

**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/24/1953**

**Re: Property at 55 Glentrool Road, Lochside, Dumfries, DG2 9QN (“the  
Property”)**

**Parties:**

**Mr Joseph Millar, 101 College Street, Dumfries, DG2 0AD (“the Applicant”)**

**Mr Mark Little, Ms Kirsty Little, 4 Drumsleet Avenue, Cargenbridge, Dumfries,  
DG2 8LH (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Ahsan Khan (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 as amended. The applicant seeks damages in the sum of £5000 in respect of an alleged unlawful eviction by the respondents. The applicant seeks to rely on section 36 of the Housing (Scotland) Act 1988.
2. The applicant’s representative Mr Bryce, solicitor, Pollock and McLean solicitors, submitted the following documents:
  - Copy tenancy agreement
  - Copy notice to leave dated 19 August 2022

- Surveyor's valuation report dated 18 June 2024
  - Council tax correspondence
  - Correspondence from Dumfries and Galloway local authority homeless department
  - Notes from housing file relating to the applicant's homelessness application.
3. The respondents submitted:
    - written representations
    - photographs of the property
    - copy text messages between the parties
    - invoices for works carried out in the property.
  4. A case management discussion took place by teleconference on 12 December 2024. The applicant was represented by Mr Bryce. The respondents attended on their own behalf.
  5. The applicant and second respondent are siblings. The first and second respondents are married to each other. Parties were in dispute in relation to whether a tenancy had been created. They were further in dispute as to whether the applicant had been unlawfully evicted and the level of any award in the event that it was found that there had been an unlawful eviction. A hearing was fixed to determine the application.

#### **Hearing – teleconference – 10 September 2025**

6. A hearing took place on 10 September 2025 at 10am. Mr Bryce was in attendance. Both respondents were in attendance. The applicant had not attended Mr Bryce's office at the stated time. The hearing was adjourned until 10.30 to allow the applicant to make his way to Mr Bryce's office.

#### **Oral evidence at the hearing**

7. Summaries of the oral evidence heard at the hearing are undernoted. For the avoidance of doubt it is not a verbatim record and focuses on the areas relevant to the application and in particular areas of dispute between the parties. Parties were given the opportunity to cross examine witnesses.

### **The applicant's evidence**

8. The applicant stated that he had moved into the property on 14 October 2018. He stated that initially there had been no written tenancy agreement however he had subsequently drafted one by finding a document on the internet. He stated that when he moved into the property it was agreed that he would pay rent of £260 per month.
9. The applicant stated that he moved out of the property on 30 September 2022.
10. The applicant stated he had found a notice dated 19 August 2022 on top of the bin at the property. The notice was from the respondents and told him to leave the property on 30 September 2022.
11. The applicant stated that after he had received the notice he contacted the homelessness department at Dumfries and Galloway Council for advice. He provided a copy of the notice to the council and said he was advised to stay in the property as the notice did not mean that he had to move out on 30 September. When he said that he would not be staying in the property the council confirmed that he would be offered emergency homeless accommodation.
12. The applicant submitted that in the weeks preceding his leaving the property his mental health had been poor and he had been drinking heavily. He stated that he had been sleeping during the day and waking during the night. He stated that the behaviour of the respondents towards him had been malicious. He referred to an incident where his sister had attended the property and had been filming. He stated that the respondents had said that they would be coming round on 30 September to force him to leave.
13. The applicant stated that prior to the notice being served he had requested a new tenancy agreement from the respondents. This was due to the fact that the rent had increased to £330. He stated that the respondents refused to provide him with an updated tenancy agreement.
14. The applicant stated that had he not received a notice to leave he would have remained in the property and continued to request an updated tenancy agreement.
15. The applicant stated that he moved out of the property due to stress and anxiety caused by the respondents' behaviour towards him.

16. The applicant stated that the respondents came to the property on 30 September. He confirmed that by that date he had already decided to leave the property. He stated that he felt threatened. The situation became too stressful and he decided to leave the property.
17. The applicant confirmed that after he left the property he stayed with his father and then some friends for a short period. He was then placed in emergency accommodation by the local authority. He stated that after 9 months he moved to a permanent tenancy provided by the local authority.
18. When asked by the Tribunal what evidence he had to support his assertion that the respondents had advised they would come round to forcibly remove him on 30 September, the applicant stated that there were text messages to this effect. However, he confirmed that these had not been submitted to the Tribunal in support of the application.

#### **Evidence of second respondent**

19. The second respondent stated that before her brother moved into the property he had been experiencing difficulties in his personal life. He had separated from his wife and needed somewhere to live. The second respondent stated that she and her husband decided to purchase a property in order to provide the applicant with somewhere to stay. The respondents took out a fixed-term mortgage to cover the cost of purchasing the property.
20. The second respondent submitted that there was no tenancy between the parties. She stated that there was an informal family arrangement regarding the applicant's occupancy of the property. No deposit was taken from the applicant. The second respondent stated that it was agreed that a rent of £260 per month would be paid as this covered the cost of the monthly mortgage repayments.
21. The second respondent stated that months after the applicant moved into the property he was required to apply for benefits. The second respondent stated that to facilitate this, she created a tenancy document which had been produced. She referred to a screenshot of her computer which had been submitted, showing when she had created the document.

22. The second respondent stated that the applicant had a fractious relationship with his children's mother. He suffered from mental health and addiction issues. The second respondent stated that the applicant lost his employment in early 2022. He requested a new tenancy agreement with an increased rent of £440. She referred to text messages that had been submitted. She stated that she refused to issue a tenancy agreement as she believed it would be used to fraudulently claim excess housing costs.
23. The second respondent stated that the tensions in the relationship between the parties increased during 2022. She stated that the applicant's behaviour caused distress to the family. She stated that the respondents decided to serve a notice dated 19 August 2022 asking the applicant to leave.
24. The second respondent stated that after the notice had been served, she received a phone call from a homelessness officer at Dumfries and Galloway Council. She was advised that her brother had sought assistance from the council. The council officer advised that the notice was invalid and could not be used to evict the applicant on 30 September. She explained that a valid notice followed by a formal eviction process would be required and that additional protections were in place for tenants due to the coronavirus pandemic. The second respondent said she accepted this advice.
25. The second respondent stated that she was subsequently advised by the applicant that he had decided to move out of the property as she would not agree to provide a fresh tenancy agreement. The second respondent referred to text messages that had been submitted which showed discussions with the applicant regarding sale of the furniture in the property and the removal of his possessions. The messages were sent between the applicant and the second respondent after the notice had been served and showed that their relationship was not strained at that time.
26. The second respondent referred to a text message that had been submitted from the applicant in which he stated that he had been told that he did not have to leave the property. She stated that the applicant nevertheless left the property voluntarily after seeking advice from the local authority, and that she allowed him to store various items in the property after moving out until they could be collected.

27. The second respondent stated that she had not filmed the applicant in his home. She stated that when the property was bought a 4-year fixed-rate mortgage was taken out. After the applicant moved out, the property was rented out to a family friend who stayed there until the fixed-rate mortgage period had expired. After that date, the property was sold.
28. The second respondent stated that she went to the property on 30 September 2022 to give the applicant a hand packing up as he had told her he was moving out.
29. In cross examination Mr Bryce questioned why there was no record of the second respondent's conversation with the housing officer in the housing file that had been produced. The second respondent stated that this was likely because she was not the service user and so a record may not have been kept. The second respondent disputed that she had put her brother out of the property for financial reasons when he had stopped paying the rent.

#### **Evidence of Gillian Martin**

30. Ms Martin confirmed that she is 65 years old. She is the mother of the applicant and the second respondent. She is employed as a bus driver for children with disabilities.
31. Ms Martin stated that she lives close to the property. She stated that the second respondent had purchased the property to try and help the applicant after his relationship had broken down. She stated that the extended family had helped as they were concerned about the applicant's children. She stated that she and the second respondent continued to see the applicant's children.
32. Ms Martin stated that she had seen the applicant regularly before 30 September 2022. She was aware that the property was in a mess as her son had not been coping very well. He had severe problems with addiction. He had been attending Midpark Hospital for treatment for his addiction issues. His behaviour had been volatile. She stated that he had been poorly after he left Midpark and she had been taking him food and shopping regularly.
33. Ms Martin stated that the applicant had told her that the property was like a noose around his neck. He had told her that he wanted to leave the property and start over.

34. Ms Martin confirmed that she had attended the property on the 30 September with the respondents. She had wanted to go as she knew the applicant had been packing but had not finished. She stated that when they arrived the applicant answered the door and asked them to come inside. She stated that some of the applicant's possessions were in boxes. The second respondent took an electricity meter reading and the applicant gave her the keys to the property.
35. Ms Martin stated that she was so shocked to hear that the applicant had accused the respondents of threatening behaviour. She stated that all the respondents had done was try to help and support the applicant.

### **Findings in fact**

36. The respondents purchased the property in order to provide the applicant with a stable home after his relationship broke down as they were concerned for his wellbeing.
37. The respondents took out a fixed-rate mortgage over the property.
38. The applicant moved into the property on or around 14 October 2018.
39. The applicant agreed to pay rent of £260 per month. The rent covered the repayments due under the mortgage.
40. A tenancy agreement was created between the parties with a commencement date of 14 October 2018.
41. The applicant has a history of mental health and addiction issues. The applicant's mental health and addiction issues caused difficulties in his personal relationships, including with the respondents and other family members.
42. During 2022 the applicant lost his employment and was required to apply for benefits. The applicant requested a fresh tenancy agreement with an increased rent figure of £440, higher than the amount he was paying to the respondents. The respondents refused to provide such an agreement which led to a deterioration in relations between the parties.
43. The respondents decided to ask the applicant to leave the property in August 2022.

44. A notice dated 19 August 2022 was received by the applicant on or around 19 August 2022. The notice stated that the respondents would like the applicant to move out of the property by midday on 30 September 2022.
45. After receiving the notice, the applicant sought advice from Dumfries and Galloway Council's Homelessness Department. He was advised that the notice was invalid, that an eviction ban was in place, and therefore he was not required to leave the property on the date specified. He was also informed that the respondents would need to follow the proper legal procedure to obtain an eviction order.
46. After 19 August 2022 the second respondent spoke with a homelessness officer at Dumfries and Galloway Council and was advised that no eviction could be carried out based on the notice. The second respondent accepted the advice provided.
47. The applicant voluntarily moved out of the property on 30 September 2022. He stayed with his father for a short period and then with various friends. He moved into emergency temporary accommodation provided by the local authority on or around 24 October 2022.
48. On 2 November 2022 the local authority issued a decision that the applicant was "unintentionally homeless". The letter confirmed that the applicant would be provided with temporary accommodation pending an offer of permanent accommodation being made.
49. In the period between the notice dated 19 August 2022 being received by the applicant and his leaving the property he was in regular contact with the second respondent regarding the disposal and sale of various items of furniture within the property.
50. During August and September 2022 the applicant received support from his mother who visited regularly with food and groceries.
51. The applicant told the respondents and his mother that he would be leaving the property on 30 September 2022.
52. The respondents and Ms Martin attended the property on 30 September 2022 to check whether the respondent needed any help with packing. The second respondent obtained an electricity meter reading and the applicant returned the keys to the property.

53. Neither respondent behaved in an intimidating manner towards the applicant on 30 September 2022.

### **Findings in fact and law**

The Tribunal found in fact and law :

54. Neither respondent unlawfully deprived the applicant of the property.

55. Neither respondent behaved in a way that harassed the applicant by acting in a manner intended to interfere with his peace and comfortable occupation of the property with the intention of causing the applicant to give up his occupation of the property.

56. The applicant was not unlawfully evicted from the property.

### **Reasons for the decision**

#### **Statutory provisions:**

57. Sections 36 and 37 of the Housing (Scotland) Act 1988 state:

*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 likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence,*

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

**37The measure of damages.**

*(1)The basis for the assessment of damages referred to in section 36(3) above is the difference in value, determined as at the time immediately before the residential occupier ceased to occupy the premises in question as his residence, between—*

*(a)the value of the landlord's interest determined on the assumption that the residential occupier continues to have the same right to occupy the premises as before that time; and*

*(b)the value of the landlord's interest determined on the assumption that the residential occupier has ceased to have that right.*

58. The applicant seeks an award under section 36. The Tribunal considered the following questions:

- Did the applicant occupy the property under a tenancy agreement to which section 36 applied?
- Did the respondents attempt to unlawfully deprive the applicant of the property or did the respondents' conduct towards the applicant comprise acts likely to interfere with the peace or comfort of the applicant or persistent withdrawal or withholding services reasonably required for the occupation of the premises as a residence, which resulted in the applicant giving up his occupation of the property?

59. The Tribunal took into account the oral evidence of the parties and the witness at the hearing and the various documents submitted by the parties in reaching its decision.

60. The Tribunal determined that a tenancy had been created between the parties. The Tribunal accepted that the respondents had acted in good faith when they purchased the property for the primary reason of providing the applicant with stable accommodation. However, the fact that parties were related did not prevent a tenancy agreement from being created. The Tribunal did not accept

the respondents' submission that the applicant occupied the property under a private family arrangement that was distinct from a lease.

61. The Tribunal found that the key elements of a lease were present – parties, subject and rent. It was not disputed that the applicant paid rent to stay in the property. A lease document had been prepared and signed, albeit some time after the lease had commenced.
62. As the tenancy had commenced after 1 December 2017 the Tribunal determined that a private residential tenancy agreement had been created in terms of the Private Housing (Tenancies)(Scotland) Act with a commencement date of 14 October 2018.
63. The Tribunal proceeded to consider whether the requirements of section 36(2) had been met.
64. The Tribunal had regard to text messages submitted by the second respondent dated 18 August 2022, the content of which was not challenged by the applicant. At 16:14 the applicant messaged: *"I have been and sorted my universal credits out, I just need this new tenancy agreement, I have also stated to the job centre that my rent is 440, in order to get some off what I already owe you paid, the date on the agreement needs to be 18.06.2019 as I have said that's when I moved in couldn't remember official date."* Later that evening, at 21:58, the applicant sent a further message: *"As I said I will need a tenancy agreement or a eviction notice, your choice."*
65. The Tribunal accepted the second respondent's evidence that she was not prepared provide a tenancy agreement showing an inflated rent. The Tribunal further found that it was at the applicant's own instigation that a notice to leave was issued when she declined to do so.
66. Both the applicant and the second respondent stated in their evidence that they had been advised that the notice that had been given to the applicant dated 19 August 2022 could not be relied upon to evict the applicant. The applicant's evidence was clear that he was aware of his legal right to remain in the property after the notice expired. A text message from the applicant which had been submitted by the respondents also referred to the fact that he was aware he did not have to leave the property. The text message dated 11 October 2022 stated: *"I did you a favour moving out when I did, when I was told by everyone I*

*contacted that you did not have a leg to stand on and I could stay there until you served me a proper eviction notice, I was told I didn't need to worry about paying rent if I stayed also as you didn't give me a proper tenancy agreement, so you should be thanking me!"*

67. The Tribunal found that, after the notice had been served, the second respondent was advised by a homelessness officer at Dumfries and Galloway Council that the notice was invalid in its form and that further legal procedure would be required to remove the applicant from the property. She was also advised of the restrictions on evictions then in place under the coronavirus pandemic protections for tenants. The Tribunal accepted that she understood this position and had no intention of forcibly removing the applicant from the property on 30 September.
68. Mr Bryce had questioned whether the second respondent had received that advice as there was no written evidence provided and in particular there was no evidence within the file obtained from the housing department of any discussions between the housing officer and the second respondent.
69. The Tribunal noted that the file appeared to have been redacted to remove conversations between the housing officer and individuals other than the applicant.
70. The Tribunal accepted that all parties were aware that the notice could not be lawfully relied upon to evict the applicant on 30 September 2022.
71. The Tribunal then considered whether the conduct of the respondents was such that the applicant nevertheless felt unable to continue to reside in the property.
72. It was clear from the evidence of the applicant, respondent and the witness that the relationship between the respondent and applicant had broken down.
73. The Tribunal found evidence of Ms Martin, the mother of the applicant and second respondent, to be credible and truthful in a most difficult situation. Ms Martin had described the support she provided to the applicant, particularly after he had received treatment at Midpark hospital in 2022. The Tribunal accepted Ms Martin's evidence that the respondents had sought to help the applicant out by buying the property. The Tribunal gave particular weight to Ms Martin's evidence that the respondents had never been threatening towards the

applicant and her description of the visit to the property on the 30 September 2022 as one where there was no element of intimidation.

74. The Tribunal found the second respondent to be a credible and truthful witness.

The Tribunal accepted her evidence that the applicant had voluntarily moved out of the property on 30 September 2022. Her evidence was corroborated by the text messages that had been submitted which showed conversations between the applicant and the second respondent in the period before he moved out discussing the sale of furniture and removal of the applicant's possessions. The tone of the text messages was cordial with no suggestion of intimidation or harassment on the part of the respondents.

75. During her evidence the second respondent stated that she was being sent abusive texts by the applicant. Notwithstanding that she retained her composure and was measured throughout her evidence.

76. The Tribunal took into account that that applicant had suffered from mental health and addiction issues. He had lost his employment during 2022. In his evidence he stated that during August and September 2022 he was not sleeping and drinking heavily. The Tribunal did not accept the applicant's oral evidence that the reason he left the property was due to the threatening behaviour and conduct of the respondents or their malicious conduct. While it was accepted there had been a deterioration in the relationship between parties the Tribunal was not persuaded that the applicant had left due to the conduct of the respondents. The applicant stated that he had been advised that he would be provided with alternative accommodation by the local authority. The Tribunal determined that having been given some assurance that he would be provided with alternative accommodation, which he subsequently did receive, the applicant decided to leave the property.

77. The Tribunal did not find the applicant's evidence that he had been threatened and intimidated to be persuasive. He clearly felt great animosity towards the respondents however no independent evidence was provided to show that their conduct was harassing. The Tribunal determined that it was possible that the applicant's response to the applicants may have been impacted by his medical/addiction issues however no direct medical evidence was provided on this point. The applicant's demeanour during the hearing showed that he

became agitated. He left the hearing during the second respondent's evidence as he had difficulty managing his emotional response to the second respondent. This led the Tribunal to question whether more generally, his response to the respondents was proportionate.

78. The Tribunal considered the letter from Dumfries and Galloway council dated 2 November 2022 finding that the applicant had become homeless through no fault of his own. The Tribunal gave limited weight to the letter as it did not make any reference to the circumstances leading up to his leaving his previous address and did not refer to the respondents' conduct. The Tribunal also considered the excerpts from the Dumfries and Galloway Council's homelessness file. These recorded the applicant's representations to the council after he had received the notice dated 19 August 2022. The Tribunal gave limited weight to the documents as they showed what had been said by the applicant to the council but did not contain independent evidence. The documents also appeared to have been redacted and were accordingly incomplete in describing the Council's inquiries.
79. The Tribunal determined that there had been a breakdown in the relationship between parties however, they preferred the evidence of the second respondent and Ms Martin that at no time was the conduct of the respondents intended to interfere with the applicant's occupation to the extent that would lead him to leave the property. The Tribunal determined service of an invalid notice does not in itself satisfy the requirements of section 36(2).
80. The Tribunal determined that the applicant left the property voluntarily despite having received independent advice from a housing professional that he was entitled to remain in the property. The Tribunal determined that section 36(2) does not apply.
81. As the Tribunal determined that no unlawful eviction had taken place no further determination was made in relation to the level of any damages awarded. The Tribunal observes that the valuation report submitted does not provide a valuation as at the time immediately before the alleged unlawful eviction took place and accordingly does not fulfil the requirement of section 37. In any event as no unlawful eviction has been found to take place 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.

# M.C-Kelly

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Legal Member/Chair

10 September 2025  
Date