Housing and Property Chamber
First-tier Tribunal for Scotland

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/20/2335

Re: Property at 1/3 Bruntsfield Gardens, Edinburgh, EH10 4DX ("the Property")

Parties:

Mr Paul Hartmann, 3F3 5 Comiston Terrace, Edinburgh, EH10 6AJ ("the Applicant")

Mr Fraser MacDonald, Villa L'Oursiere, BP 675, St Cergue, 1264 Vaud, Switzerland ("the Respondent")

Tribunal Members:

Nicola Irvine (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Applicant is not entitled to payment from the Respondent.

The decision is unanimous.

Background

[1] The Applicant made an application to the Tribunal date 25 October 2020 seeking an order for payment in terms of the Housing (Scotland) Act 2014 ("the 2014 Act") and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules and Procedure) Regulations 2017 ("the 2017 Rules").

[2] This dispute previously came before the Tribunal on 5 July 2021 at a Case Management Discussion ("CMD"), following which a Note summarising the CMD was issued to parties, setting out what matters were agreed and what issues were to be determined at a Hearing.

[3] A Hearing was assigned for 2 August 2021 and took place by conference call. Both parties participated in the hearing.

The Hearing

[4] Mr Hartmann advised that he intended to give evidence in support of his application and intended to call one witness in support of this application.

[5] Prior to hearing any evidence, the Tribunal reminded parties of the issues to be resolved, namely:-

(i) What was the contractual relationship between the parties
(ii) What is the legal basis for the Applicant's claim
(iii) Is the Respondent responsible for payment of any or all of the heads of claim

[6] The Applicant gave evidence and called his witness, Michael Howard-Johnston. The Respondent then gave evidence and called Ms Lynne Hainsworth and Dr Katrina Morris. A summary of the evidence is contained below.

Summary of evidence

Paul Hartmann

[7] Mr Hartmann resides at 3F3, 5 Comiston Terrace, Edinburgh. The Respondent is his former landlord. The relationship between the parties was one of landlord and tenant. Both parties believed that they were operating in terms of the written tenancy agreement, a copy of which has been lodged in a related case which proceeds under chamber reference FT/HPC/CV/21/0245.

[8] The Respondent breached the terms of the lease. Mr Hartmann was forced to make decisions to safeguard his health and property. He took drastic

action to find another place to live because of the Respondent's clandestine tactics.

[9] In response to questions from the Tribunal, he explained that his right to peaceful occupation, in terms of clause 5 (a) of the tenancy agreement, was breached. There was unlawful interruption of his occupation of the property by the Respondent. He was continually harassed and did not enjoy quiet possession of the property. He seeks recompense from the Respondent for his breach of the tenancy agreement. The unlawful interruption of his occupation of the property forced him to seek legal help, help for his mental wellbeing and he arranged for storage of his property for safekeeping.

[10] On 20 June 2020, he received an email from Lynne Hainsworth advising him that she would be attending the property the following week, to start painting. On 22 June 2020, he replied and asked her not to attend the property as on a previous visit to the property she had revealed that she had had covid. Ms Hainsworth replied instantly, advising that she would attend at the property that day. She emailed him *telling* him that she would be there, not asking. Two days later, he was wakened by a carpet fitter who entered his bedroom. Mr Hartmann began recording this event and he could hear Ms Hainsworth laughing in the kitchen. Ms Hainsworth ran at Mr Hartmann in the hallway of the property. He telephoned the police, who attended at the property. Police officers told him that they considered this to be a civil matter. They spoke to the Respondent by telephone who advised the officers that he has legal documents in place to have him evicted. A week later, Mr Hartmann took legal advice and his solicitor issued a letter to the Respondent advising the Respondent not to access the property, otherwise the tenancy may be further breached. Mr Hartmann also contacted Shelter and CAB.

[11] On 27 June 2020, Ms Hainsworth moved another individual, Francis Butler, into the property without Mr Hartmann's consent. Mr Butler manhandled him and tried to shake his hand, contrary to covid regulations. He has video footage of that incident. Mr Butler was very messy and constantly banged doors in the property, to the extent that neighbours complained about the noise. From this point onwards, Mr Hartmann secured his property elsewhere. The Respondent breached the tenancy agreement by moving someone else into the property without his consent.

[12] He recorded a telephone call between him and the Respondent on 8 June 2020 and transcribed that call. The transcription is lodged with the present application. The Respondent threatened him. The Respondent gave him less than 3 weeks to find another place to live. The Respondent told him that he could review the tenancy on a monthly basis.

[13] Charlotte Hocking sent an email to neighbours, advising them that he was moving out of the property. In response to questions from the Tribunal, Mr Hartmann explained that Miss Hocking was acting on behalf of the Respondent.

[14] In July 2020, the Respondent attended at the property, with the agreement of Mr Hartmann, under the guise of having a gas safety inspection carried out. Gas safety inspections were last done in 2011. The Respondent arranged for a contractor to attend the property and failed to give Mr Hartmann notice of that. The cooker in the property was condemned and had a "floppy flame".

[15] On 4 September 2020, the buzzer sounded in the property and when he answered, the person asked for Charlie. When Mr Hartmann looked out of the window, he saw Francis Butler and another man. In response to questions from the Tribunal, Mr Hartmann explained that this was another episode of harassment at the behest of the Respondent and an intrusion of his privacy.

[16] Between March and September 2020, there were 15 occasions when the property was accessed on behalf of the Respondent.

[17] In response to questions from the Tribunal, Mr Hartmann explained that he stopped paying rent around August 2020. The Tribunal referred to information provided by Mr Hartmann to an earlier Tribunal (in respect of case reference FTS/HPC/CV/1698) indicating that he stopped paying rent in June 2020. Mr Hartmann explained that he paid additional money to the Respondent in respect of council tax and that those sums were not passed on by the Respondent to the local authority. Mr Hartmann's view was that as the council tax money paid {£500} to the Respondent had not been passed on to the local authority, this money, partially off-set rent owed

[18] After a Tribunal decision in December 2020, Mr Hartmann consulted his solicitor. He was told by his solicitor that a conflict existed because the Respondent had instructed that firm to sell the property. He considered this to be further evidence of the Respondent's harassment of him. The Respondent did not disclose to the solicitor that there was a potential conflict of interest.

[19] The Respondent is liable to reimburse him for the storage costs incurred by him. The Respondent told him that he would be evicted. He was concerned about his belongings. He packed his belongings and secured them elsewhere. Mr Hartmann had understood that he was to be thrown out on the street. He was concerned about his belongings, which included thousands of pounds worth of equipment, because individuals unknown to him were accessing the property, such as tradesmen and a friend of Charlotte Hocking. He was unable to find alternative accommodation because estate agents were not allowing property viewings. The Tribunal observed that there are copy invoices and receipted invoices issued by The Big Yellow Self Storage Company lodged with the application, but they do not appear to add up to £952.92, which is the sum claimed. Separately, the Tribunal observed that the sum of £320 has been claimed for separate storage with JHC Storage. Mr Hartmann explained that some of the larger items of his personal property had to be stored with JHC Storage.

[20] The Respondent is liable to reimburse him in respect of legal fees incurred of £360. The Respondent denied that there was a lease in place and Mr Hartmann required to take legal advice about it. The nature of the Respondent's interactions was covert. Mr Hartmann believed that the Respondent was attacking him personally and taking advantage of him because of his personal difficulties and the breakdown of his relationship. The Respondent sent him an email in February 2020 advising that he wanted Mr Hartmann to leave. The Respondent shouted at him and threatened him. The Respondent gave him 6-7 weeks (54 days) to leave the property. Mr Hartmann suggested a different timescale and the Respondent snapped at him. He believes that the Respondent was bullying him.

[21] The Respondent is liable to reimburse him for removal costs of £120. He explained that he felt that he had been forced out of the property and was under duress. When Mr Hartmann gave the Respondent 28 days notice that

he would vacate the property, he no longer wished to be held to the terms of the lease and also perceived that other tenants of the property had left at short notice. In response to questions from the Tribunal, he accepted that it might be a "stretch" to hold the Respondent responsible for the removal costs.

[22] Mr Hartmann secured another property on 9 September 2020. He started to move some of his belongings to that new property. The new property was smaller and it was a furnished let. He had 2 custom made sofas which could not fit in his newly let property, so he had to give those away. He valued those sofas at £950. Mr Hartmann holds the Respondent responsible for the loss of these 2 sofas.

[23] Mr Hartmann is a self-employed locations sound recorder. He normally works all over the country. He also has skills to do post production work and he set up a personal studio in the property, which was a hobby of his. He lost all of his location work as a result of restrictions arising from the pandemic. He was offered the chance to work on a feature film. He accepted the work in principle, but ultimately had to turn the work away because he had to dismantle his studio. He was unable to set up a studio in his newly let flat right away. He values the work he lost at £3,960 and holds the Respondent responsible for that loss of work.

[24] He secured his other flat to rent from September onwards. The rent for that new flat was £333.40 more expensive per month that the property he rented from the Respondent. He had to rent it 2 months earlier to give him time to clean the flat he rented from the Respondent and to get his new flat ready to live in. Mr Hartmann incurred 2 months of more expensive rent, amounting to £666.80, for which he holds the Respondent responsible.

<u>Michael Howard-Johnston</u>

[25] Mr Howard-Johnston witnessed the conversation that took place between Mr Hartmann and the Respondent on 8th June 2020. He considered that the call was heated and emotional on the part of the Respondent. He considered the tone to be intimidatory and derogatory, with disdain for the rules relating to being a landlord. In response to questioning from Mr Hartmann, he explained that he considered Mr Hartmann's mood to be at a low point when another tenant (Francis Butler) moved into the property. He was

worried about Mr Hartmann and noted that he was stressed at the time. He advised Mr Hartmann at the time to get out of the property as soon as possible and also advised him to contact the police. He noticed that Mr Hartmann had not been working as much and he was worried about that. Mutual friends and he noted that Mr Hartmann had turned work away.

[26] As a landlord with multiple properties, he did not evict any of his tenants during the covid pandemic. He believed it was illegal. Some of his clients gave rent reductions to tenants.

[27] Mr Hartmann gave away two sofas and he commented at the time that he wished he had room to take them. Mr Hartmann gave things away, such as antique books and magazines. There was an overlap in Mr Hartmann having 2 tenancies. Mr Howard-Johnston advised Mr Hartmann to undertake therapy for his mental health.

[28] He saw other people in the property. He noted that the Respondent was aggressive and Mr Hartmann was stressed. Mr Howard-Johnston returned to the UK from Belgium in February 2020. At that time, he advised Mr Hartmann to phone the police and tried to reassure him that he could not be thrown out on the street. In his limited view of their interactions, he considered Mr Hartmann's relationship with Dr Katrina Morris was perfectly amicable. In response to questions from the Tribunal, he explained that, although he has lived abroad for extended periods of time, he has known Mr Hartmann for in excess of 30 years. Although he was abroad just before the pandemic, over the years, he had visited the flat several times.

[29] In response to a question from the Respondent, he conceded that if Mr Hartmann started therapy before March 2020, he had not told him. As far as he was aware, Mr Hartmann started therapy in March 2020. In response to further questions from Mr Hartmann, he explained that he had advised Mr Hartmann to seek legal advice and he considered that that stabilised the situation. He considers that the tenancy ended as well as it could have.

<u>Fraser Macdonald</u>

[30] Both parties were relying on the terms of the 2011 tenancy. The last time he received rent in full from the Applicant was the end of March 2020. His background with the Applicant started in 2010. By 2013, there were 13

occasions on which the Applicant did not pay rent. Sometimes 4 or 5 months of rent arrears accrued and Mr Macdonald sometimes incurred overdraft fees because rent was not paid on time. In 2013, he was thinking of serving notice to quit on the Applicant but Charlotte Hocking persuaded him not to. It was agreed that Charlotte Hocking would take over the management of the tenancy and the Applicant would pay rent to her.

[31] When Charlotte Hocking fled the property, Mr Macdonald gave the other tenants nearly 2 months' notice to leave the property. He tried to come to a reasonable solution. As a consequence of payment problems in the past, he had no intention of transferring the tenancy to the Applicant alone. Dr Katrina Morris told him that she had had enough and intended to leave at the end of March 2020. The Applicant was not keen to leave. Mr Macdonald put that down to a "cushy" rent, a big flat in a nice area. The Applicant told him he was interested in buying the flat from him. The Applicant offered to move out of the property by 24th May 2020. Mr Macdonald wasn't happy about that. The Applicant had paid the full rent of £1,400 in March 2020 so it was under consideration. Mr Macdonald believed that he had served the correct notice and was not subject to the new coronavirus regulations regarding notices. He offered to extend the notice period on a month-by-month basis. Dr Katrina Morris told him in June that the market was moving again and that she intended to move. He believes that Dr Morris was frightened to tell the Applicant that and he believes she felt vulnerable. The Applicant had withheld Charlotte Hocking's passport when she left the property.

[32] When the Applicant contacted him by telephone, trying to provoke a response from him and whilst the call was being recorded without Mr Macdonald's knowledge or consent, he threatened the Applicant with legal action. It was very frustrating. The Applicant sent him a letter and he corresponded with his lawyers. He issued a new notice to quit in June 2020, requiring the Applicant to leave by 1 November 2020. He is not aware of Lynne Hainsworth having entered the property without invitation. Ms Hainsworth was communicating directly with Dr Morris. Every time Ms Hainsworth was in the property, it was at the invitation of Dr Morris.

[33] By the end of June 2020, the situation had deteriorated and Dr Morris broke down in front of the police. Mr Butler was in the flat at the invitation of Dr

Morris and Mr Macdonald had nothing to do with that. Mr Butler is not an agent of his. Mr Butler moved out when Dr Morris moved out at the end of June 2020. The only other people who entered the property were tradesmen as required after an inspection. One tradesman attended at the property without an appointment and that was Mr Macdonald's fault.

[34] This was not harassment on the part of Mr Macdonald. His only threat was in relation to legal action. He disputes the Applicant's evidence in relation to having 3 weeks' notice. The notice went back to February 2020. Mr Macdonald viewed the video evidence of Mr Butler being in the property and disagreed with the Applicant's characterisation of man handling; he considered Mr Butler to have been friendly.

[35] Charlotte Hocking did not send an email to neighbours on Mr Macdonald's behalf and he did not ask her to do that. Mr Macdonald is not liable to reimburse the Applicant in respect of any of the heads of claim. Both parties have incurred legal expenses. The Applicant made a choice to do certain things and contract with people and is expecting reimbursement from Mr Macdonald, who denies liability. The Applicant would have had to incur removal costs come what may. The Applicant decided to leave the property before the notice came into effect. Mr Macdonald did not breach the terms of clause 5(a) of the tenancy agreement because, apart from anything else, he was not being paid rent by the Applicant. The Applicant carried on a self-employed business from the property which was in breach of the tenancy agreement. In response to questions from the Tribunal Mr Macdonald explained that he had been unaware that the Applicant had been carrying out business from the tenancy until he received a claim for loss of earnings from the Applicant.

<u>Lynne Hainsworth</u>

[36] The visits she made to the property on behalf of Mr Macdonald were always by invitation. Dr Morris invited her into the property. The only animosity was with the Applicant. Everyone else got on well with one another. She arranged for a painter to attend the property to provide a quotation for work to be carried out and obtained quotes for work required to the boiler and radiators.

[37] She tested positive for covid-19 in early March 2020 but never breached the coronavirus regulations by visiting the property. She did not use her diagnosis of having covid-19 as a threat to potentially infect anyone. She made it clear that she was not infectious and was very careful when around other people. She did not witness any harassment by Mr Macdonald or any agent acting on his behalf.

[38] In response to questions by the Respondent, she explained that Dr Morris was intimidated by the Applicant. Dr Morris was very upset when the Applicant called the police. She suggested to Dr Morris that a friend of hers, Francis Butler, could move into the property to keep the peace and mediate. Dr Morris was worried that the Applicant might damage the property. Francis Butler was invited by Dr Morris to stay and it was only for a few nights.

[39] She was unaware that the Applicant had a habit of video recording and considered that he was provocative during one altercation.

[40] In response to questions from the Tribunal, Ms Hainsworth explained that her role was to prepare the property for rent or sale. She was ill for 6 weeks with covid-19 and could not recall when she started the preparatory work. Ms Hocking moved out of the property and the Respondent told Ms Hainsworth that he wanted to re-let the property. He was considering renting the property out through Air b'n'b. The Respondent then decided to sell the property. Over the years, the tenancy operated in such a way that if one tenant moved out, the remaining tenants identified someone else who could move in.

[41] In response to questions from the Applicant, she could not recall the detail of an email exchange which took place between them in June 2020. She did not know why Francis Butler pressed the buzzer for the property on 4 September 2020. She and Dr Morris corresponded constantly. When asked by the Applicant about documentation produced to the police, Ms Hainsworth explained that she had a copy of the tenancy agreement and a letter from the Respondent explaining who she was and why she was there.

[42] She arranged for a carpet fitter to attend the property to measure the rooms and provide a quote. The carpet fitter attended at a time during mid-morning.

[43] Ms Hainsworth was told by Ms Hocking that the Applicant was undertaking therapy sessions.

Dr Katrina Morris

[44] Dr Morris was always given notice about anyone requiring access to the property and allowed access. In response to questions from the Respondent, Dr Morris explained that on one occasion, Ms Hainsworth attended the property and had a dog with her. Dr Morris likes dogs and asked Ms Hainsworth to bring the dog into the property. Ms Hainsworth attended on that occasion with a decorator. Dr Morris apologised to the Applicant later for allowing the dog into the property.

[45] Her relationship with the Applicant was complex. Towards the end of 2019, there were arguments between the Applicant and Ms Hocking. Dr Morris felt uncomfortable and decided that she wanted to move out of the property. She was not surprised when Ms Hocking moved out. Dr Morris intended to move out in March 2020, but could not do so at that time because of restrictions imposed because of the pandemic. The relationship between her and the Applicant was still cordial. They had an argument about Ms Hocking's passport, which the Applicant had retained. The Applicant agreed to hand over the passport. They had further arguments about Ms Hocking's belongings. The Applicant was tetchy because Ms Hocking had left belongings in the property.

[46] Francis Butler stayed at the property as her guest. She wanted him to be there and he was very helpful.

[47] She was told by Ms Hocking that the Applicant had been undertaking therapy since 2019.

[48] She was not duped into terminating her occupation of the property; she had decided that she wanted to move out. It took some time for her to find another property to move to and she gave notice to the Respondent of her intention to leave.

[49] In response to questions from the Tribunal, Dr Morris explained that the Applicant had called the police to attend at the property. The first time the police attended, she explained that she allowed Ms Hainsworth access to the property. The second time the police attended, she assumed that the

Applicant mistakenly thought that Dr Morris had not given Francis Butler permission to stay.

[50] In response to questions from the Applicant, Dr Morris could not remember whether she told him that a carpet fitter was to attend the property. The basis upon which she authorised people to enter the property was that she lived there and was entitled to allow people to access the property. She did not require permission from the Applicant. There were no requirements arising from the pandemic to have the property cleaned after people accessed the property.

[51] She accepted that in March 2020, she and the Applicant were close. In response to the Applicant's suggestion that they had agreed to negotiate a better time to leave the property, Dr Morris explained that she did not want to make waves with the Applicant, because he was stressed. Dr Morris felt less comfortable with the Applicant after he had retained Ms Hocking's passport.

[52] In response to questions from the Applicant, Dr Morris explained that she had become increasingly stressed and wished Mr Butler to stay at the property for 3 or 4 nights to make her feel more comfortable. When asked if she felt unsafe, Dr Morris explained that she felt uncomfortable. Sometimes she just went along with what the Applicant said because she did not want to get into an argument with him. Dr Morris did not want to leave her own room. She conceded that it was reasonable for the Applicant to expect her to tell him if people were going to access the property. Dr Morris could not be honest with the Applicant when she was living in the property.

Submissions

[53] The Applicant summarised his position by explaining that the Respondent deliberately breached the tenancy agreement and accessed the property. It was submitted that he did so without regard to the tenancy agreement. The Applicant considered the Respondent's treatment of him to have been unfair. The Applicant explained that the Respondent moved a flatmate into the property. Health and safety certificates were not in force throughout the period of the tenancy. That only came to the attention of the Applicant in July 2020 when a gas engineer attended. There was no carbon monoxide monitor in the property.

[54] The Respondent had no additional submissions to make.

Findings in fact

[55] The Tribunal had regard to all of the written representations, documents and video evidence lodged, and the oral evidence given during the hearing, whether referred to in full in this Decision or not, in establishing the facts on the balance of probabilities. The Tribunal found the following facts established:

(i) The contractual relationship between the parties was one of landlord and tenant.

(ii) The Applicant had an assured tenancy in respect of the property.

(iii) The terms of the written tenancy agreement dated 1 November 2011 governed the relationship between the parties.

(iv) The Applicant incurred expenditure in respect of storage costs, removal costs, legal advice and therapy sessions.

Reason for decision

[56] The Tribunal found that this is not a case which turned on credibility and reliability of witnesses. There was little dispute in the facts and the critical issue was the interpretation of those facts in relation to the remedy sought by the Applicant.

[57] The Applicant relied upon a breach of clause 5 (a) of the tenancy agreement as the legal basis upon which his claim is based. Clause 5 (a) of the tenancy agreement provides *"that the tenant paying the rent and performing the agreements on the part of the tenant may quietly possess and enjoy the property during the tenancy without any unlawful interruption from the landlord or any person claiming under or in trust for the landlord."* The Applicant gave evidence of instances which he considered demonstrated a campaign of harassment against him which constituted unlawful interruption of his occupation. The Tribunal does not accept that the instances referred to constituted harassment nor does it accept that there was unlawful interruption of his occupation of the property. The Applicant gave evidence that a number of people accessed the property on behalf of the Respondent without

permission from him to do so. However, Dr Katrina Morris gave evidence that she authorised most of the attendances by others at the property. The Respondent accepted that there was one occasion on which a contractor attended at the property and the Respondent had not given the Applicant advance notice of that; for that, the Respondent apologised.

[58] The Tribunal reminded the Applicant several times throughout the hearing that questions had to be asked of witnesses and that those questions had to be relevant to the issues to be determined. It was clear to the Tribunal that the Applicant believed that he had been harassed by the Respondent and consequently incurred expenditure. The Tribunal also noted that many of the events spoken to in evidence occurred whilst the coronavirus restrictions were in place and understandably, that may have caused him added anxiety.

[59] The Tribunal had no difficulty accepting that the Applicant found the months leading up to his departure from the property to be stressful. It is unfortunate that the relationship between the parties deteriorated in those last few months. The Tribunal accepted the evidence of the Applicant that he had incurred expenditure in respect of storage costs, removal costs, legal advice and therapy sessions. Not all of these items of expenditure were fully vouched. That aside, the Tribunal considered that there is no proper legal basis upon which the Applicant's claim can succeed and for that reason, the application was 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.

N Irvine

Legal Member/Chair	**22 August 2021** **Date**