



**Decision and Statement of reasons of Mrs Jan Todd, Legal Member of the First-tier Tribunal for Scotland (Housing and Property Chamber under Section 16 of the Housing (Scotland) Act 2014**

**Case Ref: FTS/HPC/CV/18/3273**

**Re: Property at flat 3/2 9 Robertson Street Greenock PA16 8DB**

**Parties: Miss Chiara Louise Cacioppo 7 Gleneagles Drive, Gourock PA19 1 HX ("The Applicant")**

**Mr Gioacchino Cacioppo, 7 Gleneagles Drive, Gourock PA19 1 HX ("The Representative")**

**Miss Natalie Stewart 163 Newark Street, Greenock PA16 7QW**

**("The Respondent")**

**BACKGROUND**

1. On 3<sup>rd</sup> December 2018 an application was received from the Applicant via her representative Mr Gioacchino Cacioppo, who is her father and is also her Power of Attorney. The application was made under Rule 70 of the Rules being an application for payment of £1500 in respect of damages and costs arising out of an alleged breach of contract.

The following documents were submitted to accompany the application:-

1. Copy tenancy agreement dated 27<sup>th</sup> January 2016
2. Copy Form AT5
3. Rent arrears letter from the Representative to the Respondent dated 19<sup>th</sup> August 2017
4. Rent arrears letter dated 5<sup>th</sup> and 13<sup>th</sup> August and 8<sup>th</sup> October 2016 from the Applicant to the Respondent
5. 50 pages of what's app messages between the Representative, the Respondent and her joint tenant Mr Mick Cavanagh

In addition the Respondent consulted a solicitor Mr Peter Harvey of Blair and Bryden solicitors who submitted a letter dated 26<sup>th</sup> February submitting that the application should be struck out on the basis that there had been eleven actions raised by the Applicant in Greenock Sheriff Court and a previous application to the first tier tribunal. The further submitted that this was another attempt by the claimant to seek enforcement of obligations in terms of the lease and this has already been decided

upon."in our submission this is an abuse of process and that Mr Cacioppo is a vivacious litigant". The Tribunal presumes the latter word should be "vexatious". Mr Harvey could not attend the CMD.

2. In terms of the tenancy agreement the Landlord is the Applicant and one of the tenants is the Respondent. The other tenant was Mick Cavanagh. The Applicant is choosing not to pursue the other tenant as his whereabouts are unknown.

The tenancy commenced on 1<sup>st</sup> February 2016 and continued until around October 2016. The Rent due in terms of the tenancy agreement is £495 per calendar month. The Applicant was asked by the Tribunal by letters dated 19<sup>th</sup> December 2018 and 31<sup>st</sup> December to confirm on what basis this further claim was being made, as there was a reference in the application to a Greenock Sheriff Court case for unpaid rent and there had been another Tribunal order dated 15<sup>th</sup> October 2018 for unpaid rent both arising out of this lease and involving the same Respondent and her co-tenant in the former case, and just the Respondent in the latter tribunal case.

The Representative responded by providing a new application form, claiming that the Respondent had breached the terms and condition of the lease causing costs and stress and the Applicant was seeking damages amounting to £1500 as a reasonable estimate of the applicants loss and damage. By order dated 25<sup>th</sup> January Karen Moore a legal member of the first tier tribunal with delegated powers of the Chamber President considered that the application should be accepted.

3. The revised application did not contain any detail of the alleged breach of the lease nor any specification of how the sum claimed is made up.

4. The Tribunal arranged a case management discussion to be held at the Gamble Halls Gourock on 1<sup>st</sup> March 2019 and advised the parties accordingly.

5. On 15<sup>th</sup> February the Representative submitted a further 10 page statement in support of his application. The further statement appeared to be a detailed response and commentary about a separate Tribunal hearing in relation to a case brought by the Respondent in this case against the Applicant for damages relating to the condition of the Property during the duration of the lease. The Representative complained in his statement that he felt the Tribunal hearing had not listened to his submissions and refused to view his DVD evidence. None of these representations appeared to relate to the current application.

At the CMD it was explained that Mr Cacioppo had tried to appeal the decision of the Tribunal in the case raised by the Respondent but was late in doing so and the appeal had been rejected.

6. The Tribunal issued a direction to the applicant asking for clarification of what loss or damage he is claiming in this application.

7. Mr Cacioppo submitted in response an e-mail dated 25<sup>th</sup> February confirming that he was making the following claims:-

- i. claiming costs from the tenant's failure to pay rent in terms of Clause 2.3 of the Lease;

- ii. damage or costs for breach Clause 13.1 of the Lease causing or likely to cause alarm distress nuisance or annoyance to any person, in particular relating to "the tenant causing distress by maliciously informing one of the owners across the landing of a gas leak at the boiler and falsely accusing the landlord of problem with gas open valve at gas fire, as well as false accusation of having buckets and towels to collect rain water."
- iii. Finally the Applicant through her Representative, is claiming damage for stress especially "when the tenants refused to have Mr Cacioppo as a representative in Court. They asked the Sheriff that Miss Cacioppo is the owner of the property and this is the person who should be in court." He went on to claim that this has caused Miss Cacioppo, the Applicant, to suffer panic attacks and to have monthly visits to hospital.

The final statement in Mr Cacioppo's e-mail states "The claim is for Greenock Court fees, fees to have people to represent Miss Cacioppo in Court for time wasted to attend false accusation from the tenant plus damage for stress.

### **The Case Management Discussion**

Mr Cacioppo attended for the Applicant and the Respondent appeared personally. The Convener advised that the case management discussion was to explore the issues, decide whether there needed to be a hearing on the matter or not and discuss how the dispute could be resolved.

The Convener started the CMD by exploring the first claim of the Applicant namely for costs relating to any claim for non-payment of rent by the Respondent.

The Convener noted that in the application to the Sheriff Court (which the Representative had lodged along with his e-mail of 25<sup>th</sup> February 2019) in 2016 for failure to pay one month's rent, there was a crave for "£495 arrears of rent plus expenses and 8% of interest from date of citation. Mr Cacioppo confirmed that at that hearing where he was not allowed to represent the Applicant, the Sheriff had suggested that the one month's rent could be taken from the deposit which had been lodged. Mr Cacioppo confirmed that was what then happened and the deposit was used to pay that sum. However he claimed there was no decision in relation to expenses and therefore he was still entitled to claim these. He also claimed he should be entitled to expenses and costs arising from the second claim for unpaid rent dealt with by the first Tier Tribunal in October 2018, which resulted in a payment of £990 in settlement of that claim along with interest at 8% which had also been claimed and was provided for in terms of the lease.

The Respondent submitted the matter had been dealt with and she felt she was now being harassed by the Representative and the Applicant with repeated applications arising out of the same matter.

It was clarified however that there were not eleven claims in the Sheriff Court but several incidental applications arising from the one claim.

In relation to the claim for damages in relation to an alleged claim about a gas leak, the Applicant did not specify how the damages should be calculated and Mr Cacioppo referred to the state of alarm the neighbours were put to and the trouble he was put to in dealing with this matter, instructing a gas engineer who found no issue

with the boiler and then dealing with the gas authorities to allow the power to be turned back on. The convener noted and asked the Representative about the fact he had made a claim for time and effort (the sum of £100) in the last claim with the Tribunal and this had been turned down.

Mr Cacioppo repeatedly mentioned that he felt the Respondent had been allowed to claim damages in her claim and he was not allowed to nor had the previous tribunal allowed him to show his video footage which he alleged showed the Respondent at the flat on 1<sup>st</sup> October when she was clearing out the property of her fellow tenant.

Finally Mr Cacioppo said he felt the Applicant was entitled to damages for stress and inconvenience especially in relation to the application in Greenock Sheriff court where, as her father, he was not initially allowed to represent her as he was not the owner of the Property and (he submitted) the Respondent did not allow him to be a Representative. It was this refusal to permit him to act that he was claiming caused his daughter a lot of stress and has resulted in a worsening of several medical conditions including Graves' disease.

### 3. DECISION

1. The Tribunal considered the parties submissions and considered the fact there have been three separate actions between these parties involving the period of rental of the lease.
2. The Tribunal also considered the application in terms of Rule 8 of the Rules and noted that Rule provides:-

#### *"Rejection of the Application*

8. (1) *The Chamber President or another member of the First Tier Tribunal under delegated powers of the Chamber President must reject an application if:-*

- a) they consider that the application is frivolous or vexatious*
- b) **the dispute to which the application relates is resolved***
- c) they have good reason to believe that it would not be appropriate to accept the application*
- d) they consider the application is being made for a purpose other than a purpose specified in the application or*
- e) **the applicant has made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First Tier Tribunal under delegated powers of the Chamber President there has been no significant change in any material considerations since the identical or substantially similar application was determined.***

3. The Tribunal noted that the first case which called in the Sheriff Court was settled by payment from the deposit of a sum of money equivalent to one month's rent. It is not clear whether any order was made by the Sheriff in that action or whether the Applicant withdrew the application, however what is clear is that expenses were claimed at that date, (the first hearing date is noted as 31<sup>st</sup> October 2016) and the matter had been resolved in favour of the Applicant. The Tribunal considered that therefor it would not be appropriate to

revisit the matter of costs or expenses now two and half years later. The matter of costs was for the Applicant to pursue if she had wanted to in that case. As the matter has been the subject of judicial procedure and has been determined it cannot be revisited.

4. The second part of the claim for costs from the Applicant appears to be, from the decision in the case numbered FTS/HPC/CV/18/0305 which went to a full hearing on 15<sup>th</sup> October 2018, "a claim for payment of amongst other things rent arrears". The outcome of that hearing was an order for payment for arrears of rent of £990 and interest on the arrears at 8% as set out in the lease. The Respondent advised that there was a discussion at that hearing about costs incurred by the Applicant in respect of payment to her father for his time in handling the case. No costs or expenses have been awarded in that case but the tribunal considers that the applicant in having made that claim has made an identical or substantially similar application and there has been no significant change in any material considerations since the identical or substantially similar application was determined. The dispute relating to rent arrears and costs should have been resolved in the last hearing and the Tribunal upholds the Respondent's claim that this is *res judicata*.
5. The second claim is for damages and costs relating to for breach Clause 13.1 of the Lease causing or likely to cause alarm distress nuisance or annoyance to any person, in particular relating to "the tenant causing distress by maliciously informing one of the owners across the landing of a gas leak at the boiler and falsely accusing the landlord of problem with gas open valve at gas fire, as well as false accusation of having buckets and towels to collect rain water."
6. Again this appears to have been the subject of a similar claim in the case FTS/HPC/CV/18/305. The written decision in that case states in paragraph 31 that " the Tribunal refused to make an Order for payment to the Applicant in the sum of £100 as requested in the application for time spent in attending to the property following termination of the lease to attend to matters referred to within the application. The claim for payment in the sum of £100 did not arise as a result of any fault or actions on behalf of the Respondent and in any event the attendance by the Applicant at the property following the termination of the lease to ensure that the fixtures and fittings in particular the gas fire was in working order is a step which would ordinarily be expected of a landlord or her agents following the termination of a lease". Any claim for loss suffered by the Applicant in attending to the report of the gas leak appears to have been considered by the previous Tribunal and refused. The matter is *res judicata*; it has been judicially considered and determined and cannot be re considered. In addition the Tribunal notes the previous Tribunal did not find that the Respondent was at fault.
7. Finally in regard to the final claim which is for "damages for stress and inconvenience especially in relation to the application in Greenock Sheriff court where her father the Representative was not initially allowed to represent her as he was not the owner of the Property and (he submitted) the Respondent did not allow him to be a Representative. It was this refusal to

permit him to act that he was claiming caused his daughter a lot of stress and has resulted in a worsening of several medical conditions including Graves' disease. The Tribunal find that, if there is any cause of action here, this is not within the jurisdiction of the Housing and Property Chamber of the First Tier Tribunal for Scotland. The Housing and Property Chamber's jurisdiction is to deal with disputes arising out of private rented tenancies. This is not such a claim. It appears to be a claim for damages arising out of actings in a sheriff court case not arising out of the tenancy itself.

5. After consideration of the application, the attachments and the correspondence from the Applicant the Tribunal considers that the Application should be dismissed on the basis that part of the claim has been resolved and part is frivolous in terms of Rule 8(1) (a) of the Rules.

#### **6. Reasons for the Decision**

The Tribunal considers that the Application should be dismissed on the basis that in relation to claims one and two of the application, the dispute to which the application relates has been resolved following the raising of a Sheriff Court Case and the determination of the Tribunal case numbered FTS/HPC/CV/18/0305 and/or the applicant has made an identical or substantially similar application and in the opinion of the Tribunal there has been no significant change in any material considerations since the identical or substantially similar application was determined.

In relation to the final claim for damages arising out of the representation of the sheriff court case this is not a matter that can be dealt with (if there is any cause of action here at all) by the Tribunal and it is therefore a futile and misconceived application.

"Frivolous" in the context of legal proceedings is defined by Lord Justice Binham in *R v North West Suffolk (Mildenhall) Magistrates Court (1998) Env. L.R. 9* At page 16 he states:-

*What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic" it is that definition which I have applied as the test in this application and, on consideration of this test I have determined that this application is frivolous, misconceived and has no prospect of success.*

#### **7. OUTCOME**

**The Application is dismissed.**

What you should do now:-

If you accept the decision there is no need to reply.

If you disagree with the decision then an applicant aggrieved by the decision of the Chamber President, or another member of the First Tier Tribunal acting under

delegated powers of the Chamber President, 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 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.

Information about the appeal procedure can be forwarded to you on request.

---

**Legal Member**

---

**Date**

delegated powers of the Chamber President, 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 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.

Information about the appeal procedure can be forwarded to you on request.

**J Todd**

Legal Member

Date

10/3/19