



**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/23/0358**

**Re: Property at Rowan Cottage, Drumsmittal, North Kessock, Inverness, IV1  
3XF (“the Property”)**

**Parties:**

**Mr Mark Rodgers, Rowan Cottage, Drumsmittal, North Kessock, Inverness, IV1  
3XF (“the Applicant”)**

**Mrs Elizabeth Ross, t/a Rosscroft Properties, Culbin, Drumsmittal, North  
Kessock, Inverness, IV1 3XF (“the Respondent”)**

**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 refused.**

**Background**

By application, dated February 2023, the Applicant sought compensation for the “unreasonable behaviours” of the Respondent towards him as a tenant, to include refusal to carry out repairs, refusal to provide documentation relating to safety of electrical systems, harassment, malicious accusations and threatening to unlawfully access the Property, in addition intimating that he was required to leave on the expiry of notice when she had not obtained a decree. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 7 February 2020 at a rent of £675 per month.

The individual complaints were set out in a letter which accompanied the application and are summarised as follows (using the headings provided by the Applicant). For ease of convenience, the Respondent’s written representations provided to the

Tribunal by her solicitor on 10 May 2023 are shown in italics after the summary of complaint under each heading.

**1. Threat to unlawfully access the Property.**

In an email of 22 June 2022, the Respondent had stated “I am giving you notice that on the 26<sup>th</sup> of June, no exact time can be given, that I will be accompanying the Electrician to do the survey of the fire equipment (alarms and lights). I also give you notice that should you not be at home I will take entry as this has to be done...” The Applicant took that to mean she would force entry if necessary and it caused him significant harm, alarm and distress.

*The Respondent denied that the email of 22<sup>nd</sup> June 2022 amounted to a threat to unlawfully access the Property. The Respondent has a right of access for the purposes of determining whether the house meets the repairing standard and carrying out works necessary to comply with the standard. The Respondent gave more than 48 hours’ notice of the date for access. The Applicant did not allow access and no access was then taken by the Respondent who subsequently made an application to the Tribunal for access. This application was granted and access was taken on 1 November 2022.*

**2. Stating in writing a requirement for me to leave Rowan Cottage on expiry date of her notice, and numerous allegations as regards my conduct contained within.**

The Applicant referred to a letter from the Respondent of 9 January 2023, in which she brought to his attention a number of items needing to be done before he vacated the Property and in which she stated - “I will do the internal inspection of Rowan Cottage at 11am on 05.02.23.” The Respondent said that as she did not have a decree, he interpreted this as intimating an intention to illegally evict him. There were, he said, also a number of spurious and unevicenced allegations against him in the same letter, designed to harass and intimidate him and which had caused him significant harm, alarm and distress.

*The Respondent’s view was that the letter could not reasonably be interpreted as an intention to illegally evict him. She had set out her concerns, which she was entitled to do. No loss had been incurred.*

**3. Landlord “inspection” report of July 8<sup>th</sup> 2022.**

The Respondent had made a number of false and malicious allegations in the report. This caused the Applicant significant harm, alarm and distress and included evidentially baseless allegations such as fixing items to the bathroom wall, which the Respondent could clearly see were suction cup fittings for a toilet roll holder. The Applicant had a right not to be deliberately harassed in this way.

*The Respondent’s view was that she had concerns about the condition of the Property. The Applicant denied her claims. No claim of a breach of tenancy*

*clause had been made by the Respondent and the condition of the Property did not form the basis of her application for an Eviction Order.*

**4. Allegations of deliberate damage to shower and threat to charge me for alleged damage.**

The Applicant stated that the Inspection Report had claimed that there was mould in various places in the bathroom, caused by lack of proper ventilation “and is already causing damage... there is an obvious lack of care and maintenance”. Further, in an email of 19 July 2022, the Applicant had stated that she would arrange access for a plumber/joiner and herself to assess the situation regarding water ingress “the cost of any work to remedy the problem you will be billed for”.

The Applicant had provided the Respondent with photographs showing these allegations were false and also Wood Moisture Equivalent readings showing no dampness/water ingress. The Respondent’s plumber and joiner took damp readings which showed no penetrating damp/leak, and their advice was to replace some mastic to the shower area. Such minor cyclical maintenance is a landlord’s responsibility. This pattern of malicious allegations and seeking to make every allegation the responsibility of the Applicant as tenant was designed to intimidate and harass him and had caused him significant stress and alarm.

*The Respondent’s view is that the passages quoted above from the Inspection Report did not support the contention that the Respondent had alleged deliberate damage caused by the Applicant and could not reasonably be construed as an attempt to intimidate and harass the Applicant.*

**5. Allegations of unreasonable behaviour – self installation of dishwasher and allegations I had altered plumbing.**

The Applicant referred to the Respondent’s comment in her letter of 7 January 2023 that the Property was never plumbed for a dishwasher and that he had altered the pipework to make an installation with no permission from the Respondent. The dishwasher was a free-standing table-top one and there is provision in the sink itself enabling taps and/or a hose to be inserted precisely for this purpose. There had been no alteration to the pipework, which is plumbed to supply water to a washing machine and also for the waste water to a washing machine to be drained. All that was required were two commercially available adaptors, so that water would feed two, not one source, and the same for the waste. Again, this was little more than deliberately aggravating behaviour. The Applicant believed that what he had done was a reasonable tenanted use of the Property.

*The Respondent’s answer was that the description of the work done by the Applicant did amount to an alteration of the pipework and the Applicant had not sought permission in advance. This application is a claim for damages and there is no basis for such a claim. The Applicant has not been asked to remove the dishwasher.*

6. The enumerated list in the supporting paperwork “jumps” from 5 to 7, so there is no item 6.

**7. Failure to carry out repairs reported.**

This head of complaint was not considered by the Tribunal as it was the subject of a separate application for a Repairing Standard Enforcement Order. An Order had been made, requiring the Respondent to carry out certain works within 8 weeks of 26 April 2023. The Applicant did, however, also contend that, whilst the Respondent had produced a Satisfactory Electrical Installation Condition Report (“EICR”) dated 1 November 2022, the previous one had expired on 19 April 2022. The Respondent had also refused to provide Portable Appliance Testing (“PAT”) certification. She had stated on 11 August 2022 that the three items concerned, the fridge, washing machine and chest freezer had been tested and had stickers confirming that attached to them. The stickers were not attached and, when the appliances were tested on 1 November 2022, the chest freezer failed. This failure could have had very serious and potentially fatal implications for the Applicant. The Respondent had still declined to remove the defective freezer.

*The view of the Respondent was that the Applicant had suffered no loss and had not set out any basis for a claim for solatium.*

**8. Allegations made by Mrs Ross to Police Scotland that I had deliberately and/or maliciously or criminally damaged her fence.**

This matter was not considered by the Tribunal as the Applicant accepted that the fence lay outwith the let Property, so any dispute regarding damage to it was not between a landlord and a tenant.

**9. Incorrectly advising me that I was required to move out of Rowan Cottage on the date of expiry of my notice.**

This matter is covered under heading 2 above.

The Applicant stated that he felt that the Respondent had acted unreasonably towards him in his tenancy, and in particular had threatened to illegally access the Property, whether he was there or not, and insisted on carrying out a “move out” inspection on the day of expiry of his notice, which was essentially unlawful when she did not have a decree entitling her to require him to move. She had failed to carry out a number of repairs and/or to provide evidence of compliance with a number of statutory requirements. He believed he should be compensated for these behaviours and also wished the Tribunal to direct the Respondent not to write to him requiring him to leave by any means other than a lawfully obtained decree executed by a sheriff officer.

The Respondent argued that any claim made on the basis of damages for unlawful eviction or for wrongful termination by Eviction Order was incompetent, The Applicant remained in the Property and has not been evicted, so a claim for unlawful eviction could not be made. No Eviction Order has been made, so a claim for wrongful eviction or wrongful termination was incompetent.

In further representations of 23 May 2023, the Applicant contended that if a landlord acts either unreasonably or unlawfully towards a tenant, the tenant should have the ability to ask the Tribunal to consider redress in terms of damages. Additionally, in accepting the claim, the Tribunal had at least indicated that at a basic level there was an arguable case to consider, otherwise it would have been obliged to dismiss it as either made on no lawful basis or without any reasonable prospect of success. The eviction process on the basis of hardship had been rejected by the Tribunal. The view of the Applicant was that there was never any reasonable ground to have issued a Notice to Leave based on alleged hardship. It was simply a retaliatory Notice issued following the Applicant's issuing the Respondent with a formal notice of repairs being required to the Property. Her behaviours were unreasonable and should give rise to consideration of damages. He argued that the situation was analogous to the provisions of Section 58(3) of the Private Housing (Tenancies) (Scotland) Act 2016 Act which permits the Tribunal to make a wrongful termination order if it finds that the former tenant was misled into ceasing to occupy the let property by the landlord. There was never any ground for the Respondent's claim to evict him.

The Applicant restated his view that there was no proper construction applicable to the Respondent's email of 22 June 2022 other than that it contained a direct threat to access the Property on the time and date stated, whether he was present or not. Further, the only reasonable interpretation of the Respondent's letter of 9 January 2023 was an intention to force the Applicant to leave the Property on 5 February 2023. This was inducing a tenant to leave at a given time or date when that cannot be lawfully enforced without her subsequently obtaining decree and extracting and executing the same, and was unlawful. The misconduct allegations were examples of behaviour that is tantamount to harassment and bullying and is typical of landlords seeking to create some pretext to support a potential argument to eject. They were wholly baseless and unevidenced allegations, but the cumulative effect was to cause stress, fear and harassment and is unacceptable behaviour to which some penalty should be attached.

### **Case Management Discussion**

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 30 May 2023. The Applicant was present. The Respondent was also present and was represented by Mr Martin Smith of South Forrest, solicitors, Inverness. The discussion focused on the numbered items above.

In relation to Item 1, the Respondent's solicitor reiterated that the email of 22 June 2022 did not amount to a threat to unlawfully evict the Applicant. In any event, the Applicant did not allow access and no access was taken. The Applicant said that he took the email at face value. He confirmed that he had not attended his doctor in respect of the stress he said he had experienced as a consequence of the Respondent's behaviour.

With regard to Item 2, the Applicant said that he accepted there had been no illegal eviction, but contended that the Respondent was indicating in her letter of 9 January 2023 her intention to evict him. She had not said in that letter that she could not evict him without an Eviction Order. The Respondent's solicitor pointed out that the Notice

to Leave clearly advised the Applicant that he could not be evicted without such an Order, following an application to the Tribunal.

On Item 3, the Applicant said that he was not suggesting that damages under this head should be more than nominal, but it was unreasonable for a landlord to make baseless allegations and he had the right not to be harassed in this way.

In relation to Item 4, the Applicant told the Tribunal that the Respondent's allegations in the email of 19 July 2022 were that the issue in the bathroom was solely the result of his neglect. He had sent moisture readings, but the joiner and plumber still came out.

With regard to Item 5, the Applicant stated that all he had done was to put in an adaptor. The Respondent's solicitor responded that there had been an alteration to the pipework and that, in any event, the remedy being sought was disproportionate. The Applicant had suffered no loss.

The Applicant accepted that the portions of Item 7 that related to the repairing standard could be regarded as withdrawn. On the elements of Item 7 that were considered by the Tribunal, the Respondent's solicitor repeated that there had been no consequences for the Applicant of the testing not being up to date. He also commented that the access that had been refused by the Applicant had included access to enable the electrical checks to be carried out.

The Applicant accepted that the issues in Item 8 could not competently be considered by the Tribunal, and it was agreed that the matters in Item 9 had already been covered under Item 2.

In closing remarks, the Applicant stated his view that the behaviours of landlords will never change unless there are consequences for failures such as not ensuring that EICR and PAT testing are up to date. The Respondent's solicitor repeated that the claims related to illegal eviction or threats of it were incompetent as there was no Eviction Order. When a landlord does not fulfil his or her obligations, there are various remedies available to tenants. The Applicant, he stated, was seeking a punitive compensation award.

### **Reasons for Decision**

The Tribunal did not accept the statement by the Applicant that the fact that the Tribunal had accepted the application at least indicated that at a basic level there was an arguable case to consider, otherwise it would have been obliged to dismiss it as either made on no lawful basis or without any reasonable prospect of success. The preliminary sifting process carried out by the Tribunal when an application is received is designed to ensure that the application is in proper form and that procedural matters such as intimation of the applicant's complaints to the respondent has been made. The only grounds on which an application will be rejected at that stage are that it is frivolous or vexatious, the dispute to which it relates has been resolved, the Tribunal has good reasons to believe that it would not be appropriate to accept it or considers that it is being made for a purpose other than a purpose specified in the application, or the applicant has previously made an identical or substantially similar application and there has been no significant change in any

material considerations since the earlier application was determined. No view whatsoever is taken of the merits at the stage at which the Tribunal accepts an application. It is for Tribunal Members to consider the merits of the application when it comes before them at a Case Management Discussion or a Hearing.

The Tribunal also did not accept the Applicant's argument that the situation was analogous to the provisions of Section 58(3) of the Private Housing (Tenancies) (Scotland) Act 2016 which permits the Tribunal to make a wrongful termination order if it finds that the former tenant was misled into ceasing to occupy the let property by the landlord. That argument is fundamentally flawed. Section 58(3) only applies where a tenancy has been brought to an end and the tenant has ceased to occupy the property. The present tenancy continues and it is not a sustainable argument that seeking to inspect a property towards the end of a notice period given in a valid Notice to Leave is in any way analogous to the circumstances envisaged in Section 58(3) of the 2016 Act.

In relation to failures by landlords to carry out PAT testing timeously or to ensure the property is covered by a current EICR, there are clear remedies available to tenants under the Housing (Scotland) Act 2006 and the Applicant's statement in the abstract regarding landlords not changing their behaviours was not a competent matter for the Tribunal to consider.

The Tribunal then considered the heads of complaint in turn and its decisions are given under each heading as provided by the Applicant.

**1. Threat to unlawfully access the Property.**

The Tribunal did not uphold this head of complaint. The view of the Tribunal was that the intimation of intention to inspect the Property was not unlawful. The Respondent had to comply with certain legal obligations as landlord, including periodic safety checks and annual PAT testing and it appeared to the Tribunal that the request was entirely reasonable. More than 48 hours' notice was given. The wording of the intimation did indicate an intention to take entry (presumably with a key) if the Applicant was not there, but in the event, the Applicant was there and refused to allow access. The Applicant subsequently agreed that access could be given on 6 July 2022.

**2. Stating in writing a requirement for me to leave Rowan Cottage on expiry date of her notice, and numerous allegations as regards my conduct contained within.**

The Tribunal did not uphold this head of complaint. The Respondent had served a Notice to Leave and was entitled to seek to carry out an exit inspection in anticipation of the Applicant vacating the Property voluntarily. She was also entitled in this private correspondence to set out concerns she had regarding the condition of the Property and/or possible damage caused by the Applicant. On no reasonable interpretation of the letter of 9 January 2023 could it be regarded as intimating an intention to illegally evict the Applicant. The Notice to Leave would have set out clearly that the Applicant could not be evicted without an Eviction Order having been issued by the Tribunal.

**3. Landlord “inspection” report of July 8<sup>th</sup> 2022.**

The Tribunal did not uphold this head of complaint. The Respondent was entitled to express her concerns following the inspection carried out on 6 July 2022 and the Applicant was entitled, as he did, to disagree with her, but the Tribunal did not accept that the Respondent’s expressed concerns were malicious or that the contents of the letter could reasonably be construed as constituting harassment.

**4. Allegations of deliberate damage to shower and threat to charge me for alleged damage.**

The Tribunal did not uphold this head of complaint. The Respondent had at the inspection on 6 July 2022, identified black mould, which she believed resulted from inadequate ventilation of the room by the Applicant. She had also noticed that the silicon in the shower was breached. It was not unreasonable for her to be concerned that it might be penetrating damp, as the Applicant denied that it was due to condensation caused by lack of ventilation, and she was entitled to indicate that, if the problem had been caused by the Applicant, he would be expected to pay for any remedial work. The moisture readings taken by the Applicant and by the Respondent’s plumber and joiner seem to indicate that the problem was not penetrating or rising damp, so, apart from replacement of mastic pointing in the shower, no remedial work was required. The Tribunal did not regard the Respondent’s actions or the wording of the email of 19 July 2022 as being intimidatory or indicative of harassment. The Respondent expressed concerns and took reasonable steps to ascertain that her property was not affected by penetrating or rising damp.

**5. Allegations of unreasonable behaviour – self installation of dishwasher and allegations I had altered plumbing.**

The Tribunal did not uphold this head of complaint. The view of the Tribunal was that the Applicant clearly altered the plumbing by attaching new adaptors and the fact that they were readily commercially available and that the work was simple was irrelevant. The Respondent was entitled to be concerned that this work had been done without her prior consent and by an unqualified person.

**6. There is no numbered complaint 6.**

**7. Failure to carry out repairs reported.**

The Tribunal did not uphold this head of complaint. The Respondent did not dispute the fact that the EICR had expired on 19 April 2022, but it was a matter of which the Applicant would have been unaware at the time and, as the EICR obtained on 1 November 2022 was satisfactory the Tribunal held that the Applicant had suffered no loss or damage and had not set out a case for solatium, as he was unaware of the problem at the relevant time. The Tribunal made no finding as regards the stickers which the Respondent said were on the electrician items and which the Applicant denied were there. There was no way of determining whether they had at some point been attached to the items following PAT testing. The issue regarding the failure of the Respondent to remove the chest freezer was irrelevant, as the



Respondent is aware that it has not passed PAT testing, so should not be used. The Respondent's solicitor also stated at the Case Management Discussion that the Applicant has refused to allow it to be collected, but it was not necessary for the Tribunal to make a finding on that point.

**8. Allegations made by Mrs Ross to Police Scotland that I had deliberately and/or maliciously or criminally damaged her fence.**

This matter was not considered by the Tribunal as the Applicant accepted that the fence lay outwith the let Property, so any dispute regarding damage to it was not between a landlord and a tenant.

**9. Incorrectly advising me that I was required to move out of Rowan Cottage on the date of expiry of my notice.**

This matter is covered under heading 2 above.

Having determined that none of the heads of complaint in the application should be upheld, the Tribunal did not make an Order for Payment of damages or compensation.

### **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.**

**George Clark**

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**Legal Member/Chair**

**2 June 2023**

**Date**