



**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/18/2921

**Re: Property at 139 Wedderburn Crescent, Dunfermline, KY11 4RY (“the
Property”)**

**Miss Joanna Pawlowska and Mr Piotr Michalowski, 121 Lady Campbells Court,
Dunfermline, KY12 0LE (“the Applicants”)**

**Miss Magdalena Mikiciuk, Mr Jakub Zahorowicz, 158 Wedderburn Street,
Dunfermline, KY11 4SB (“the Respondents”)**

Tribunal Members:

George Clark (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be determined without a
hearing and made an Order for Payment by the Respondents to the Applicants
of the sum of £240.**

Background

By application, received by the Tribunal on 30 October 2018, the Applicants sought an Order for Payment. In the application, they stated that they had moved into the Property on 20 June 2018. They had been illegally evicted on 28 July 2018. On that date, the Respondent, Miss Mikiciuk, had arrived at the Property saying that it was time to move out and later sent a message by text threatening the Applicants with the police. The Applicants packed up as much as they could and moved out, but left a few belongings behind. They returned to the Property a few days later, but found that the locks had been changed. They tried to contact the Respondents, but received no response. A few days later, Miss Mikiciuk sent them a message to say that she had left their belongings outside the flat near the bins, but they were not there when the Applicants tried to retrieve them. The Applicants reported the theft to the police, who advised them to write to the Respondents, giving them a chance to return their belongings or to make an offer of compensation. The Respondents did not reply to that letter. The Applicants said that the items concerned were a big

wooden table, a big grey carpet, an electric heater and a laptop, together with car insurance documents and the car registration certificate.

The application also made reference to an invoice for house cleaning and gardening and deductions from the deposit, but these matters were not considered further by the Tribunal, as they had been dealt with by the tenancy deposit scheme, with £600 of the £800 deposit being returned to the Applicants.

The Tribunal advised the Parties by letter dated 6 December 2018 of the date, time and venue for a Case Management Discussion. The Respondents were invited to make written representations by 28 December 2018. The Respondents made no written representations to the Tribunal.

A Case Management Discussion was held at The Vine Conference Centre, 131 Garvock Hill, Dunfermline, on the morning of 8 January 2019. The Applicants were present. The Respondent, Miss Mikiciuk, was present. The second Respondent was not present or represented. The Parties were assisted by an interpreter, Dorota Malecka.

The Applicants confirmed to the Tribunal that they had not been required to pay to the Respondents any further sums for cleaning or gardening following their departure from the Property and that the matter of the deposit had been dealt with.

The Applicants told the Tribunal that they had not had time or sufficient space in their small car to remove all their belongings on 28 July 2018. Mr Michalowski had been unwell over the following few days. They had returned to the Property on 4 August 2018, but found that the locks had been changed. They had video evidence, taken through the windows at that time, of the interior of the Property, showing the items they had left behind, but they could not retrieve them, as the locks had been changed. The Respondents had not replied to their messages seeking to recover them until 7 August 2018, when the Respondent, Miss Mikiciuk, sent a text message to the Applicants, stating "Your things are next to the bins, if someone hasn't taken them". This message was sent at 7.36pm, but, when the Applicants arrived at the Property, their belongings were not there. At this point the Applicants reported the matter to the police as theft and, having been advised to write to the Respondents, they did so through Citizens Advice Scotland.

The Respondent told the Tribunal that the items she had placed outside the Property were a coffee table, a rug and a heater. She said that there had not been a laptop in the Property and questioned why anyone would have left such an item behind when moving out. She confirmed that she had received the letter from Citizens Advice Scotland.

The Tribunal was satisfied that a number of items belonging to the Applicants had been put outside the Property without the Applicants being afforded a reasonable opportunity to collect them. The Respondent, Miss Mikiciuk, had told the Tribunal that she had put them outside and the Tribunal had seen the text message sent on 7 August 2018. The Tribunal accepted the evidence of the Applicants that the items had not been there when they called round after receiving that message. The only remaining issue was whether or not the items left behind when the Applicants moved out included a laptop and, as the Applicants had stated that they had video evidence taken through the windows of the Property on 4 August 2018, showing the items left behind, the Tribunal decided that it must see that evidence prior to determining the application and that it would adjourn the case to a further Case Management Discussion at which the Applicants would be expected to provide a laptop on which the video evidence could be seen.

The Tribunal adjourned the case to a Case Management Discussion to be held at The Vine Conference Centre, Dunfermline on 29 January 2019 at 10am. At the request of the Respondents, the Case Management Discussion was postponed and was rescheduled for 6 March 2019.

The Case Management Discussion

A Case Management Discussion was held at The Vine Conference Centre, 131 Garvock Hill, Dunfermline, on the morning of 6 March 2019. The Applicants were present. The Respondent, Miss Mikiciuk, was present. The second Respondent was not present or represented. The Parties were assisted by an interpreter, Wioleta Kwiatkowska.

The Applicants told the Tribunal that they had been unable to obtain the use of a laptop and asked the Tribunal to view the video evidence on a mobile phone. The evidence was then shown to the Tribunal and to the Respondent. It was dated 4 August 2018.

Reasons for Decision

In terms of Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, 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 and that it would make a decision on the application without a hearing.

The Tribunal was satisfied that the video evidence, taken through a window of the Property, showed the presence in the Property of a heater, rug and wooden table. The Applicants had told the Tribunal that the laptop had been behind the table, but it could not be seen on the video, due to reflection from the window glass through which it had been taken. Accordingly, the Tribunal was unable to determine that there had been a laptop in the Property at that time.

The Tribunal was, however, satisfied that the Respondents had put the Applicant's property outside on or about 7 August 2018, without giving them a reasonable opportunity to collect it beforehand and that the Applicants had been unable to re-enter the Property on 4 August 2018 as the locks had been changed. The video had shown the Applicants trying their keys in the door lock but being unable to get in. The Respondents had stated at the earlier Case Management Discussion that they had put a table, a rug and a heater outside.

The Applicants had stated in their application that they estimated the value of the wooden table at £100, the rug at £100 and the heater at £40. The Respondents had not commented on these figures and the Tribunal, therefore, accepted them as reasonable valuations of the items which they had lost as a result of the Respondents' actions.

Decision

The Tribunal determined that the application should be determined without a hearing and made an Order for Payment by the Respondents to the Applicants of the sum of £240.

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.



Legal member/Chair

6 March 2019

Date