



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.

Chamber Ref: FTS/HPC/PR/23/0883

Re: Property at 25/1 Durar Drive, Edinburgh, EH4 7HW (“the Property”)

Parties:

Mr Stephen Lafferty, 8/3 Fountainhall Road, Edinburgh, EH9 2NN (“the Applicant”)

Ms Katarzyna Budek, 46 Bogwood Road, Mayfield, Dalkeith, EH22 5DZ (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Wrongful Termination Order should be made against the Respondent on the basis that the Respondent misled the Applicant into ceasing to occupy the property. The Tribunal determined that the Respondent shall make payment to the Applicant of the sum of two thousand pounds (£2000) within 14 days of service of this order.

Background

1. This was a hearing in connection with an application in terms of rule 110 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017, (‘the rules’) and section 58 of the Private Housing (Tenancies) (Scotland) Act 2016, (‘the Act’) for a wrongful termination (without eviction) order. The Applicant attended and he was represented by Mr Scott Gillanders and Miss Jasleen Kaur of the University of Strathclyde Law Clinic. The Respondent did not attend and was not represented.

2. A case management discussion ('CMD') took place on 6 June 2023 and the Tribunal fixed a hearing and made directions. A hearing due to take place on 23 August 2023 was adjourned at the Respondent's request as she stated she was involved in a road traffic accident on 25 July 2023. A second hearing fixed for 1 November 2023 was adjourned at the Applicant's request as he was abroad. The parties received notification on 20 October 2023 that today's hearing would require to take place in Glasgow Tribunal Centre rather than George Street in Edinburgh as the Scottish Covid Inquiry was taking place there. The Tribunal also made a direction for a Polish Interpreter as English is not the Respondent's first language.

Preliminary matters

3. The Respondent contacted the Tribunal on 30 October 2023 to ask to attend the hearing by telephone as she is the main carer for her daughter. The Respondent also stated that she would need an interpreter. The Tribunal wrote to the Respondent on 12 November 2023 as follows:

The tribunal legal member has considered your request. It is the legal member's view that the in person hearing will go ahead as planned. If the hearing was in person in Edinburgh you would have to make arrangements for the care of your daughter so a hearing in Glasgow would be no different.

However, if medical evidence was provided in connection with your daughter's diagnosis and further information was provided setting out the particular difficulties you face in travelling to Glasgow that will be considered by the legal member.

4. The Respondent did not provide any medical evidence or any further specification regarding the particular difficulties she had in travelling to Glasgow for the hearing. She sent an email on 9 November 2023 and stated that she would not require to arrange childcare for the hearing if it was in Edinburgh as the hearing would take place during school hours. At the CMD, as noted in the CMD note, the Respondent's position was that her daughter resided with her father during the week and the child's father took her to and from school. The Tribunal wrote to the Respondent on 28 November 2023 stating that in the absence of any documentation sent in response to the letter of 9 November 2023 the hearing would proceed as planned. On 29 November 2023 the Respondent wrote to the Tribunal with a copy of a letter from Social Security Scotland which confirmed she was in receipt of Child Disability Payment for her daughter. This document did not provide any details of her daughter's condition. No other documentation was produced.

5. The Tribunal invited the Applicant to consider whether he wished to seek to persuade the Tribunal to proceed with the hearing in the absence of the Respondent in terms of rule 29, or whether he was seeking to adjourn consideration of the application to another date. After a short adjournment to discuss matters the

Applicant's representative Mr Gillanders submitted that the Tribunal should hear the application in the Respondent's absence as this was only fair on the Applicant given he had had to travel from Auchterarder and there had already been a considerable delay. Having heard submissions and considered the matter, the Tribunal was not satisfied that the Respondent had a reasonable excuse for her non-attendance. She was aware of the date and had decided not to attend. The Tribunal did not consider it was fair to hear her evidence by telephone given the need for an interpreter and the fact an in person hearing was arranged. The application was made in April 2023 and this was the third hearing. The Tribunal in accordance with the overriding objective decided to proceed and hear the application.

6. The Respondent had sent lengthy submissions to the Tribunal on 23 November 2023. In terms of rule 13 these submissions should have been lodged by 21 November 2023 (7 working days before the hearing) The Respondent did not intimate the submissions to the Applicant and they were sent out by the Tribunal Chamber on 29 November 2023. The Applicant had no objection to the submissions being received late and the Tribunal allowed them to be received and form part of the case.

7. The Applicant's representative lodged two numbered bundles of documents. The two bundles consisted of all of the papers from the Applicant since his initial application was made in March 2023 and accepted by the Tribunal on 6 April 2023, with the exception of a letter from the Applicant's GP dated 15 June 2013 and lodged on 16 June 2023 which was not within the bundles.

Matters agreed at the CMD

8. The Applicant moved into the property in August 2021, and he left on 21 June 2022 after receiving a notice to leave. The rent was £450 per month.

The Applicant's Position

9. The Applicant does not have a copy of his lease. He rented a room in the property after finding an advert on Facebook Marketplace. The Applicant moved in on 13 August 2021. The property is a two bedroom flat however there were two other tenants in the property and the Applicant used the living room as a bedroom. There was a shared kitchen and bathroom. The Applicant had a cat and he came into conflict with one of the other tenants who did not like the cat. The Respondent sent him a message in February 2022 stating that she wanted him to move out of the property due to alleged antisocial behaviour. She then sent him a notice to leave dated 18 March 2022 by recorded delivery. No other notices to leave were issued but the Applicant was sent a reminder by the Respondent on 26 May 2022. The Applicant moved out on 21 June

2022 and the Respondent was aware of this. In February 2022 the Respondent told the Applicant she had a prospective tenant to look at the room. That individual moved some of his belongings in to the flat in March 2022. On 5 March 2023 the Respondent sent a message to the Whatsapp group chat in the flat stating that she intended to move back into the property. On 6 March 2022 the individual called Bartosz came to leave belongings and told the Applicant he was the new tenant. The Applicant received an abusive call from this individual on 1 October 2022 complaining that some of his belongings had been damaged. The Applicant contacted the police and made a complaint. The Applicant believes the Respondent may have moved back into the property recently because he has made this application. He believes Bartosz and one other tenant have been residing in the property since he left on 21 June 2022. The Respondent has sold her property in Dalkeith. The Respondent has removed herself from the landlord register and she received a warning for operating an HMO without a licence.

The Respondent's Position

10. At the CMD the Respondent submitted that she moved back into the property around 18 August 2022. She was not aware that the Applicant moved out on 21 June 2022 and was on holiday abroad for all of July and some of August 2022. She had work to do to her property in Dalkeith and put it on the market in October 2022. It sold in March 2023. Both of the tenants who were residing in the property in June 2022 have moved out. One moved in August 2022 and the other shortly thereafter. The Respondent submitted her daughter stays with her at the weekends but during the week she lives with her father who takes her to school. She submitted she always intended to move back to the property, and she did so as soon as she could. She submitted that the two previous tenants are related to her, and she was not aware that an HMO license was required in the circumstances.

11. In her written submission dated 23 November 2023 at page 2 the Respondent refers to asking the Applicant to leave her property on 10 February 2023 and she states:

At this stage, I still didn't take the final decision to move back to the flat- my divorce was in progress, I still had to decide something but at that moment I was not sure what to do and when... I had been postponing that decision to the future as there were lots of things involved in order to do so and it was not the best time in my life".

12. The Respondent goes on to state at page 2:

2 weeks later on 24 February Stephen Lafferty had changed his mind about moving the flat and he notified he would not leave.. I realised it would take time in case I wanted to move back to 25/1 Durar Drive since Stephen Lafferty didn't agree to leave, so I decided to start the formal procedure- on 18 March 2022 I filled up Notice to Leave, Edinburgh City Council was notified as per law.

13. The Respondent lodged various documents with the Tribunal with her written submission. They confirmed that she sold her Bogwood Road property in May 2023 and she arranged a redirection from Bogwood Road to Durar drive for three months from 10 June 2023.

Submissions on behalf of Applicant

14. A private residential tenancy has been constituted. The Respondent did not intend to move back to the property and this is confirmed by the fact that 6 days after she wrote and asked him to move out on 10 February 2022 she asked to show a prospective tenant around. That individual then moved belongings into the property on 13 March 2022. It was not therefore credible for the Respondent to contend she intended to move in herself. Further in October 2022 the same individual Bartosz Chrapusita confirmed to the Applicant that he was the new tenant. There was no sign of the Respondent moving back into the property between February 2022 and 21 June 2022 when the Applicant left. It is not credible that the Respondent in fact moved back in August 2022 as she contends. She also told Mr Grant at Edinburgh Council that she was a resident landlord whereas she did not live in the property for the duration of the Applicant's tenancy. It is disputed that she moved back in August 2022 because:

- Mr Chrapusita viewed the room, moved in his belongings and moved into the property.
- There was an 8 month gap between the notice to leave being issued and the Bogwood Road property being put on the market.
- The Respondent had a parcel delivered to Bogwood Road in February 2023.
- The Respondent wanted the Applicant out of the property as her submission confirms.
- The Respondent tried to take advantage of the Applicant's lack of knowledge of the eviction process and get him to move on the basis of a letter rather than a notice to leave.
- The Respondent decided to use the ground of intending to live in the property for convenience as the notice period is shorter than some of the other grounds.
- At page 44 of her submission the Respondent states that she did not have a clear intention of living in the property at the point she issued the notice to leave.

15. Mr Gillanders submitted that the Respondent has shown no remorse for unlawfully evicting the Applicant. He referred to the case of Ortega and Lopez FTS/HPC/PR/20/1515 for the factors to be taken into account in considering the level of the penalty. He submitted that the Applicant had to move to a more expensive property during a cost of living crisis. His employment was disrupted, and he subsequently had to give up his cat and move home to live with his father. The Respondent has contributed to a delay in the proceedings and she has retained the Applicant's deposit.

16. Findings in fact

- The Applicant let a room in the property from the Respondent from 13 August 2021 until 21 June 2022.
- No tenancy agreement was signed but the Applicant was given a blank private residential tenancy agreement.
- The agreed rent was £450 per month.
- A private residential tenancy was constituted.
- The Applicant paid a deposit of £450.
- The Applicant occupied the property as his only or principal home.
- The Applicant worked in a local bar a short walk away.
- The Respondent did not occupy the property during the period of the Applicant's occupation.
- On 10 February 2022 the Respondent sent the Applicant a text message stating that due to a call from the council which gave details of a complaint from neighbours regarding smells and noise emanating from the flat, she wished him to leave.
- On 15 February 2022 the Respondent contacted the Applicant asking to show a prospective new tenant round the property.
- On 17 February 2022 the Respondent sent a text message to the Applicant asking him to move out by 13 March 2022.
- On 5 March 2022 the Respondent sent a message to the flat group chat indicating that she was planning to move back to the property.
- On 6 March Bartosz Chrapusita came to the flat and moved in some of his belongings.
- The Applicant was advised by Cameron Grant of the Homeless Persons Team of Edinburgh Council not to leave the property as the correct procedure for a private residential tenancy had not been followed.
- The Respondent told Mr Grant she was a resident landlord and the correct procedure had been followed.
- In an email to the council dated the 7 March 2022 the Respondent stated 'I do live in the flat but I will be away until Stephen moves out'.
- In a further email she stated 'I expect him to leave the flat by midnight on 12 March as I'm back to the flat with my daughter and dog the following day. I have a complicated personal and financial situation and that's why I need the room back'.
- The Applicant was served with a notice to leave on 19 March 2022.
- The eviction ground was that the Respondent intends to live in the property.
- At the date of the notice to leave the Respondent did not intend to move back into the property.
- The notice asked the Applicant to leave the property by 20 June 2023.
- The Respondent gave the Applicant a letter on 20 May 2022 which stated she expected him to leave by 20 June 2022 and if he refused to move she would 'place an eviction order' and have him removed within 14 days.
- The tenancy came to an end when the Applicant moved out of the property on 21 June 2022 and returned the keys.
- The Applicant paid rent up until 13 June 2022.
- The Respondent retained the deposit of £450.
- The Applicant moved to a room at Fountainhall Road Edinburgh with an increased monthly rent of £475.

- The Applicant gave up his bar job in July 2022 as the new tenancy was a half hour's drive away.
- The Applicant's mental health was adversely affected by the stress and anxiety of receiving the notice to leave and moving from the property. He had increased contact with community mental health services, his GP and the practice community psychiatric nurse as a consequence.
- The Applicant received an unpleasant note from his flatmate Sebastian on 17 March 2022 stating " Seeing that you do not respect the landlord's preference for you to move out, I would not like you to use my things in the kitchen...Get move your ass. Maybe we should do it for you?"
- On 31 August 2022 the Applicant made a freedom of information request to the licencing team at Edinburgh Council in connection with his complaint that the Respondent was operating without an HMO licence. He was advised his complaint was upheld and the Respondent had been issued with a written warning and the property would be monitored to ensure compliance.
- On 1 October 2022 the Applicant received a threatening phone call from someone who identified himself as 'Bartosz and who stated he was the 'new tenant' at Durar Drive and who stated 'where the fuck is my stuff. I will fucking get you'.
- The Applicant reported the matter to the police.
- On 2 February 2023 the Applicant was in Dalkeith to take his cat to the cattery. He passed the Respondent's home at 46 Bogwood Road and there was a parcel addressed to her on the doorstep.
- On 25 June 2023 the Applicant's former neighbour Shirley Paton sent him an email stating that the Respondent had been at the property moving items in but that she did not live there.
- On 18 April 2023 the Applicant checked the landlord register and noted that the Respondent was listed as residing at 46 Bogwood Road. He contacted the landlord registration team at Edinburgh Council for clarification, given the terms of his notice to leave.
- On 28 April 2023 he received a reply which stated that she removed her landlord registration on 27 April 2023.
- The application was served on the Respondent by sheriff officer on 4 May 2023. The sheriff officer left the application in the hands of Batrosz Chrapusita at 46 Bogwood Road.
- The Respondent arranged a mail redirection from Bogwood Road to the property for three months from 10 June 2023.
- The Respondent sold her property at Bogwood Road in May 2023.
- The Respondent moved into the property at Durar Drive around June 2023.

Reasons

17. The Tribunal heard oral evidence from the Applicant and took into account the written evidence. The Applicant has maintained the consistent position throughout the process that the Respondent wanted him out of the property and using the ground that she intended to live in the property was the most convenient route for her to take. She did not actually intend to live in the property when the notice to leave was served and

she ultimately moved back in around June 2023, probably as a result of the application being made.

18. The Tribunal considered the available evidence carefully and decided on the balance of probability the Applicant was misled into leaving. There was a lot of evidence in support of this conclusion, not least the Respondent's own written submission that when she gave the Applicant the notice to leave she had not decided whether she would be moving back in or not. She states in paragraph 5 of her submission ' I realised it would take time in case I wanted to move back to 25/1 Durar Drive since Stephen Lafferty didn't agree to leave, so I decided to start the formal procedure- on 18 March 2022 I filled up Notice to Leave'.

19. The Applicant has also presented evidence that before he was issued with a notice to leave, the Respondent told Edinburgh Council that she was a resident landlord and a formal notice to leave was not required. The Respondent confirms in her written submission that she attempted to get the Applicant to leave in February 2022 and the Applicant has presented evidence that after he initially agreed to leave voluntarily in February 2022 the Respondent showed a prospective tenant around the property, (Bartrosz Chrapusita). It was only when the Applicant was advised not to move out by Edinburgh Council that a formal notice to leave was issued. The Applicant contends that the Respondent wanted him out and in ground in the notice to leave was just a convenient excuse. The Respondent's submission confirms this as she makes reference to him smoking cannabis in the property and coming into conflict with the two other tenants due to his cat.

20. The evidence presented by the Applicant is in support of the conclusion that the Respondent did not move back until a year after he left. Sometime after June 2022 the Respondent received a warning that she was operating an unlawful HMO at the property. If she had moved back around August 2022 as she contends, this would not have been necessary. She was on the landlord register as residing at Bogwood Road until April 2023 so if she had moved back into the property she would not require to be on the register at all. She did not put the Bogwood Road property on the market until October 2022 and her redirection from Bogwood Road to Durar drive did not commence until June 2023. The evidence from the neighbour at Durar Drive supports the Applicant's position that she was not living at the property up until June 2023 but she had been moving things in. Mr Chrapusita moved some belongings into the property in March 2022 and in October 2022 he called the Applicant and told him he was the new tenant at the property.

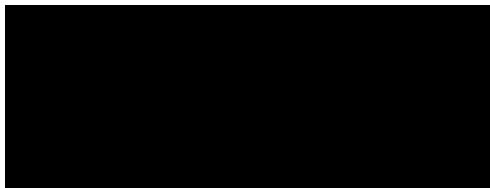
21. The Tribunal was not satisfied that when the notice to leave was issued, the Respondent intended to move back into the property. Taking the Respondent's position at it's highest level, she served the notice to leave to give her the option of moving back into the property should she decide to do so. It is quite clear from the terms of *Majid-v Gaffney (2019) UT 59* that a notice to leave sent in anticipation of a ground being met is not valid notice to leave.

22. Having decided that a Wrongful Termination Order should be granted, the Tribunal went on to consider the penalty. In terms of section 59 of the Act the maximum penalty is six months' rent, £2700. The Applicant's new tenancy had a higher rent and it was

much further away from his place of employment. His mental health was adversely affected by the stress of the eviction process. The letter from his GP dated 15 June 2023 gives details of 7 consultations with the practice for stress and anxiety due to the eviction process between March 2023 and July 2023. He also had the inconvenience of moving out and obtaining a new tenancy. The Tribunal decided the sum of £2000 reflected the level of inconvenience, upset and distress the Applicant had suffered as a result of being misled into leaving the Property by the Respondent.

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.



Legal Member

6 December 2023

Date