



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/24/2360

Re: Property at 7 Farm Terrace, Burnbank, Hamilton, ML3 9LE (“the Property”)

Parties:

**Mrs Annette MacMillan, 54 Aberfeldy Avenue, West Craigs, Blantyre, Glasgow,
G72 0TB (“the Applicant”)**

**Mr Russell Stewart and Mrs Lauren Diamond-Stewart, both 24 Draffan Road,
Netherburn, Larkhall, ML3 3DE (“the Respondents”)**

**Tribunal Member:
George Clark (Legal Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and that the application should be refused.

Background

1. By application, dated 22 May 2024, the Applicant sought an Order for Payment against the Respondents in respect of costs incurred in unblocking a toilet drain and in instructing sheriff officers to trace the Respondents who, she said, refused to provide their forwarding address despite signing the Private Residential Tenancy Agreement agreeing to do so. The sum sought was £814.28, being £718.28 in respect of plumbers’ charges and £96 in respect of sheriff officers’ fees.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 1 November 2022, an Invoice dated 22 May 2024, for £96, from Stirling Park, sheriff officers, and two plumbers’ Invoices, the first dated 31 March 2024 for breaking concrete, cutting off metal, drain cleaning and rodding, removal of rubbish and repairing the path (£386.25), and the second, dated 3 April 2024, for an emergency call out to a blocked drain and high pressure jet wash (£415). The Applicant also provided three undated photographs purporting to show wipes/nappies that

had been removed from the drain, and an email from the Applicant to the Respondents of 26 March 2024, advising them that on the previous day she had discovered that the toilet was blocked, that, on investigation, it became clear that the blockage was due to used nappies/wipes being disposed of down the toilet and that, as the property had been empty since the end of the tenancy on 14 February and the flat above, which is also served by the sewer, had also been empty, the only conclusion was that the problem came from the Respondents' tenancy. The Applicant said that once she had the bills, she would be forwarding them to the Respondents and, if they chose to ignore her email, she would pursue recourse through the Tribunal. She provided a copy of the Respondents' reply of the same date in which they stated that the toilet was working perfectly when they vacated the Property and pointed out that the issue was not raised at the final checkout or in discussions regarding release of the deposit. They stated that no nappies or baby wipes had been disposed of down the toilet but accepted that flushable washlets had been flushed. They did not accept responsibility and asked the Applicant not to contact them again.

3. The Applicant also provided a copy of a further email of 9 April 2024 from her to the Respondents, with which she attached the costs she had incurred in clearing the blocked drain. She advised the Respondents that she would be making an application to the Tribunal. She drew the attention of the Respondents to one of 21 "Additional Tenancy Terms" set out in Clause 36 of the Tenancy Agreement, which stated that "When the Tenant vacates the Let Property they will inform the Landlord or Agent of their new address and the Tenant agrees that if they fail to do so the Landlord may pursue the Tenant for reimbursement of any costs incurred in tracing the Tenant's new address." The Respondents had not left a forwarding address, so the Applicant would be adding the cost of engaging a sheriff officer to confirm their new address.
4. On 11 October 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 1 November 2024.
5. On 23 October 2024, the Respondents made written submissions to the Tribunal. They stated that they had taken counsel from Citizens Advice on 16 April 2024. That advice had been that, after the completion of the tenancy and after the deposit was settled and agreed upon by both Parties, the tenancy was drawn to a close. Citizens Advice wrote to the Applicant on their behalf. They reiterated their stance and profusely rejected any claim that they caused malicious damage to the toilet. It would not be possible to flush a nappy down a toilet. The photographs showed a very large cloth. They repeated that the only items flushed apart from human waste were toilet roll and flushable washlets available in most supermarkets.
6. The Respondents said that the first time they were asked for a forwarding address was in the Applicant's email of 9 April 2024. They never refused to provide it and were never asked for it prior to that date. They did not respond personally to the email of 9 April. Citizens Advice contacted her on their

behalf, as they felt that email had reached a harassing and threatening threshold.

7. The Respondents' position was that the tenancy ended on 14 February 2024 and there was an end of tenancy inspection on that day. The deposit was settled on 14 March 2024. There was an extensive inspection of each room, and all wear/tear/damage was agreed upon. The notice that there was a fault with the toilet was submitted on 26 March 2024, 41 days after the tenancy ended and 15 days after the deposit was settled. The sewer is shared by two properties, not 7 Farm Terrace alone. Either property could be responsible for the blockage. The Property clearly had person(s) in attendance between 14 February 2024 and 26 March 2024. These persons could include the Applicant and/or contractors attending for inspection or repair. It was equally possible or probable for the same to be said for the property upstairs (8 Farm Terrace). The blockage could have occurred at any time after they left. The claim was made on circumstantial evidence, based on assumptions that, because the Respondents have children, it must have been them.
8. The Respondents included with their written submissions a copy of a letter from Clydesdale Citizens Advice Bureau, Lanark, to the Respondent. It was undated and appeared to have been sent to her email address. They referred to the Applicant's emails of 26 March and 9 April 2024 and stated that no mention of plumbing issues had been made when the tenancy ended and the deposit was returned by MyDeposits Scotland and that the Respondents robustly disputed any claims for repairs, given that the apparent issue had arisen six weeks after the tenancy ended.
9. A copy of the Respondents' submissions with their attachments was sent by the Tribunal to the Applicant by email on 29 October 2024.
10. A Case Management Discussion was held on 18 November 2024. The application was dismissed by the Tribunal, as the Applicant was not present or represented and it was not clear that she wished to rely on the matters within the case. The Decision was emailed to the Applicant on 20 November 2024 but was recalled by the Tribunal on 16 December 2024 in the interests of justice, as the Applicant stated that she had not received the email of 11 October 2024, advising her of the date and time of the Case Management Discussion. It was rescheduled for 12 May 2025, but was postponed at the request of the Applicant, as she was to be out of the country on that date.

Case Management Discussion

11. The rescheduled Case Management Discussion was held by means of a telephone conference call on the morning of 17 November 2025. The Applicant was present, as was the Respondent, Mr Russell Stewart.
12. The Applicant confirmed to the Tribunal that she carried out the exit check herself and that she did not test whether the toilet was working properly. The problem was discovered a few weeks later when she was in the Property to

allow viewings. The waste pipe is shared with the flat above, but it had been empty for some weeks and had been sold.

13. Mr Stewart challenged the statement that the upstairs flat had been empty for some time, He said that the tenants there moved out only a day or two before them, as he met the landlord carrying out their checkout inspection when he was loading the car in preparation for leaving the Property. He repeated that he and his wife would never have put nappies in the toilet. Nappies would never be flushable in any event. Mrs MacMillan retorted that the Respondents had admitted in their email of 26 March 2024 that they had flushed washlets down the toilet. Mr Stewart said that washlets are toilet-safe and bio-degradable. They are not wipes. It was not possible to say that neither the toilet in the Property or in the flat above had not been used between the end date of the tenancy and 26 March 2024.
14. The Applicant told the Tribunal that she felt she had provided enough evidence that she had to instruct a plumber with specialist equipment. The plumber's advice had been that the problem was coming from the Property and not the flat above, which was empty. She had been present when her contractors were there on 19 February 2024 and the toilet had not been used at that time.
15. Mr Stewart accepted that the Tenancy Agreement contained a clause regarding a forwarding address but stated that he would have given it if he had been asked for it.
16. In concluding remarks, Mr Stewart said that the Respondents had regarded the matter as closed when the Applicant did not respond to the email from Citizens Advice and they heard nothing further until they received notification by the Tribunal of the application, in October 2024.
17. Mrs MacMillan told the Tribunal that she had never received the email from Citizens Advice and wondered whether it had been inadvertently mis-addressed. She concluded her remarks by stating that the facts she was arguing were backed up by the photographs and Invoices.
18. The Parties confirmed that they had no further information or documentation that they wished to provide, that they were happy for the Tribunal to determine the application on the basis of the written representations and the evidence given at the Case Management Discussion and that they did not wish a full evidential Hearing.

Reasons for Decision

19. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information

and documentation it required to enable it to decide the application without a Hearing and that the Parties were content with that course of action.

20. The Tribunal considered first the Applicant's claim for the costs of carrying out work to clear a blocked drain at the Property. The Respondents vacated the Property on 14 February 2024, and a checkout inspection was carried out by the Applicant on that day. No problem with the sewage or drainage was detected at that inspection and any issues raised were agreed between the Parties and the deposit refunded by the tenancy deposit scheme on 11 March. On 25 or 26 March, the Applicant discovered that the toilet was blocked, and she instructed plumbers to investigate and carry out repairs. The plumbers removed material from the drainage system, and jet cleaning and other reinstatement works were carried out.
21. The Tribunal did not doubt that the photographs provided by the Applicant showed material that had been found in the system's pipework or that it would in all probability have caused a blockage, but the Tribunal had to decide whether the Applicant had demonstrated that it had been the result of nappies or wipes having been flushed down the toilet by the Respondents during their tenancy. The photographs appeared to show a mass of white material, but the Tribunal could not say with any certainty that it comprised nappies or wipes. The Respondents had categorically denied flushing such items down the toilet. The Tribunal also noted that the pipework in question is shared with the flat above and, although it appeared to have been empty when the problem was identified, the Respondents stated that it had been occupied until a few days before their tenancy ended. The Tribunal was unable to determine whether that was the case, but the Applicant was not able to disprove it. In their response to the Applicant's email of 26 March 2024, the Respondents said that the toilet was working perfectly when they vacated the Property. The Applicant accepted that she had not flushed the toilet at the checkout inspection, but the Tribunal noted that there was no suggestion of there being any issue such as a foul odour at the inspection, which was carried out on the day the Respondents vacated. The Respondents would have been using the toilet up until that day and had not reported any problem with it.
22. Having considered carefully all the evidence before it, the Tribunal decided that the Applicant had failed to prove that the blockage had been caused by the Respondents flushing nappies or wipes. It remained a possibility that the problem was caused from the flat above and it was not possible to know exactly what the material that caused the blockage comprised. There had been a gap of some weeks between the end of the tenancy and the discovery of the problem, and it was not possible to exclude the possibility that someone had been in the flat above during that period. It was for the Applicant to prove her case on the balance of probabilities, and the Tribunal held that she had failed to do so.
23. The Tribunal then considered the claim in respect of sheriff officers' fees for tracing the Respondents. The Tribunal noted the terms of the Tenancy Agreement, but also that it is a document of 79 pages, with the provision in question being on Page 28. Whilst it did place an obligation on the

Respondents to provide a forwarding address and they admitted they had not done so, the Applicant does not appear to have asked them for the address before 9 April 2024. The Tribunal would have expected her to have done so, if it was important to her. She did not ask when the tenancy ended or at any time during the process of reaching agreement on the refund of the deposit. There was no evidence to indicate that the Respondents had wilfully refused to provide a forwarding address. They sought and obtained advice from Citizens Advice on the emails of 26 March and 9 April 2024, and Citizens Advice responded on their behalf. The email from Citizens Advice was correctly addressed and, although the Applicant said she never received it, the Respondents were entitled to assume that she had and that, having received no response, the Applicant had decided to drop the matter. They did not find out until the application and papers were served on them by sheriff officers on 14 October 2024 that the Applicant was seeking to pursue it further. The Applicant said that she did not receive the reply sent by Citizens Advice on behalf of the Respondents, but she does not appear to have chased up a response using the Respondents' email address, which was the normal means of communication between the Parties.

24. Having considered carefully all the evidence before it, the Tribunal decided that the Respondents had not refused to provide a forwarding address. They had failed to do so, but the relevant clause is a very small part of a very large document and the Tribunal understood that it could have been overlooked. The Applicant did not ask for the address when the tenancy ended or during the period of negotiation on the refund of the deposit or even in her email of 26 March 2024 when she told them about the issue of the blocked toilet. Accordingly, the Tribunal decided that the Respondents should not be held liable for the sheriff officers' fees for tracing them to their new address.

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.

George Clark

Legal Member/Chair

17 September 2025
Date