the Applicants' children did indeed still plan on leaving and did actually leave the Property on 7 May 2023.*
10. *Mr Dalgity's message was misleading and was not candid as to the Applicants' true intentions.*
11. *The Applicants appear to have entered into a separate tenancy agreement for another Property around 4 April 2024.*
12. *Mr Dalgity is vague as to the details of that separate tenancy.*
13. *The Respondent had no reason to know that the Applicants had separated.*
14. *A message was then published on a Facebook page closely associated to Mr Dalgity in which he referred to having moved house.*
15. *Any reasonable person reading this would have assumed that Mr Dalgity had moved house.*
16. *On 7 May 2025, which was the date originally agreed as when the Applicants would move out of the Property, removal vans attended at the Property and the occupants of the Property were seen to load their belongings into the removal vans and leave.*
17. *The Respondent had seen Mr Dalgity's message on Facebook and attended at the Property to establish the situation on the ground.*



18. *The Respondent spoke to Mr Craig Gammack who is the occupant of 8 Plover Crescent. Mr Gammack informed the Respondent that he had seen removal vans at the Property on 7 May and had seen the occupants pack up their belongings and leave not to return.*
19. *The Respondent inspected the Property and saw no signs of occupation.*
20. *The Respondent returned on 11 May 2023 and changed the locks. When he entered the Property, he observed it was empty with no sign of current human habitation. There were numerous bin bags containing domestic waste in the Property. On 13 May, the Respondent returned and took photographs which documented his findings. These photos corroborate the Respondent's account of the contents of the Property.*
21. *The list of items submitted to the Tribunal by email dated 16 August 2024 does not accurately reflect what was left in the Property.*
22. *There was no hot tub in the garden in May 2023 and the other items listed were similarly not present in the Property. The Property was empty save from bags of rubbish left inside and a trampoline in the garden and some tins of paint in the shed.*
23. *The Respondent took reasonable steps to establish that the Property was unoccupied before he changed his locks. When he gained access to the Property, the absence of any sign of human habitation corroborated his belief that the Applicants had moved out.*

## **Decision**

[48] Having made the above findings in fact, the Tribunal considered the term of Section 36 of the Act. It is in the following terms.

*36 Damages for unlawful eviction.*

*(1) This section 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.*

*(2) This section also applies if, at any time after 6th July 1988, a landlord or any person acting on his behalf—*

*(a) attempts unlawfully to deprive the residential occupier of any premises of his occupation of the whole or part of the premises; or*

*(b) knowingly or having reasonable cause to believe that the conduct is likely to cause the residential occupier of any premises —*

*(i) to give up his occupation of the premises or any part thereof; or*

*(ii) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof,*

*does acts **[F1likely]** 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,*

*and, as a result, the residential occupier gives up his occupation of the premises as a residence.*

*(3) Subject to the following provisions of this section, where this section applies, the landlord shall, by virtue of this section, be liable to pay to the former residential occupier, in respect of his loss of the right to occupy the premises in question as his residence, damages assessed on the basis set out in section 37 below.*

*(4) Any liability arising by virtue of subsection (3) above —*

*(a) shall be in the nature of a liability in delict; and*

*(b) subject to subsection (5) below, shall be in addition to any liability arising apart from this section (whether in delict, contract or otherwise).*

*[F2(4A)Any action to enforce liability arising from this section must be raised in the First-tier Tribunal unless the residential occupant's claim is founded on the premises in question being subject to a Scottish secure tenancy or to a short Scottish secure tenancy (within the meaning of the Housing (Scotland) Act 2001 (asp 10)).]*

*(5)Nothing in this section affects the right of a residential occupier to enforce any liability which arises apart from this section in respect of his loss of the right to occupy premises as his residence; but damages shall not be awarded both in respect of such a liability and in respect of a liability arising by virtue of this section on account of the same loss.*

*(6)No liability shall arise by virtue of subsection (3) above if—*

*(a)before [F3the date on which the proceedings to enforce the liability are finally decided], the former residential occupier is reinstated in the premises in question in such circumstances that he becomes again the residential occupier of them; or*

*(b)at the request of the former residential occupier, the sheriff [F4or First-tier Tribunal] makes an order as a result of which he is reinstated as mentioned in paragraph (a) above.*

*[F5(6A)For the purposes of subsection (6)(a) above, proceedings to enforce a liability are finally decided—*

*(a)if no appeal may be made against the decision in these proceedings;*

*(b)if an appeal may be made against the decision with leave and the time limit for applications for leave expires and either no application has been made or leave has been refused;*

*(c)if leave to appeal against the decision is granted or is not required and no appeal is made within the time limit for appeals; or*

*(d)if an appeal is made but is abandoned before it is determined.*

*(6B)If, in proceedings to enforce a liability arising by virtue of subsection (3) above, it appears to the court [F6or, as the case may be, the First-tier Tribunal] —*

*(a)that, prior to the event which gave rise to the liability, the conduct of the former residential occupier or any person living with him in the premises concerned was such that it is reasonable to mitigate the damages for which the landlord would otherwise be liable, or*

*(b)that, before the proceedings were begun, the landlord offered to reinstate the former residential occupier in the premises in question and either it was unreasonable of the former residential occupier to refuse that offer or, if he had obtained alternative accommodation before the offer was made, it would have been unreasonable of him to refuse that offer if he had not obtained that accommodation,*

*the court [F6or, as the case may be, the First-tier Tribunal] may reduce the amount of damages which would otherwise be payable to such amount as it thinks appropriate.]*

*(7)In proceedings to enforce a liability arising by virtue of subsection (3) above, it shall be a defence for the defender to prove that he believed, and had reasonable cause to believe —*

*(a)that the residential occupier had ceased to reside in the premises in question at the time when he was deprived of occupation as mentioned in subsection (1) above or, as the case may be, when the attempt was made or the acts were done as a result of which he gave up his occupation of those premises; or*

*(b)that, where the liability would otherwise arise by virtue only of [F7the doing of acts or] the withdrawal or withholding of services, he had reasonable grounds for [F8doing the acts or] withdrawing or withholding the services in question.*

*(8)In this section —*

*(a)“residential occupier”, in relation to any premises, means a person occupying the premises as a residence whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises;*

*(b)“the right to occupy”, in relation to a residential occupier, includes any restriction on the right of another person to recover possession of the premises in question;*

*(c)“former residential occupier”, in relation to any premises, means the person who was the residential occupier until he was deprived of or gave up his occupation as mentioned in subsection (1) or subsection (2) above (and, in relation to a former residential occupier, “the right to occupy” and “landlord” shall be construed accordingly).*

[49] It was immediately apparent on the facts found established that there was no case to answer for the Respondent in respect of the claim of the Second Applicant, Ms Lindsay Graham. She left the Property voluntarily and so her claim for damages under Section 36 cannot succeed.

[50] The Tribunal also considered the statutory defence relied on by the Respondent as per Section 36 (7) of the Act. That section is in the following terms:

*36(7) In proceedings to enforce a liability arising by virtue of subsection (3) above, it shall be a defence for the defender to prove that he believed, and had reasonable cause to believe —*

*(a) that the residential occupier had ceased to reside in the premises in question at the time when he was deprived of occupation as mentioned in subsection (1) above or, as the case may be, when the attempt was made or the acts were done as a result of which he gave up his occupation of those premises;*

[51] The Tribunal therefore considered whether the Respondent believed, and had reasonable cause to believe, that Mr Dalgity had ceased to reside in the Property at the time the locks were changed on 11 May 2023. The Tribunal considered the reasons which pointed towards the Respondent having reasonable cause to have such a belief and those factors which went against him having reasonable cause to have such a belief.

[52] The main reason which suggested that the Respondent could not have had reasonable cause to have such a belief was that Mr Dalgity had messaged him on 3 May 2024 saying that

*“ I’m just letting you know, we no longer plan on leaving, so will be keeping the keys, you may want to have a look at the Scottish law regarding the eviction ban along with the rent increase limit.”*

[53] The Respondent had acknowledged receipt of this message meaning that shortly before the Respondent changed the locks, he had been clearly told that the Applicants were not moving out.

[54] The Tribunal then considered the reasons which pointed to the Respondent having reasonable cause to believe that the Applicants had moved out. First of all, there had been a previous discussion which involved the Applicants previously saying that they would move out on 7 May 2023. The idea that they might then move out did not therefore come out of the blue. Secondly, the Respondent saw a post on a Facebook page closely associated with Mr Dalgity which then appeared to declare that they had recently moved house. Any reasonable person would have assumed that Mr Dalgity had therefore moved house. The Respondent then consulted with a neighbour who reported that on 7 May 2023 removal vans had attended at the Property and he had witnessed the residents pack up their belongings and leave. Then on 11 May 2023, when the Respondent did change the locks, he saw that the Property was empty with no signs of human habitation other than bags of rubbish being piled up. What is also particularly noteworthy is that there is no dispute that Ms Graham and the children actually did move out. The Respondent was not privy to the goings on in the Applicants' relationship. A natural assumption would be that they all moved out together. The Respondent was also entitled to treat Mr Dalgity's messages with caution. He was after all threatening to report him to the tax authorities unless the Respondent made him a substantial payment. It is hard not to consider that the Applicants were financially motivated to target the Respondent and on the evidence heard the Tribunal cannot discount the idea that this Application may be a continuation of that scheme.

[55] In any event the Tribunal unanimously finds that the statutory defence relied on by the Respondent is established. The Respondent believed and had reasonable cause to believe that Mr Dalgity had moved out of the Property. This Application for damages under s36 of the Act is therefore 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.

A. McLaughlin

Legal Member/Chair

23 July 2025

Date