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 58 of the Private Housing (Tenancies) (Scotland) Act 2016 and Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.**

**Chamber Ref: FTS/HPC/PR/20/0775**

**Re: Property at 1 Braevalla Chalets, Skinidin, Dunvegan, Isle of Skye, IV55 8ZS ("the Property")**

**Parties:**

**Mr Neale Farnaby, c/o 8 Fasach, Glendale, Isle of Skye, IV55 8WP, per his wife and representative, Mrs Susan Farnaby, ("the applicant")**

**Mr Iain Copeland, 1 Braevalla Chalets, Skinidin, Dunvegan, Isle of Skye, IV55 8ZS ("the respondent")**

**Tribunal Members:**

**Mr David Preston (Convener) and Mrs Elizabeth Dickson, (Ordinary Member)**

**Decision:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the tenancy agreement between the parties had not been wrongfully terminated by the respondent.**

**Background:**

1. By application dated 24 February 2020 under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 and section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the Act") the applicant sought a determination that the tenancy had been wrongfully terminated.

2. By Notice of Acceptance dated 13 March 2020 a legal member of the First-tier Tribunal with delegated powers so to do, accepted the application for determination by the First-tier Tribunal and appointed the case to a Case Management Discussion ("CMD").

3. A CMD took place by telephone on 13 August 2020. Mrs Farnaby represented the applicant and the respondent was represented by Mr Burd, Solicitor.
4. A Note of the CMD dated 13 August 2020 was issued to the parties in response to which the parties made further representations and submissions.

5. A full hearing took place by telephone on 24 September 2020 at which Mrs Farnaby was in attendance on behalf of the applicant and Mr Copeland who represented himself.

6. The tribunal had before it:

    a. Application form dated 24 February 2020.
    b. Tenancy agreement in the form of a Short Assured Tenancy dated 16 October 2018.
    c. Tenancy agreement in the form of a Private Residential Tenancy Agreement dated 6 March 2019.
    d. Representations from the respondent dated 30 July 2020.
    e. Applicant's response to representations dated 10 August 2020.
    f. Representations from the applicant dated 6 September 2020
    g. Representations from respondent dated 11 September 2020.
    h. Representations and submissions from the applicant dated 22 September 2020.
    i. The tribunal was also given access to a video lodged by the respondent, access to which was also provided to the applicant.

7. At the outset of the hearing the convener outlined the purpose of the hearing. he noted the productions and representations made by the parties but pointed out that the tribunal would only have regard to such evidence as was relevant to the question of whether the tenancy had been wrongfully terminated. The question of condition of the property before, during or after the tenancy arrangements between the parties were not relevant to that issue. As had been identified at the CMD the tribunal was required to determine the extent to which the stated ground of eviction, namely that the respondent intended to refurbish the property and that: he was entitled to do so; and that it would be impracticable for the applicant to continue to occupy the property given the nature of the refurbishment intended.

**Evidence**

8. Mrs Farnaby referred to the written representations and submissions. She said that the applicant had not been made aware that the respondent was intending to recover possession of the property and bring the tenancy to an end in April 2020. In any event, after the Notice to Leave was issued on 7 January 2020 and the tenant had been given temporary accommodation by his employers, it had been advertised for let on the Air BnB website as early as 9 February 2020.

9. Mrs Farnaby said that the rent had initially been £325 per month over the winter months and when the new lease was negotiated the respondent had asked for £650 but this was reduced to £500. In addition, the electricity had cost them about £200 per month through the pre-paid meter card.

10. Mrs Farnaby pointed out that the Notice to Leave had not contained any evidence of the intended refurbishment and merely stated “Property refurbishment”. These events had caused significant hardship for the applicant in having to find alternative accommodation at very short notice. She said that had the applicant been aware of the respondent’s intention to recover the property he would have been able to take action to find accommodation sooner and register for loca authority housing.

11. The respondent referred to his representations and submissions. He specifically referred to that part of the productions headed “Refurbishment – details”. He said that this showed the extent of the works required to the property which involved: replacing two windows; repairing or replacing roofing over the kitchen and bathroom; replacing or repairing the kitchen cabinets and worktops; investigating under the floors in the kitchen and bathroom; checking over and repairing or replacing the electrical wiring and sockets throughout; and the other items detailed in the productions. He also referred to the purchase orders and quotes included in his document. He explained that he had been unable to proceed with much of the intended work due to the lockdown and the attendant difficulties in getting supplies and materials as well as getting help to do the work.

12. The respondent said that he had suggested the figure of £500 per month as an average of the holiday rent and winter rent over a year. He had not brought any pressure on the applicant to take the tenancy.

13. The respondent’s position was that he had given more notice than he had been required to give under the Act. He was required to give 84 days’ notice and he had given over three months’ notice from 7 January until 14 April 2020.

**Findings:**

14. The tribunal made the following findings in fact:

    a. The respondent was in business of letting out the property as a holiday let with other holiday chalets at Skindin.

    b. In October 2018 the parties entered into a tenancy agreement for the property which was intended to subsist until April 2019 – ie over the winter months. Thereafter the parties entered into a further Agreement which took the form of a Private Residential Tenancy Agreement under the Act. The initial agreement had taken the form of a Short Assured Tenancy notwithstanding that the Act had the effect of replacing that form of tenancy.

    c. The new agreement was entered into to take account of an increase in rent to cover at least the summer months.

d. On 7 January 2020 the respondent issued the Notice to leave and depended on Ground 3 of Schedule 3 to the Act i.e. he intended to carry out refurbishment of the property.

e. The applicant secured alternative accommodation and left the property before the expiry of the Notice to Leave.

**Reasons for Decision:**

15. Section 58 of the Act provides:

> ***Wrongful termination without eviction order***
> *(1) This section applies where a private residential tenancy has been brought to an end in accordance with section 50.*
> *(2) An application for a wrongful-termination order may be made to the First-tier Tribunal by a person who was immediately before the tenancy ended either the tenant or a joint tenant under the tenancy ("the former tenant").*
> *(3) The Tribunal may make a wrongful-termination order if it finds that the former tenant was misled into ceasing to occupy the let property by the person who was the landlord under the tenancy immediately before it was brought to an end.*
> *(4) In a case where two or more persons jointly were the landlord under the tenancy immediately before it ended, the reference to the landlord in subsection (3) is to any one of those persons*

16. Ground 3 of Part 1 of Schedule 3 to the Act provides:

> *(1) It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property.*
> *(2) The First-tier Tribunal must find that the eviction ground named by sub-paragraph (1) applies if—*
> *(a) the landlord intends to refurbish the let property (or any premises of which the let property forms part),*
> *(b) the landlord is entitled to do so, and*
> *(c) it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord.*
> *(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(a) includes (for example)—*
> *(a) any planning permission which the intended refurbishment would require,*
> *(b) a contract between the landlord and an architect or a builder which concerns the intended refurbishment.*

17. The tribunal was satisfied that work was required, the applicant in his statement of 17th September 2020 stated *"There appears to be no maintenance or repairs carried out on this chalet for many years and it was well overdue a full overhaul during our residence there"*

18. The tribunal was satisfied on the written material produced by the respondent that he had intended to refurbish the property as outlined in the document

headed “Refurbishment – details” and the invoices and orders attached, although the tribunal noted that these were all dated after the end of the tenancy. Nonetheless we accepted the respondent’s explanation of the difficulties he had faced in view of the lockdown measures.

19. The tribunal was satisfied that the respondent was entitled to carry out the intended refurbishment of the property. It was clear from the documents and submissions that he was the owner of the property which he used in his business of holiday lets.

20. The tribunal was satisfied that it would be impractical for the applicant to have occupied the property during refurbishment.

21. The tribunal could not accept in all the circumstances that the applicant was not aware that the landlord intended to resume his business of holiday letting during the year 2020, although those intentions may have been frustrated by the covid-19 pandemic. The property forms part of a group of holiday chalets. The fact that they had been advertised on the Air BnB website did not affect the respondent’s intention to refurbish. There was no evidence presented to us of any bookings have been accepted prior to any refurbishment taking place. A question had been raised in relation to which chalet had been occupied by the applicant, but we accepted that there was only one chalet occupied, whatever it had been called or referred to in the documentation.

22. The tribunal was satisfied the respondent had given in excess of the required notice period.

23. In relation to the lack of evidence of the refurbishment intended we consider that this is not a requirement of the Act. Such evidence might be required for certain grounds of recovery of possession, such as details of rent arrears, or of a tenant’s anti-social or other unacceptable behaviour but was not necessary for all grounds. The respondent said that in any event he had been willing to provide details had they been requested.

**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.**

[redacted]

29 September 2020

David Preston