



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/23/0066

Re: Property at 3C Ronald Place, Stirling, FK8 1LF (“the Property”)

Parties:

Miss Claire Martin, 27C Wallace Street, Stirling, FK8 1NS (“the Applicant”)

Miss Sasha Emelianova, 3C Ronald Place, Stirling, FK8 1LF (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for a wrongful termination order is refused.

Background

1. This is an application under rule 110 of the Procedural Rules made by the Applicant on 6 January 2023.
2. The Applicant seeks a wrongful termination order to be made by the Tribunal in terms of S 59 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). As the tenancy was not terminated by an eviction order from the tribunal, the application is made under S 58 of the Act.
3. The Applicant seeks payment of six months rent (6 x £475) i.e. £2850 in respect of the wrongful termination order.

4. The documents lodged in this case with the application consist of:
 - Tenancy agreement between the parties for the Property for the period commencing on 15 November 2021 to 15 August 2022.
 - Advertisements for the Property dated 25 August 2022, 21 November 2022 and January 2022
 - E-mail from Stirling Council to the Applicant dated 4 July 2022
 - Screenshots of messages exchanged between the Applicant and the Respondent's mother
 - E-mail and letter from the Respondent and the Respondent's mother to the Applicant dated 19 April 2022 entitled, "Notice to vacate the Property".
5. On 1 March 2023 the application was accepted by the Tribunal.
6. An initial Case Management Discussion (CMD) was fixed for 20 April 2023 and the paperwork was served on the Respondent by Sheriff Officers on 15 March 2023.
7. On 6 April 2023 the Respondent's Representative requested a postponement of the CMD which was granted by the Tribunal and a further CMD was fixed for 2 June 2023 by teleconference at 11.30.
8. On 4 May 2023 the Respondent lodged written responses to the application together with a list of supporting documents ;
 - Miss Sasha Emilianova's permission to Mrs Svetlana Emelianova (her mother) and Mr Jonathan Grundy (her step-father), to deal on her behalf in relation to the application.
 - Tenancy agreement with the Applicant.
 - Extract from Shelter Scotland website regarding Lodger agreements.
 - Termination of tenancy notice copy from Torben Ziehr.
 - Landlord registration.
 - Energy certificate.
 - Gas inspection certificate.
 - Electricity certificate.
 - Whatsapp exchange messages between the Applicant and Mrs Svetlana Emelianova.
 - Christmas cards from the Applicant and Torben Ziehr.
 - Photos of family stay at the Property
 - Print out of family friend's stay at the Property
 - E-mail communication copy between Stirling restaurant and the Respondent.

9. On 26 May 2023 the Applicant lodged further written representations with the Tribunal.

The First Case Management Discussion 2 June 2023

10. The CMD took place by teleconference on 2 June 2023. The Applicant was present. The Respondent was represented by her mother Mrs Svetlana Emelianova who was supported by Mr Jonathan Grundy.
11. At the commencement of the CMD Mrs Emelianova stated that she had lodged a two page bank statement on the day of the CMD which she wished to be accepted as evidence. There were no objections and this was forwarded to the Applicant during the course of the CMD and accepted as a production.
12. Mrs Emelianova stated that she had only received the Applicant's response to her representations the previous day from the Tribunal and had not received the invitation to attend the CMD until that date either. The bank statements which she had lodged on the morning of the CMD were lodged to show the additional £5 bank charges that had been incurred when the Applicant made rental payments from her overseas account.
13. The Tribunal explained the purpose of the CMD and the matters to be explored. Both parties indicated that the following facts were capable of agreement
- The tenancy agreement which both parties had lodged with their productions was the tenancy agreement signed between the parties in respect of the Property.
 - The Applicant moved into the Property on 14 November 2021 and moved out on 9 July 2022.
 - During the period of time that the Applicant resided in the Property there was one other person who resided in the Property namely Mr Torben Ziehr.
 - The notice entitled "Notice to vacate the Property" was sent by the Respondent and Mrs Svetlana Emelianova on 19 April 2022 by post and by mail.
14. Mrs Svetlana Emelianova stated that she had visited the Property along with her husband and daughter during the period the Applicant occupied the Property but they did not stay overnight whilst they visited. They rented a hotel nearby when they required to visit.
15. The Applicant said that she would be giving evidence at the Hearing and she anticipated that Mr Torben Ziehr and a few other close friends would also be witnesses.

16. Mrs Emelianova stated that she would be giving evidence along with her husband Mr Jonathan Grundy and the Respondent. She added that her daughter, the Respondent, had some health problems and that she can become anxious, and very worried, and therefore may not be able to participate. There may be other witnesses in addition.
17. Parties were advised by the Legal Member that a Direction would be issued following the CMD directing them to lodge their respective list of witnesses and details of the witnesses/ addresses/ contacts information over the following 14 Days.
18. Parties were also advised that the Tribunal could not keep letting parties lodge more and more written information and documentation or the case would never come to a conclusion. Included in the Direction would be a Notice to parties that the Applicant had 14 days to lodge any final documents/ representations and then the Respondent would have a final 14 days to lodge any final documents/ representations after that. No further productions/written representations would be received unless on cause shown.
19. The case was then adjourned to proceed to a Hearing on 28 July 2023 at 10am. The parties received oral intimation of the date and time of the next Hearing before adjournment of the proceedings on 2 June 2023.

Hearing 28 July 2023

20. The Hearing took place by teleconference at 10am on 28 July 2023.
21. The Applicant was present. The Respondent was represented by her mother Mrs Svetlana Emelianova who was supported by her husband Mr Jonathan Grundy.
22. Prior to the case calling the tribunal administration had forwarded to the Respondent at 8.30 am that morning a file of representations made by the Applicant dated 29 June 2023 amounting to 82 pages .
23. Mrs Emelianova was furious about this and demanded an explanation.
24. The Tribunal apologised and explained that the Applicant had included some sensitive information in her representations which she had not wished to be disclosed to the Respondent and that the Tribunal administration had already

crossed this over to the Respondent. The Applicant had been given a written apology on 7 June 2023 by the Tribunal for this happening and it was explained that the Tribunal could not consider any information in a vacuum and that any representations would require either to be withdrawn/redacted or crossed over. The Applicant had accepted the apology and had lodged her representations which still contained this sensitive information on 29 June 2023. The Tribunal had therefore required to go back to the Applicant to clarify that she still wished this to be included and she had confirmed that she did. This had accordingly caused a delay in the representations being sent to the Respondent. This ought however to have been done prior to the morning of the Hearing. The Tribunal directed the Respondent to the Tribunal website if she wished to make any particular complaints regarding the manner that the case had been dealt with by the administration.

25. Having said that it was clear that the Applicant wished her representations to form part of her case and the Respondent was entitled to a period of time in order to consider the same and to make any final representations to the Tribunal.
26. In all the circumstances, and as the Tribunal is entitled to regulate its own procedure, the Tribunal treated this Hearing date as a further Case Management Discussion.
27. The Applicant said that she was content that she had set out everything that she required to do in respect of her application and did not wish to make any further written submissions. She said that she anticipated calling only one witness Mr Torben Ziehr. She gave her dates of unavailability being 11 August 2023 and 13-27 September 2023 inclusive.
28. Mr Grundy asked the Tribunal what constituted a wrongful termination. Mr Grundy was told that the Tribunal are not in a position to give legal advice and that the Respondent could seek legal advice regarding this definition or be pointed in the direction of advice agencies by the Tribunal if so required.
29. The Tribunal indicated that there were a number of productions and e-mails with representations lodged by both parties, and that it would assist the Tribunal if any documents which were to be relied on in evidence and submissions were indexed and paginated for the Tribunal. This was included in the Tribunal's Directions and is in accordance with the Chamber President's Practice Direction dated 27 May 2021.

30. Mrs Emelianova said that she was due to go on holiday from 1 to 25 August 2023 so would be unavailable between those dates. In addition she is a teacher so a Friday would be the best date for her for a further Hearing date. She said that she would be giving evidence along with her husband. Mr Grundy.
31. The Tribunal stated that given the history of the case and the holiday commitments for Mrs Emelianova that it would be fair to give the Respondent until the end of August for the Respondent to lodge final submissions.
32. A Direction was issued separately by the Tribunal in the following terms;

‘NOTICE TO THE PARTIES

The tribunal, on its own initiative and for the purpose of making inquiries, give the following Direction to the Applicant/Respondent as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017:

The Respondent is required to provide:

- 1. Any final written representations/productions if required by her to contest the application*

The said documentation should be lodged with the Chamber no later than close of business on 31 August 2023.

The Applicant and the Respondent are each required to provide;

- 1. A full list of any Productions /Documents together with a paginated and indexed Inventory of the Productions in a hard copy format in terms of the President’s Practice Direction. At the same time each party must send a copy of these productions and Inventory to their opposing party.*

The said documentation should be lodged with the Chamber no later than close of business on 15 September 2023.’

33. In the circumstances the case was adjourned proceeding to a further Hearing date on a date to be afterwards fixed by the Tribunal administration.

The Hearing 27 October 2023

34. The Hearing took place by teleconference on 27 October 2023 at 10am. The Applicant was present on the line as was the Respondent’s Representatives Mrs Svetlana Emelianova and her husband Mr Grundy.

35. Since the date of the last Hearing there had been further representations made to the Tribunal namely; - on 31 August 2023 the Respondent had lodged a "final letter of representation" dated 26 August 2023.
36. Both parties were in a position to proceed. The Applicant said that she would give evidence herself and had no witnesses. Mrs Emelianova said that both she and Mr Grundy would give evidence.

Evidence of the Applicant, Miss Claire Martin (Summary)

37. The Applicant said that she had been illegally evicted from the Property in April 2022. She said that she and Torben Ziehr had moved into the Property in Autumn 2 years ago. There was an end date specified on her lease. She said that she was told that the lease could be extended and that she should not worry about that.
38. The Applicant agreed that she was not a joint tenant of the Property along with Mr Ziehr. They both had separate tenancy agreements.
39. Regarding the accommodation that she was living in immediately before she came to live in the Property, the Applicant said that it had been very damp and mouldy. It was university accommodation and the university had done nothing to rectify the problem and it had an adverse effect on the Applicant's health. She had saved up and paid for the last two months of her semester for the university accommodation, and knew that she could move in to the Property right away.
40. A conflict had developed with Mrs Emelianova in the spring of 2022 when Mrs Emelianova had said that her elder daughter Katie would be moving into the Property. This had come as a shock to the Applicant and she had expressed her dissatisfaction at that proposal. She was then sent eviction notices on 19 April 2022. These were sent by post and by e-mail telling her to remove herself from the Property by 15 August 2022. Mr Ziehr had also received an eviction notice.
41. She had then taken advice from Shelter Scotland and from Stirling Council. Mr Ziehr had taken advice from the Citizens Advice Bureau. They had both been advised that the notice requesting them to leave was not valid as the notice required to give the tenant a reason for leaving and there was no reason detailed in the notice.
42. The email and letter which the Applicant had received from the Respondent was in the following terms;-

'Notice to vacate the property

Hi Claire,

We are giving you an official notice to vacate the rented room at 3c Ronald Place, Stirling FK8 1LF on 15 August 2022.

This e-mail will also be confirmed by a posted letter.

Kind regards,

Sasha Emelianova (Landlord)

Svetlana Emelianova (Agent)

43. Due to difficulty finding housing , along with the fact that they were international students and in the middle of their degree studies, she and Mr Ziehr had decided to remain in the Property as they were happy living there.

44. Mr Torben Ziehr had then decided that he would move out.

45. On 27 June 2022, she was contacted by Mrs Emelianova who asked her what her plans were for the flat. She had told Mrs Emelianova that she was waiting for another housing situation to open up. She had said that she was unsure and Mrs Emelianova told her that they had sent her eviction notices and indicated that they gave notice of the termination of the tenancy.

46. Miss Martin said that under Scot's tenancy law that the lease had reverted to a Private Residential Tenancy ('PRT') which was the allowed form of the tenancy, and that time limits could not be included on a lease. Furthermore, the notices to leave and to terminate the tenancy were not valid as no specific reason for moving out had been provided. She said that the notice was not valid as it was not legal.

47. Miss Martin said that she had told Ms Emelianova that she wished to extend her tenancy to September 2022 as she had originally discussed with her when the tenancy commenced. She had received a message back on 27 June 2022 telling her that the Respondent's whole family would be moving in to the Property and using it from 15 August 2022.

48. Due to the fact that lots of people were moving in she had felt very pressurised to leave and this was less than 3 months before the Respondent's family were due to move in. She had to find somewhere to live.

As an international student, the Applicant said that she was not able to be homeless- a residence address was required. She was very stressed and panicked. Luckily she found another place. It was that message that made her feel pressurised. She said that she assumed that Ms Emelianova and her family did not know about tenancy law.

49. Moving forward she found another flat. She was looking on 'Spare Rooms' which is where she had originally found the advertisement for the Property and she had received notice of a new post.
50. On 25 August 2022 she had seen an advertisement for a room in the Property- this was 10 days after she had moved out. She said that it was clear that the Respondent wanted her out and a new tenant moved in as quickly as possible. She had received additional notifications and saw that the Property was posted 2-3 times more after that date. This had encouraged her to file these proceedings. Every time she had seen the Property posted it was for a rent significantly higher than she had paid.
51. It seemed to the Applicant that the Respondent wanted her and Torben Ziehr out of the Property as they had questioned the Respondent's legal responsibilities as a landlord and on the basis the Respondent wanted more rent as well.
52. She said that she had been quite desperate when she found another flat. She said that there is a housing crisis in Stirling at the moment. She had paid extra to be contacted with new properties by 'Spare Rooms' as 'an early bird'. Her new accommodation had 'popped up' and she had been very lucky to get it as she shared a mutual friend of the owner. She had not told Mrs Emelianova that she was stressed- she didn't want her as a tenant anymore so she didn't feel that she needed to tell her that she felt stressed.
53. Miss Martin agreed that when she had moved into the Property that she had been told by the Respondent's family that the Respondent would move in to the flat as well but no date and time was specified.
54. Miss Martin was asked if she had noticed after she had moved out of the Property, whether she had read the advertisement on 'Spare Rooms' and whether she had noticed it was a different rental package. Miss Martin said that she had noticed some differences but that the living situation was the same. She and Mr Ziehr had shared a 2 bed roomed flat. The advertisement looked to be a one bed roomed flat with a landlord living there so seemed to Miss Martin to be a similar situation.

55. She said that she could not see on the advertisement that there was access to the lounge. She said that she saw the Property being advertised at twice the rent that she had paid with Mr Ziehr namely £1000 per month.
56. Miss Martin said that during the time that she had occupied the Property that Mrs Emelianova had been in the Property on two occasions that she could recall. The first time she had come to pick up a parcel, and on that occasion Miss Martin said that she was not in and therefore could not understand why it was suggested that there was noise coming from her room. On the second occasion Mrs Svetlana Emelianova arrived to oversee a smart meter installation.

Evidence of Mrs Svetlana Emelianova (Summary)

57. Mrs Emelianova said that when the Applicant first viewed the Property, that Mr Ziehr had also arranged a viewing. The Applicant and Mr Ziehr had been surprised to see each other. Mrs Emelianova said that they had a number of potential candidates who were viewing the Property. They were each given 30 minute slots. Mrs Emelianova said that they had one room or potentially two rooms to rent out. Another third room, the smallest room was always to be left for the use of the Respondent and her family. They had wondered whether to rent the lounge out as a room as it was similar in size to the room they had advertised. When the bedroom in the Property which was advertised for rent was shown to the Applicant it was explained that another person would be viewing the room later on. The Applicant and Mr Ziehr were not invited to view at the same time. They had said that they were both happy to rent a room each at the Property. Ultimately the lounge was rented to Mr Ziehr. Mrs Emelianova had clearly explained to the Applicant and to Mr Ziehr that they were not renting the whole property as they had previous problems in the past when they did so and tenants had sub-let. They had clearly explained that the tenancy would run until August 2022 as the Respondent's whole family would be staying there in the August of 2022.
58. Mrs Emelianova said that the Applicant was charged only a small amount of rent. The tenancy agreement which she had lodged was for a room lodger and the Applicant was a lodger at the Property renting a double room and sharing it with another lodger Mr Ziehr and with the Respondent. The Applicant had no responsibility for any bills or maintenance. Mrs Emelianova had explained to the Applicant that the family were not expected to be coming to the Property often due to work commitments that year. Furthermore as they were to be travelling they would only envisage using their room from time to time. It was clearly explained however that the Landlord, the Respondent would be staying from time to time in their own room at the Property. Mrs Emelianova said that it was hardly worth having a lodger- it made financial

sense to take on both the Applicant and Mr Ziehr as lodgers. She said that the Respondent and her family are not rich people and they were not providing a charity. Both the Applicant and Mr Ziehr received separate tenancy agreements.

59. The Applicant had indicated at the time the tenancy commenced, that her course carried on into October 2022. Mr Ziehr said that his course finished earlier. Ms Emelianova had said if this was the case that they would be able to have a look at things after 15 August 2022. She had expected that the students would travel during August 2022. She said that the additional months could be negotiated on a monthly basis at a later stage. Both the Applicant and Mr Ziehr had said that this would not be a problem.
60. The room to be used by the Respondent was the smallest room in the Property, which was next to the bathroom and which still accommodated a double bed and a fitted built in wardrobe. The family kept belongings in that room. The room had very high ceilings. It measured 6.8 square metres. At the time the agreement was signed by the Applicant, the Respondent and her family had intended to live at the Property much more than they did. Instead, as the Applicant was hostile, the family stayed in a nearby hotel. Their daughter was afraid to stay in the Property with the Applicant.
61. Mrs Emelianova said that she had been in the Property during the Applicant's tenancy when a parcel was collected and they stayed in their room for a little while. She said that she could hear a conversation from the Applicant's room. The Applicant did not come out of her room to say, "hello" at that time.
62. Mrs Emelianova said that she understood that the Applicant believed wrongly that she had full possession of the Property and it was this which had caused the problem.
63. The Property was not rented out as a whole flat or as a joint tenancy to the Applicant and Mr Ziehr. It was a lodger agreement. That was what the Respondent wanted.
64. They had notified the Applicant on 11 March 2022 that their elder daughter Katie would be coming to stay at the Property for a few weeks. They had understood that this would not encroach on the HMO Rules.
65. They were given different conflicting information by Stirling Council. They now understand that they are unable to rent two rooms in the Property to unrelated lodgers and use the third room themselves. Mrs Emelianova said that they

required to change the lodger arrangements otherwise she and her husband would be unable to visit the Respondent and stay with her in the Property. The Respondent has a disability and may require periods of increased support when she moves into the Property for work or study. That was the reason the Respondent decided that they could not rent the Property to two people moving forward and only to one person so that their daughter could live there and not encroach on the HMO Rules.

66. One reason that the tenancy was terminated was due to the HMO Rules and the fact that there were two tenants and Mrs Emilianova's elder daughter and her boyfriend wanted to move in. Accordingly notice was given to the Applicant to leave. Only one month's notice was required but she was given 2 months almost. The Respondent had no indication that this had caused the Applicant any trouble. Mr Ziehr had returned to live with his parents. He had been refunded his deposit and rent paid in advance. The Applicant was treated in the same way. In Mrs Emilianova's view everything was done to accommodate the Applicant's wishes.
67. The Applicant had contacted her on 28 June 2022 stating that she would be leaving the Property on 15 July 2022.
68. Mrs Emelianova asked the Tribunal to consider the terms of the tenancy agreement and that it was clearly a lodger agreement and not a PRT. It was specifically explained that not the whole of the flat was being rented out. She said that when the Applicant first moved in she said that her previous accommodation was not adequate. When Mrs Emelianova enquired as to how long she would need to get out of her previous tenancy, the Applicant told her that she could "wriggle" out of it and move in to the Property straight away.
69. She said that the Applicant was a lodger. She shared the Property with another lodger and with the Respondent. It had not been planned that the Applicant would be in the Property with someone that she knew already.
70. It was explained that the Respondent kept personal belongings in the Property and some pet food in one of the rooms and that the Applicant could have the use of the Respondent's room when the Respondent was not there. If a lodger's agreement is in place, she said that the Respondent is allowed to live in the Property. The HMO Rules she said would only be encroached if another member of the Respondent's family aside from the owner wanted to stay over.
71. Mrs Emelianova said that the Respondent's circumstances have now changed. She is due to start University. She has a life-long chromosomal disorder. From time-to-time the Respondent needs to be at home and supported by her mother.

72. Mrs Emelianova said that at no point had she been rude to the Applicant They had minimal communication which was carried out over whatsapp messages. She cannot see anything from her messages suggesting that she was rude. She said that she was “to the point”, and businesslike. It was quite the opposite from rude. She said that the Applicant had apologised to Mrs Emelianova for the way that she behaved towards her in April 2022. The way that the Applicant had behaved to her family members made them very unhappy. Her daughter had ultimately refused to stay in the Property.
73. On more than one occasion the Applicant had refused to come out of her room when Mrs Emelianova visited. Perhaps, the way that the Applicant was thinking, was that the Respondent was encroaching on her space. Her behaviour is predicated by her belief that she had a PRT. It is this mistaken belief that has caused problems. Seeing the Applicant’s hostility made the Respondent’s family feel uncomfortable.
74. The Applicant was very unhappy at the prospect of Mrs Emilianova’s daughter Katie coming to stay in their room in the Property. The Applicant clearly did not think that she was leasing just one room. After that Mrs Emelianova said that they did not come to the Property so as not to upset the Applicant. Up until the point that they said that their daughter would be coming to stay they had a very good relationship with the Applicant.
75. Mrs Emelianova said that landlord registration details were provided although they were not required to do so, as well as the Gas Safety Inspection Certificate and Energy Certificate for the Property.
76. If required, they replaced any equipment in the Property which was faulty such as the toaster or Hoover. The accommodation was clean and warm with no mould.
77. The Applicant was not forced out of the Property. That suggestion was simply untrue.
78. The Respondent had been advised regarding the potential HMO issues. Therefore after the Applicant left the Property she had no option but to change the way that the rooms in the Property were rented out .She therefore gave both lodgers ample time to vacate their rooms. The Respondent did not cut the supply of amenities or change the keys to the locks. The Respondent explained in writing that if the Applicant wanted to leave earlier that she would be re-imbursed pro rata which was done as per the calculated daily rate.

79. After the first lodger Mr Ziehr had left the Respondent and her family decided to come to Stirling to allow the Respondent to look for work. Mrs Emelianova gave the Applicant the option to move out of the Property. She did so and moved out earlier. The Respondent said that she did not see this as an eviction. The Applicant's pre-paid rent was returned to her.
80. It was only later on that it was realised that the Applicant had in fact lost her room key. The Respondent did not seek to be re-imbursed for that. It was no big deal she said and cost £12 for another key.
81. Mrs Emelianova said that the family used the flat extensively over the summer of 2022. This was discussed both prior to and at the time the lodger agreement with the Applicant was signed. She said that she had provided documentation proving that the Property was used as they had always intended and planned that it would be used.
82. It was only after she said that she had been misled by Stirling Council regarding the HMO rules regarding 2 lodgers and themselves using the Property that she had no alternative but to change the way that the rooms were rented out. The new advertisement was for one double room and the use of the lounge and kitchen /bathroom as shared areas. The price of the rent of the double room was increased to make it economically viable.
83. Mrs Emelianova said that her family had suffered immense stress at the long delay of this application proceeding and the large sum of compensation being sought. She said that the Respondent had provided a very good environment for the Applicant and that the Applicant had accepted that she really liked the flat and living there. Mrs Emelianova said that they did all that they could to make the Applicant's stay good value for money. She said that she "does our little job very well". She said that they have a current tenant/lodger living in the Property with them. He is happy to cohabit together. Even in August 2023 when it was agreed that the family would be staying there the new tenant did not want to move out and they all managed to stay together happily.
84. Mrs Emelianova said that the Applicant had a different package from her current tenant. Due to HMO rules she was unable to move into the Property. So the family could not allow that situation to continue. The situation with the Applicant's rental was not suitable. They had to change the package. The current tenant finds it amenable to cook with the Respondent and her family and to socialise with them. Due to the situation with the Applicant they needed to change everything.
85. At the end of the day the Applicant terminated the tenancy early and moved out a month before she had been given notice to leave.

Evidence of Mr Jonathan Grundy (Summary)

86. Mr Grundy's evidence was in short compass. He agreed with the evidence of his wife and he re-iterated that the plan was for their daughter Sasha, the Respondent to move to Scotland and to live in the Property but this plan had fallen through.

Closing Submissions for the Applicant

87. The Applicant made closing submissions and said that her eviction was illegal. She had consulted a multitude of services when conflict arose. All of the advice agencies had said that she had a PRT as the tenancy agreement that she had been provided was not a valid type of tenancy agreement according to tenancy law.

88. She said that she believed that in their posting of the Property that the Respondent and Mrs Emelianova wanted her and Mr Ziehr to get out of the Property. This was because they had expressed their dissatisfaction at Mrs Emilianova's oldest daughter staying there.

89. The Notice that had been served was not a valid notice and had caused her a lot of stress and a difficult housing situation.

90. She said that she believed that the Respondent and her family need to be held responsible as landlords in Scotland and that they did not have the proper knowledge.

Closing Submissions for the Respondent

91. Mrs Emelianova said that she wanted to repeat that being knowledgeable about rentals applied to both landlords as well as tenants.

92. She said that they had educated themselves to the best of their ability regarding the lodger agreement and that they had been misled on the HMO situation.

93. At the end of the day the Applicant had signed an agreement and she believed that as the Respondent's representative she had addressed and

fulfilled every point that she needed to do. They had allowed the Applicant as a lodger to stay until 15 August 2022 in the Property and given her the chance to move out earlier.

94. The lodger agreement had been their choice. It was their decision not to rent out the entire flat as they had a bad experience in the past and this was all explained at the initial meeting.

95. There had been no forcing out of the Applicant at any point.

Findings in Fact

96. The Respondent is the owner and heritable proprietor of the Property.

97. The Applicant entered into a tenancy agreement with the Respondent on 14 November 2021.

98. The tenancy agreement was to run from 15 November 2021 to 15 August 2022.

99. The rent payable was £475 per calendar month payable monthly and in advance starting on 15 November 2022.

100. A deposit was paid by the Applicant to the Respondent of £475.

101. The tenancy agreement provided for the rental of a double room for a single occupancy along with shared occupation of common areas namely the kitchen diner and bathroom.

102. The Applicant rented one room in the Property.

103. Mr Torben Ziehr rented out another room.

104. A third room was for the use of the Respondent as landlord.

105. This position was fully explained to the Applicant at the time she signed the tenancy agreement.

106. The Respondent did not live in the Property during the duration of the Applicant's tenancy.
107. The Respondent's mother and family members visited the Property on at least two occasions during the tenancy.
108. On 11 March 2022 the Respondent's mother and representative Mrs Svetlana Emelianova contacted the Applicant by Whatsapp message to state that her daughter Katie would be coming to stay in the Property.
109. The Applicant sought advice from agencies including Stirling Council and Shelter Scotland and was wrongly advised that the Applicant's rental of the Property was in fact a PRT.
110. The Applicant did not have a PRT of the Property.
111. The Respondent intimated to the Applicant on 19 April 2022 that she required to leave the Property on 15 August 2022 by letter and by e-mail.
112. The Applicant left the Property on 9 July 2022.
113. The Respondent paid the Applicant back the prepaid rental and returned her deposit to her in full.

Reasons for Decision

114. The relevant legislation is set out in the 2016 Act.
115. Section 1 of the 2016 Act states;

1. Meaning of private residential tenancy

(1)A tenancy is a private residential tenancy where—

(a)the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b)the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c)the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2)A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

116. Section 2 of the 2016 Act states;

2 Interpretation of section 1

(1) This section makes provision about the interpretation of section 1.

(2) A tenancy is to be regarded as one under which a property is let to an individual notwithstanding that it is let jointly to an individual, or individuals, and another person.

(3) A tenancy is to be regarded as one under which a property is let as a separate dwelling, despite the let property including other land, where the main purpose for letting the property is to provide the tenant with a home.

(4) A tenancy is to be regarded as one under which a property is let as a separate dwelling if, despite the let property lacking certain features or facilities—

(a) the terms of the tenancy entitle the tenant to use property in common with another person (“shared accommodation”), and

(b) the let property would be regarded as a separate dwelling were it to include some or all of the shared accommodation.

(5) In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in section 1(1)(b) and in subsection (3) are to any one of those persons.

117. Schedule 1 of the 2016 Act sets out specific tenancies which cannot be a PRT; Clause 7 of Schedule 1 details;

Resident landlord

7 A tenancy cannot be a private residential tenancy if paragraph 8 or 9 applies to it.

8 This paragraph applies to a tenancy if—

(a) the let property would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the tenant to use property in common with another person (“shared accommodation”), and

(b) from the time the tenancy was granted, the person (or one of the persons) in common with whom the tenant has a right to use the shared accommodation is a person who—

(i) has the interest of the landlord under the tenancy, and

(ii) has a right to use the shared accommodation in the course of occupying that person’s home.

9(1) This paragraph applies to a tenancy if sub-paragraphs (2) and (3) apply to it.

(2) This sub-paragraph applies to a tenancy if, from the time it was granted, a dwelling within the same building as the let property has been occupied as the only or principal home of a person who, at the time of occupying it, has the interest of the landlord under the tenancy.

(3) This sub-paragraph applies to a tenancy if, at the time it was granted, there was an ordinary means of access—

(a) through the let property to the dwelling occupied by the person who is, or is to be, the landlord, or

(b) through the dwelling occupied by the person who is, or is to be, the landlord to the let property (whether or not that access was available to the tenant as of right).

(4) For the purpose of this paragraph, in determining whether a dwelling is occupied as the only or principal home of the person having the interest of the landlord, no account is to be taken of—

(a) any period beginning with the date on which the interest of the landlord is transferred (other than on death) and ending—

(i) 28 days later, or

(ii) 6 months later if, within 28 days of the period beginning, the person to whom the interest is transferred notifies the tenant of the person's intention to occupy a dwelling within the same building as the let property,

(b) any period of up to 24 months beginning with the date of the person's death and ending with the person's interest in the tenancy being vested in another person (otherwise than as the person's executor).

10 If, at any time, the landlord holds the landlord's interest as a trustee under a trust, a reference in paragraph 8 or 9 to a landlord or the person having the interest of the landlord includes a person who is a beneficiary under the trust.

11 In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in paragraphs 8 to 10 are to any one of those persons.

118. Section 58 of the 2016 Act states

58. 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.

119. Section 59 of the 2016 Act states;-

Wrongful-termination order

(1)In this section and in sections 57, 58 and 60, “a wrongful-termination order” means an order requiring the person who was the landlord under the tenancy immediately before it ended to pay the person who made the application for the wrongful-termination order an amount not exceeding six months’ rent.

(2)Subsection (3) applies where—

(a)the First-tier Tribunal intends to make a wrongful-termination order under section 57 or 58, and

(b)two or more persons jointly were the landlord under the tenancy in question immediately before it was brought to an end.

(3)The Tribunal may make a wrongful-termination order—

(a)against all, some, or only one of the former joint landlords,

(b)stating that each person against whom the order is made is liable to pay a specified amount, but the cumulative total of each of the specified amounts must not exceed six months’ rent,

(c)stating that each person against whom the order is made is jointly and severally liable for the whole amount to be paid.

(4)In subsections (1) and (3)(b), “rent” means—

(a)the amount that was payable in rent under the tenancy immediately before it ended, or

(b)in a case where two or more persons jointly were the tenant under the tenancy immediately before it ended, the amount mentioned in paragraph (a) divided by the number of persons who were at that time joint tenants under the tenancy.

120. The essential starting point is whether or not there is a PRT as it is only if there is a PRT that there is a right under the 2016 act for a wrongful termination order.

121. The Tribunal considered the terms of the tenancy agreement along with the evidence presented to the Tribunal both in writing and orally and have concluded that it is not a PRT and comes under the exemption of Schedule 1

paragraph 8. The tenancy agreement satisfies the requirements of Schedule 1 8 (a) and (b) and accordingly cannot be classed as a PRT.

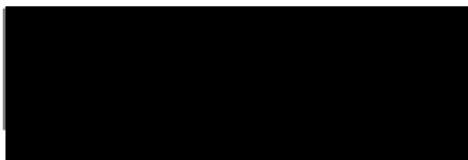
122. It was clear from the terms of the tenancy agreement that the Applicant did not have the entitlement to use the whole Property. She did not enjoy exclusive use of the Property. She did not have a joint tenancy, which was a point she agreed on.

123. The landlord/ Respondent retained a right to use the Property. Whether or not that right to actually reside in the Property was actually exercised in real terms is of no significance. The right to use was retained by the Respondent as landlord.

124. Having accepted this position the tribunal are of the view that there is no wrongful termination of a PRT and accordingly no entitlement to an application for wrongful termination of the tenancy under section 58 and no entitlement to an award of money as payment therefore arises.

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.



27 October 2023

Legal Member/Chair

Date