



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/25/1103

Re: Property at 8/2 Eyre Crescent, Edinburgh, EH3 5ET (“the Property”)

Parties:

Mr Christopher Lynch, 8/2 Eyre Crescent, Edinburgh, EH3 5ET (“the Applicant”)

Ms Carolyn Clark, 65 Dukes Avenue, New Malden, Kent, KT3 4HW (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member)

Decision

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

[2] This Application called for a Case Management Discussion (“CMD”) by conference call at 2pm on 14 November 2025. The parties were personally present. The Respondent had instructed agents to lodge written representations on her behalf setting out her opposition to the Application. They were however not instructed to appear further on the Respondent’s behalf. The Applicant had also submitted further written representations by email dated 28 October 2025. The Tribunal began by ensuring that everyone had sight of the documentation submitted.

[3] In the Application, the Applicant seeks a Payment Order against the Respondent in the sum of £31,370.00, failing which, an order in the sum of £17,640.00. The claim was clearly not well set out and conflated various issues as further commented on below.

The Applicant was a former tenant seeking compensation from the Respondent who was his ex-landlord.

[4] The Tribunal invited the parties to speak to their respective positions and in particular gave the Applicant an opportunity to respond to the Respondent's critique of the basis of his claim.

[5] Having heard from parties and having considered the documentary materials before it, the Tribunal agreed with the Respondent's position that this Application ought to be summarily refused. In explaining why so, it may be helpful to simply refer to the representations submitted by the Respondent's agents which accurately and fairly set out the position and then commenting on each part of their defence in turn. Their position is as follows:

"Rent Repayment Order - not competent

The Property in which the subject matter of this claim arises is 8/2 Eyre Crescent, Edinburgh, EH3 5ET (the "Property"). The Property is based in Scotland. At section (C) of the Form F the Applicant seeks the grant of a "Rent Repayment Order" by the First Tier Tribunal for Scotland Housing and Property Chamber. A Rent Repayment Order is a mechanism provided for under Chapter 4 of the Housing and Planning Act 2016. A Rent Repayment Order in connection with any breach of HMO licencing conditions is governed by part 2 of Housing Act 2004. Both Acts (and in particular Chapter 4 and Part 2 of said Acts) apply only to England and Wales. There is no equivalent mechanism applicable in Scots Law. It is not therefore competent for the First Tier Tribunal for Scotland to grant the order craved at part (c). This is not a remedy available to the Applicant in his application to the First Tier Tribunal for Scotland. Accordingly the claim ought to be summarily dismissed."

[6] The Tribunal upheld this line of defence. The Application specifically referred to seeking an order which is unknown to Scots law. In that regard the Application was in jeopardy of being refused from the very start. However, if this had been the sole failure of the Application then perhaps the Application could have been amended to allow this to be re-phrased. However, there were other significant problems to follow. The Respondent's next line of defence was:

"Compensation for Criminal Offence – not competent

At paragraph 1 of the Applicant's email to the Tribunal of 26 March 2025 the Applicant submits to the Tribunal that operating an HMO licence is a criminal offence under the Housing Scotland Act 2006. It is not clear if these averments form part of the Applicant's claim. In any event and to address those, the Respondent would submit as follows. The First Tier Tribunal for Scotland does not have jurisdiction to investigate, hear or decide on criminal matters. It therefore follows that the contents of paragraph 1, 2 and 3 of said email correspondence have no basis in law in which to be considered by the Tribunal. The Application is therefore incompetent in this regard and ought to be summarily dismissed."

[7] At the CMD, the Applicant actually expressly said that he was not seeking compensation for criminal activity. But that is precisely what he was saying in his Application. He also appears to seek the Tribunal to find that the Respondent has committed a criminal offence. The Tribunal must be very mindful of the limitations of its jurisdiction in such matters. The Applicant's response to the Tribunal's discussion about these matters had the effect of making matters more confusing rather than less so. The Tribunal agrees that the Tribunal certainly does not have jurisdiction in respect of criminal proceedings regarding private tenancies. However, the Tribunal does not think it is necessarily accurate for the Respondent's agents to have written that the Tribunal could not theoretically entertain an Application for a Payment Order which may involve behaviour which may also be considered "*criminal*". However, it is accurate for the Respondent's agents to state that the Tribunal cannot award "*compensation for a criminal offence*" in these circumstances. The important circumstance is in this case that the Respondent has not been convicted of any criminal offence. The Tribunal cannot then find that the Respondent has committed a criminal offence and then award compensation. It is the Courts who have exclusive jurisdiction over whether there has been a criminal offence committed.

[8] The Respondent's next line of defence was:

Unjustified Enrichment

At paragraph 1 of the Applicant's email of 21 April 2025 he appears to rely on the Common Law Principle of Unjustified Enrichment as the basis for which the sums sought in this case. It is not clear if these averments form part of the Applicant's claim. In any event and to address those the Respondent would submit as follows. The Applicant's averments in this regard are denied in their entirety. The Applicant cites breach of Section 123 of the Housing (Scotland) Act 2006 as a basis for alleged unjustified enrichment. The aforementioned section relates to an "Amendment of Rent (Scotland) Act 1984, specifically section 90(3), relating to Premiums". His averments in this regard contain no relevance and ought not to be remitted to probation. In any event the application of the Common Law Principal of Unjustified Enrichment is not applicable inter alia in these circumstances The Application is therefore incompetent in this regard and ought to be summarily dismissed. Even if the principal of Unjustified Enrichment is applicable in these circumstances (which is denied) it is the Respondent's position that the Respondent has not been unjustifiably enriched in the circumstances. A person may be said to be unjustifiably enriched at another's expense when he has become owner of the other's money or property or has used that property or otherwise benefited from his actions or expenditure in circumstances which the law regards as actionably unjust, and so as requiring the enrichment to be reversed. Enrichments fall to be reversed only if they are unjustified. The general approach is to say that an enrichment is unjustified when its retention can be supported by no legal ground. Parties entered into a tenancy agreement for the above property. The parties agreed a rental amount. The Applicant paid rent for the room in the Property. A room was provided to the Applicant by the Respondent in return for payment of that rent. The sums paid to the Respondent by the Applicant are justified. Unjustified enrichment cannot be deemed to have taken place in this instance.

The Application is therefore incompetent in this regard and ought to be summarily dismissed.

[9] The Tribunal accepts this line of defence and would go further and say that the argument that the Respondent should pay back all the rent the Applicant ever paid to her, has no obvious home in the law of unjustified enrichment. Certainly not as expressed in the Application.

[10] The Respondent's defence goes on:

"Repairing Standards

Throughout the application there is references made by the Applicant to breach of the Repairing Standards. These averments hold no relevance for the following reasons: i) The applicant no longer occupies the Property; ii) the Property/Respondent is not subject to any Repairing Standards Order, nor are they aware of any such application; and iii) the current application is submitted under rule 111 and is therefore not a Repairing Standards Application. The Applicants averments in this regard ought to be entirely disregarded and not remitted to probation."

[11] The Tribunal agrees that this introduces yet more confusion into the basis of the claim. The Application simply does not stitch any of these threads together in any kind of coherent form.

[12] Finally, is the important matter of the actual sum of money the Applicant is seeking. The Respondent points out the following:

"Sums sought by the Respondent

Esto the Applicant has averred a proper legal basis for their application (which is denied) the Applicant has sought that the Tribunal grant an order in the sum of £31,370, failing which, an order in the sum of £17,640. It is unclear to the Respondent as to the basis these sums are sought and the calculations used to determine the sums due. There has been a fundamental failure to provide justification as to the calculations used. It is unclear as to why they are seeking to recover this sum specifically. The Respondent is entitled to fair notice. The Respondent cannot submit a defence to an action where it is unclear on what basis the sum is being sought. The Applicant is called upon to provide the basis for this calculation, in addition to the legal basis on which they claim it is due to be paid."

[13] The Applicant did address this when attempting to navigate his way past the Tribunal's own internal sift. In an email to the Tribunal about this matter he stated:

"I calculated the amount as the amount I have paid to my landlord in rent for the duration they were perpetrating criminal activity. I made a secondary request for a lesser amount after researching the maximum that the tribunal can compensate me for (36 times monthly rent) considering the extremely lengthy duration the criminal offence was being carried out. If neither

of these amounts are appropriate then I request the tribunal determine an appropriate amount of compensation”

[14] There is no legal basis put forward as to why, even if the Tribunal could award compensation for criminal behaviour in the manner hoped (which it can't), it might be appropriate to allow for the Applicant to achieve a net result whereby he lived rent free for the entirety of his tenure in the Property. No legislation or case law was produced or referred to that explained how that might be possible.

[15] The Tribunal noted that there was in fact no criminal conviction which actually underpinned these matters. The Respondent also stated that the Applicant hadn't even paid all his rent when he was in the Property. The Tribunal noted that statement appeared to be contested by the Applicant and so the Tribunal attaches no weight to that in the context of this decision to refuse the Application.

Decision

[16] The Tribunal considered that there was no benefit in allowing an adjournment for these issues to be resolved. That would have required a re-writing of the entire case. The Tribunal decided that this Application should instead be summarily refused. The Respondent should not have to take any further action in respect of this Application.

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

Date 14 November 2025