

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/18/2289

Re: Property at 1 Balcarres Mains Cottages, Colinsburgh, KY9 1HL (“the Property”)

Parties:

Mr Duncan Meharry, 21 Deas Wharf, Kirkcaldy, Fife, KY1 1JJ (“the Applicant”)

Balcarres Estate, 2 Balcarres Mains Cottages, Balcarres Estate, Colinsburgh, KY9 1HL (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

This matter called for a Case Management Discussion at 2pm on 14 March 2019 in Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy, KY1 1XT. The Applicant was personally present. The Respondent was represented by Mr Robert Stokes, their Estate Manager.

The Tribunal began by seeking to clarify the respective positions of the parties. From the outset it became apparent that much of what the Applicant was seeking was far removed from his Application. The Applicant was clearly animated and at times was personally confrontational towards Mr Stokes. The Applicant was clearly emotional. The Tribunal however spent time trying to unpick what the Applicant’s position might be.

Despite this prompting from the Tribunal, the Applicant continued to give conflicting accounts of what he wished the Tribunal to order. At the start he said that he wanted only for “*Mr Stokes to be personally sanctioned*”. It was a matter of agreement that this Tribunal Hearing was the first time the Applicant

had ever met Mr Stokes. After further questioning from the Tribunal, the Applicant then made reference to seeking damages for an unlawful eviction in the sum of £30,000.00 which was the figure referred to in the Application.

Mr Stokes confirmed the Respondent's position as being that they denied carrying out any unlawful eviction. Mr Stokes pointed out that in November 2015 the Claimant left the property due to a hospital admission where he remained receiving in-patient care for six months. After this, he then moved into sheltered accommodation in his current address. Mr Stokes said that accordingly there was no merit at all in the Application.

After enquiring further on this point, the Tribunal noted that the account of events which the Applicant had stated in his Application and additional correspondence with the Tribunal was far removed from what was being said by him today.

The Tribunal noted that the Applicant had stated in written representations sent to the Tribunal that *"I was driven out of my home by harassment"*. The Applicant had also written *"I left at the end of that awful week June 27th 2017"*.

At this Hearing however, the Claimant was now freely admitting that he had left the property in November 2015 for in-patient hospital care before moving into permanent sheltered accommodation and that he had never returned to live in the Property.

The Tribunal considered that the Applicant was now giving a completely different account of matters which was manifestly different from the facts set out in the Application.

The Tribunal considered that the Application had no doubt been accepted by the Tribunal on the basis that it was an Application for damages for unlawful eviction under s36 of the Housing (Scotland) Act 1988. The information supplied to the Tribunal by the Applicant, claiming that he had been driven out of his home by harassment, had been essential in considering whether there was merit in accepting the Application under Rule 8.

However at the Hearing, the Applicant was now setting out a very different account from the information provided in the Application. The Tribunal enquired with the Applicant whether he had obtained legal advice or wanted to obtain legal advice. The Applicant replied that he had taken legal advice and wished to proceed without any legal representation.

The Case Management Discussion had also now become difficult as regrettably the Claimant was routinely now interrupting and making confrontational remarks to Mr Stokes.

The Tribunal adjourned to consider how to proceed. After reconvening, the Tribunal decided that any makings of a case for damages for unlawful eviction that had been set out in the Application, had now been significantly eroded by the numerous contradictions set out by the Applicant at this Hearing. The

Tribunal considered that it was not fair or reasonable to expect the Respondent to have to spend the necessary time and resources to defend such a case. It was plain that the Respondent had not been given fair notice of the case being brought against them. The key essence of the Application- the claim that the Applicant was driven out of his home by harassment- was clearly misleading.

The Tribunal considered whether it should adjourn to allow the Applicant the opportunity to take steps to rectify his case. On balance though, the Tribunal considered that the Respondent should not have to deal further with any procedural matters relating to this Application. Accordingly the Tribunal refused the Application and made no order.

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.

Mr Andrew McLaughlin

Legal Member/Chair

14/3/19

Date