



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 51 of the Private Housing  
Tenancies (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/PR/23/0393**

**Re: Property at 31 Deanpark Avenue, Balerno, EH14 7EB (“the Property”)**

**Parties:**

**Mr Lewis Forbes, Ms Lisa Aird, 35 Park Grove Crescent, Edinburgh, EH14 4JL  
 (“the Applicant”)**

**Miss Catherine Smith, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make a wrongful-termination order under section 58 of the 2016 Act in the sum of Five thousand seven hundred pounds (£5,700) Sterling.

**Background**

- 1** By application to the Tribunal dated 5 February 2023 the Applicants sought a wrongful-termination order against the Respondent. In support of the application the Applicants provided a copy Notice to Leave, private residential tenancy agreement between the parties and copy correspondence from their former neighbours.
- 2** In summary the Applicants submitted that they had received Notice to Leave from the Respondent stating that the Respondent required the property to live in as her home. The Applicants had subsequently been informed by their former neighbours that the Respondent had not moved back to the property, and instead the property had been re-let two months after the Applicants vacated. The Respondent was believed to be living in Spain. The Applicants sought a wrongful termination order due to the stress and disruption caused by the Respondent’s action and the maximum compensation.

- 3 By Notice of Acceptance of Application a Legal Member with delegated powers from the Chamber President determined that there were no grounds upon which to reject the application.
- 4 The Applicants submitted an application for service by advertisement on the basis that the Respondent's whereabouts were unknown. In support of the application the Applicants provided evidence of their attempts to obtain a forwarding address from the Respondent's former agent, as well as a report from a tracing agent confirming that there had been no identifiable activity under the Respondent's name in the UK for at least two years and former neighbours understood her to be residing in Spain. The application was therefore granted by the Tribunal. A Case Management Discussion was assigned and the application paperwork together with notification of the Case Management Discussion was served on the Respondent by advertisement on the Tribunal's website.

### **The Case Management Discussion**

- 5 The Applicants were both present at the Case Management Discussion. The Respondent was not in attendance. The Tribunal noted that service had been effected upon her by service by advertisement and therefore determined to proceed in her absence.
- 6 The Tribunal explained the purpose of the Case Management Discussion and asked the Applicants to address it on the application. For the avoidance of doubt the following is a summary of the relevant submissions from the parties and does not constitute a verbatim account of what was discussed.
- 7 Mr Forbes explained that the Applicants believe that the Respondent had broken the law and as a result they had been forced to leave what they had been assured was a long term let. The Respondent had stated in the Notice to Leave that she wished to move back into the property. However that did not happen and the property was re-let to another couple. The Applicants were made homeless as a result. Mr Forbes explained that they had been on good terms with their neighbours during their stay in the property and had received text messages from said neighbours after they left, advising that the Respondent had been carrying out viewings and subsequently a new couple had moved in. Mr Forbes made reference to excerpts from those text messages that had been submitted with the application. Mr Forbes understood that the Respondent had since moved the new tenants out of the property in an attempt to sell the house.
- 8 Ms Aird confirmed that their former neighbours had gotten in touch with them to let them know what had happened. The neighbours had also advised that the Respondent had asked the new tenants to leave after they had been there just shy of a year. The new tenants had been asked to leave on the grounds that the landlord wished to sell the property however the Applicants had found no evidence of that in terms of advertising. The Applicants believed that the Respondent had been residing in Spain over the past few years and Ms Aird referred to the report from the tracing agent which supported this. There was no evidence of her residing in the UK from credit records or tax records, and no

evidence that she had ever lived in the property since the Applicants were asked to vacate.

- 9 Ms Aird confirmed that the Applicants had left the property in July 2022 and it was relet to the new tenants on or around 25 September 2022. The Respondent had made it quite difficult for the Applicants in terms of delaying the repayment of their tenancy deposit and there had been instances where she had gone behind her letting agent and contacted them directly on Facebook. Tradesmen had also appeared unannounced with no notice given. It appeared that, following service of the Notice to Leave, the Respondent believed she could do what she liked. The Applicants' rights as tenants did not exist.
- 10 Ms Aird advised that the Applicants had been given the impression that the tenancy would be a long term let and they had taken it on that basis. It was their first year of marriage and they were looking to start a family. Ms Aird had learnt she was pregnant a few weeks after they left the property. This had caused emotional distress as they were facing homelessness as well as a new pregnancy. Ms Aird stated that she had subsequently lost the pregnancy in October 2022, which delayed their ability to find a new property. This was compounded by the delay in the Respondent returning their tenancy deposit. The tenancy had ended on 31<sup>st</sup> July 2022 and it was not confirmed that the deposit would be returned to them until 21<sup>st</sup> September 2022. The Respondent had not consented to this which had resulted in the delay.
- 11 Mr Forbes and Ms Aird both agreed that they were seeking the maximum sanction in terms of the wrongful termination order for the disruption to their lives. It had taken several months to find another property for a similar budget. It was only after increasing their budget and widening the net in terms of the location that they had managed to find a similar home. The rent they paid was now £225 more than it had been in their previous tenancy. Mr Forbes also had a much longer commute to work. They were both in their late 30s and in their first year of marriage when they took on the tenancy. The Applicants felt they had lost some of the opportunities they should have had, such as starting a family. Mr Forbes confirmed they were only now back on track some two years later, Miss Aird was pregnant again and they were back in a comfortable home.
- 12 The Case Management Discussion concluded and the Tribunal determined to issue its decision in writing.

### **Relevant Legislation**

- 13 The relevant legislation is sections 58 and 59 of the 2016 Act:-

*"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.*

### **59. 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.”*

## **Findings in Fact**

- 14** The Applicants and the Respondent entered into a private residential tenancy agreement dated 8 December and 10 December 2021.
- 15** On 26 June 2022 the Respondent served the Applicants with a Notice to Leave citing ground 4 of schedule 3 of the 2016 Act, namely the landlord’s intention to move back into the property.
- 16** The Applicants left the property on or around 31<sup>st</sup> July 2022.
- 17** The Respondent did not move back into the property.
- 18** The Respondent re-let the property to new tenants on or around 25 September 2022.
- 19** The Respondent currently resides in Spain.
- 20** The Applicants were misled into ceasing to occupy the property by the Respondent.
- 21** The Applicants have suffered significant disruption, emotional distress and financial detriment as a result of the Respondent’s actions.

## **Reasons for Decision**

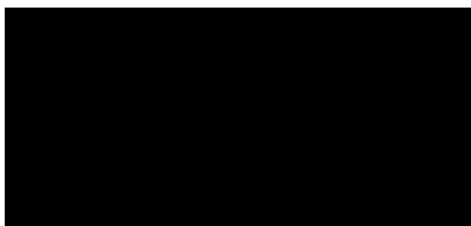
- 22** The Tribunal considered that it had sufficient information in order to reach a decision on the application following the Case Management Discussion and that it would not be prejudicial to the parties to do so. There were no issues to be resolved that would require a hearing to be fixed. Attempts had been made to locate the Respondent to no avail and service of the application paperwork had been served on her by way of service by advertisement which is a proper mode of service under Rule 6A of the First-tier Tribunal for Scotland (Housing and Property Chamber) Procedural Rules 2017.
- 23** The Tribunal found the Applicants to be wholly credible in their submissions before the Tribunal. They were candid and honest in their evidence at the Case Management Discussion and the Tribunal accepted their account of events in accordance with its findings in fact. The Tribunal therefore accepted, in terms of section 58 of the 2016 Act, that the Applicants had been misled by the Respondent into ceasing to occupy the property immediately before the tenancy terminated on 31<sup>st</sup> July 2022 by virtue of the fact she had cited ground 4 of Schedule 3 of the 2016 Act in the Notice to Leave served on 28 June 2022 stating that she intended to move back into the property, but had not done so and instead had re-let the property to new tenants. There was no reasonable

explanation before the Tribunal as to why she had done this, therefore the Tribunal concluded that she had intentionally misled the Applicants as to the reasons for terminating the tenancy. The Tribunal therefore considered that it could make a wrongful termination order based on the facts before it.

- 24** The Tribunal then considered the terms of section 59, which states that a wrongful termination order is “*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*”. The Tribunal therefore has to exercise its judicial discretion in determining the level of sum to be paid in terms of any such order, up to a maximum of six months rent.
- 25** The Tribunal considered the impact of the Respondent’s actions on the Applicants and accepted that this would have caused them significant distress and disruption, particularly given the sequence of events they had outlined at the Case Management Discussion. There were no mitigating circumstances identified by the Tribunal that would explain the Respondent’s actions and no apparent justification for why she had served the Notice to Leave. The Applicants had been given the impression that they were taking on the tenancy in the long term, and had planned on that basis. Instead the Respondent had terminated the tenancy after less than a year and had rented it to new occupants. This had placed a significant burden on the Applicants, which was compounded by the barriers that had been put in the way of them moving on through the Respondent’s failure to fully cooperate in the release of their tenancy deposit.
- 26** Accordingly in this particular case the Tribunal could see no reason to not make an award at the highest end of the scale. Under the terms of the tenancy between the parties the monthly rent was £950. The Tribunal therefore made a wrongful termination order in the sum of £5,700.

## **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.**



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**Legal Member/Chair**

**3 March 2024**

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**Date**