



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 57(2) and 58(2) of the Private
Housing (Tenancies) Scotland Act 2016**

Chamber Ref: FTS/HPC/PR/22/4147

Re: Property at 2/1 3 Havelock Street, Glasgow, G11 5JB ("the Property")

Parties:

**Mr Andrew Bodie, Miss Eleanor Kirsty Alice Wood, 2/2 51 Rupert Street, Glasgow,
G4 9AP ("the Applicants")**

Mr Baldev Sood, 73 Stockiemuir Avenue, Glasgow, G61 3JJ ("the Respondent")

Tribunal Members:

Lesley-Anne Mulholland (Legal Member) and Melanie Booth (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that a wrongful termination order should be granted against the Respondent in terms of Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") and has decided to make an order for payment in the sum of THREE THOUSAND SIX HUNDRED POUNDS (£3600) STERLING. The order for payment will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

- 1. This is an application under Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 for a wrongful termination order of the tenancy at Flat 2/1, 3 Havelock Street, Glasgow G11 5JB.**
- 2. The Applicants were the former tenants and the Respondent is the Landlord and owner. The Applicants seek compensation in the sum of £5,400 representing 6 months' rent at £900 per month.**

3. The Respondent denies the wrongful termination of the tenancy.

CASE MANAGEMENT DISCUSSION AND HEARINGS

4. A two-member Case Management Discussion (CMD) took place at 10.00 am on 31 March 2023 by teleconference. The matter could not be resolved without a hearing as some email exchanges made a number of allegations in a heated manner. We decided that a face-to-face hearing was required. The Parties were unrepresented. A Legal Member issued Directions to ensure the smooth running of the hearing by focusing the issues.
5. The oral hearing took place at Glasgow on 2 June 2023 and 18 August 2023. We heard evidence from the Parties and the 2nd Applicant's brother. We allowed each party an opportunity to respond to all matters arising. We reserved our decision which we give now with reasons.

ANALYSIS AND CONCLUSIONS

6. The Landlord and the 2nd named Applicant entered into a short-assured lease with Miss Avery in 2020. Miss Avery vacated the property sometime later and consent was obtained from the Landlord for the 1st named Applicant to take her place. The lease was due to end on 31 July 2022.
7. It was no longer possible to enter into a short-assured lease as the law had changed which required Landlords to enter into a Private Residential Tenancy Agreement before the outset of the tenancy. Neither the Applicants nor the Landlord appreciated this at the time. Both acted in good faith and adhered to the terms of the short-assured lease. There were no complaints.
8. It is helpful to set out the chronology here as taken from a review of the papers.
9. On 2 July 2022 the Applicants asked the Landlord to extend the tenancy from 1 August 2022 to July 2023. The Landlord agreed but requested an increase in rent from £900 to £1100 per calendar month [291, 298]. The Applicants agreed to meet the increase.
10. By then the Applicants had become aware that a short-assured lease was no longer lawful and that they required a Private Residential Tenancy Agreement. They brought this to the attention of the Landlord and asked for a 3 months' notice, as required by law, of any proposed increase in rent. They indicated that they would accept the rent increase after the notice period expired [290].
11. On 6 July 2022 a face-to-face meeting took place between the Parties. At that meeting the Landlord said that his daughter and co-owner of the property may need to move into the property. He was unhappy as the 2nd Applicant's

brother listened into the meeting by telephone. The Landlord felt pressurised and believed the Applicants had acted in bad faith.

12. The following day, the Landlord stated that after the unpleasant meeting on 6 July 2022, he intended to terminate the lease [300]. He issued a notice to leave (1st notice). This notice gave the wrong period of notice by asking them to leave by 31 July 2022 whereas they were entitled to 84 days' notice in law. The notice to leave stated that the Landlord intended his daughter to occupy the property.
13. On 12 July 2022 the Applicants let the Landlord know that they were entitled to and required a Private Residential Tenancy Agreement and a lawful notice period of 3 months to increase the rent.
14. On 13 July 2022 the Landlord issued a Private Residential Tenancy Agreement stating that the tenancy would run until 31 August 2023 even though it was not lawful to set an end date. The Landlord emailed the Applicants to say he had already given notice to leave which would expire by the last week in July. This was based on the wrong period of notice given on 7 July 2022. He stated that he needed the property for his daughter but nevertheless he attached a Private Residential Tenancy Agreement.
15. On 20 July 2022 the Landlord asked the Applicants if they still intended to move out at the end of July 2022 and said that he could extend the tenancy until August 2022 to help them out [293].
16. On 21 July 2022 the Applicants sent a text message stating that they were planning to leave by the end of October 2022 [296]. They relied upon being entitled to a lawful notice period of 84 days [294].
17. On 25 July 2022 the Landlord's daughter signed an affidavit swearing that she intended to live in property [288].
18. On 26 July 2022 the Landlord's daughter secured a new job with a probationary period of 3-4 months.
19. On 5 August 2022 a 2nd notice to leave was issued giving the correct 84 days' notice which was due to expire on 29 October 2022 [285-288]. This notice is lawful and can be relied upon.
20. On 19 August 2022 the Applicants gave the Landlord 28 days' notice as required by law, intimating that they would vacate the property on 17 September 2022. This notice is lawful.
21. At a date unknown, an advertisement of the rental property was placed on a rental site. It stated there that prospective tenants could take up occupancy on

25 August 2022 for £1200 per calendar month [52]. The Landlord stated orally that he was not aware of this posting, although he accepts the advertisement on the website states 25 August 2022 as the date the property would be available to new tenants. The Landlord was Directed orally to produce evidence of who placed the advertisement and why at the hearing on 2 June 2023. He was unable to say who posted it or why but agreed that it was on the website as advertised.

22. On 19 September 2022 the Landlord asked the Applicants for information for his new tenants as they had notified him of an intention to vacate on 19 August 2022.
23. On 1 October 2022 a Private Residential Tenancy Agreement commenced for the new tenants as per his advertisement stating the property was available.
24. On 29 October 2022 the notice to leave expired. It has to be recalled that this date was superseded by the Applicants' notice to vacate.
25. On 15 November 2022 an application was made for a wrongful termination order and compensation representing 12 months' rent which was subsequently changed to 6 months' rent.
26. The Applicants, at the hearing and in writing, requested 6 months' rent as compensation. The 1st Applicant stated in submissions that he suffers from epilepsy which was exacerbated by the stressful situation of having to find another tenancy in a heated market at a time when there was pressure from university students and a lack of supply.
27. The Landlord submitted that he had at all times acted in good faith. He has been a Landlord for many years and has never had any problems with any of his tenancies as the character references from previous tenants show. He believes that the Applicants have acted in bad faith and were out to get him. His daughter did not move into the property because she had to serve three months' probation in her job. The Applicants vacated the property sooner than the end of the 84 days' notice period. This meant that she would not be able to move in at that time. She did not know if she would be kept on in her job.
28. Having considered all the information before us, individually and together, we are satisfied that the Landlord misled the Applicants into leaving the property earlier than they intended doing so because they understood that the Landlord required the property for his daughter. This is clear from the information recorded before.
29. We do not accept that his daughter could not move in because she had a probationary period or because the Applicants moved out when they were

legally entitled to do so. We have carefully considered the chronology of events. We note that the Landlord mentioned his daughter moving in on 6 July 2022, the day following upon the meeting where he clearly stated that he believed the tenants had acted in bad faith by having the 2nd Applicant's brother on the phone. He had indicated on 2 July 2022 that he agreed to extend the lease to the end of July 2023 so long as the Applicants agreed to an increase in rent.

30. The Landlord's daughter has provided an affidavit to say that she intended moving in. That affidavit was provided on 25 July 2022. We note that the Landlord's daughter secured her new job on 26 July 2022. At no time did the Landlord rescind the notice or notify the Applicants that his daughter would no longer be moving in because of the insecurity of her contract by having to satisfy her employers over the 3 to 4 months' probationary period.
31. The Landlord relies upon the Applicants early termination of the tenancy when they gave 28 days' notice as being the cause of his daughter being unable to move in. However, we are concerned that an advertisement was placed on a rental website offering the property from 25 August 2022 to prospective tenants. The Landlord could not provide any information as to whom had placed the advertisement. He has not provided any information to show that his account had been compromised or hacked. We are therefore satisfied that the Landlord, or someone authorised by him, placed the advertisement for new tenants to take up occupancy from 25 August 2022. The Landlord provided a printout of the advertisement however this does not show the date that it was posted. The Landlord was unable to provide us with this information despite being Directed to do so.
32. It is inherently implausible that the Applicants or anyone else would have placed this advertisement on the rental website to manipulate the application we have to decide. On balance, we find that the Landlord, or those authorised by him, did in fact place this advertisement. This provides a useful insight into his motive.
33. Of particular importance is the fact that it was only after the face-to-face meeting on 6 July 2022, when the Landlord believed the tenants had acted in bad faith by having the 2nd Applicant's brother on the phone, that his daughter was mentioned. She was not mentioned before, when on 2 July 2022 the Landlord had agreed to extend the lease to July 2023 as long as the rent was increased. The dates are so close together that it seriously calls into question the Landlord's account. We do not find his explanations credible.
34. It is a matter of fact that the Landlord's daughter did not move in and another tenant did at a higher rental payment. We find that the Landlord deliberately misled the Applicants by claiming that his daughter intended to move in. We are satisfied that it was never his intention for his daughter to move in as

evidenced by the advertisement offering the property to prospective tenants as available on 25 August 2022. We do not accept the Landlord's account that he has no idea how this advertisement was made and available to prospective tenants on a rental website controlled by him. This is inconceivable.

35. The Landlord has failed to provide any independent evidence to show why his daughter and co-owner could not have moved in when the Applicants moved out. He has not provided any evidence to show that he was liable for mortgage payments and would have been out of pocket if his daughter had moved in. Bearing in mind his daughter is a co-owner and her job was insecure, it could easily be argued that it would have been beneficial for her to move into her own property without any liability for rent.
36. Having satisfied ourselves that the Landlord has wrongfully terminated the tenancy, we shall turn to consider the level of award.
37. The 1st Applicant stated in submissions that he has suffered from ill health which has been exacerbated because of the situation described before. He was Directed to submit any evidence he wished to rely upon before the hearing. He failed to make mention of his health situation. This has deprived the Landlord of an opportunity to cross-examine him on this matter. Accordingly, we do not take this into account as it was submitted too late in the day, outside the period allowed for in the Rules and it would be unfair to do so.
38. Nevertheless, we do accept the Applicants position that after having been advised that the property was required for the Landlord's daughter, that they had no option but to look elsewhere for a rental property. We accept there is high pressure during the summertime on rental properties because of the student influx, particularly in the West End of Glasgow where the 1st Applicant is studying.
39. We have taken into account the Landlord's position that he has been a good Landlord with no complaints against him for many years and that there were no complaints from the Applicants about his management of the tenancy. However, on this occasion, we are satisfied that he misled the Applicants because he found them demanding, despite them only requesting what they were entitled to in law.
40. The Landlord stated that he has been stressed throughout the process which has lasted over a year. We accept that. However, this was a situation of his own making. It is his evidence that he has been a Landlord for many years. In that case he ought to have taken legal advice to ensure that he was complying with the law. Ignorance of the law is no excuse. He was ignorant of the law by entering into a short-assured lease when a Private Residential Tenancy Agreement was required. He was ignorant of the notice period required to

increase rent, the notice period required to terminate the agreement and that a Private Residential Tenancy Agreement is unlimited in time.

41. In considering the amount to be paid by the Landlord to the Applicants, we have taken into consideration that the actions of the Landlord caused significant inconvenience and disruption to the Applicants, whose priority was having a roof over their heads. They had to move from the property and find other accommodation. We accept that accommodation in the West End of Glasgow was scarce and that the Applicants had to pay a higher rent of £1200 per month to secure their new tenancy.
42. The maximum penalty which can be imposed by the Tribunal in terms of Section 59(1) of the 2016 Act is 6 times the monthly rental. The monthly rental for this property was £900 immediately before the tenancy was terminated. In assessing the amount for the wrongful-termination of the tenancy, we have taken all the circumstances into account and decided that an order for 4 times the monthly rent is just, fair and reasonable.
43. Accordingly, we have decided to make an order for payment in the sum of THREE THOUSAND SIX HUNDRED POUNDS (£3,600) sterling.

Decision

44. A wrongful termination order for THREE THOUSAND SIX HUNDRED POUNDS £3,600 is granted.

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.

Lesley-Anne Mulholland

Legal Member/Chair

Date: 18 August 2022