



**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/24/2288**

**Re: Property at 1/5 Dean Path, Dean Village, Edinburgh, EH4 3BG (“the Property”)**

**Parties:**

**Mr Henry Haynes and Mrs Catherine Maria Rowden Haynes, 57 Willowbrae Road, Edinburgh, EH8 7EZ (“the Applicants”)**

**Mrs Una Phelan, 7 Dean Terrace, Edinburgh, EH4 1ND (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application.**

**Background**

1. This is an application for a wrongful termination order under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a Private Residential Tenancy Agreement between the Applicants and the Respondent dated 14 June 2021, a Notice to Leave with an email dated 14 January 2024 on the basis the Respondent intended to sell the Property and which expired on 30 April 2024, various text messages, an advertisement for the Property from Rettie and Co showing it was available for let on 5 April 2024 at a rent of £1350 per month and an excerpt from Landlord Registration.
3. The Respondent lodged written submissions in response to the application on 18 November 2024 accompanied by various text messages, a statement

from a neighbour dated 15 November 2024, various emails between the Respondent and an insurance company, emails dated 18 March 2024 between the Respondent and her dentist, emails dated 17 November 2024 from the Respondent's son with an email dated 8 July 2024 from Leeds University to her son, a statement from a friend dated 17 November 2024, an email from Rettie and Co dated 13 November 2024 and an email from Barbara Marshall dated 17 November 2024.

4. On 29 November 2024 the Applicants lodged further written representations with text messages, an advertisement from Gumtree dated 23 March 2024 advertising the Property as a holiday let for £950 per week.
5. On 4 December 2024 the Respondent lodged further written representations with further text messages.

### **Case Management Discussion**

6. The Tribunal proceeded with a Case Management Discussion ("CMD") on 6 December 2024. Mr and Mrs Haynes, the Applicants appeared with Mr Haynes speaking on their behalf. Ms Phelan appeared and represented herself.
7. The Tribunal had before it the Private Residential Tenancy Agreement between the Applicants and the Respondent dated 14 June 2021, the Notice to Leave with an email dated 14 January 2024, various text messages lodged by both parties, the Gumtree advertisement dated 24 March 2024, the Rettie and Co advertisement showing it was available for let on 5 April 2024, the excerpt from Landlord Registration, the statement from a neighbour dated 15 November 2024, various emails between the Respondent and an insurance company, the emails dated 18 March 2024 between the Respondent and her dentist, the emails dated 17 November 2024 from the Respondent's son with an email dated 8 July 2024 from Leeds University to her son, the statement from a friend of the Respondent's dated 17 November 2024, the email from Rettie and Co dated 13 November 2024 and the email from Barbara Marshall dated 17 November 2024. The Tribunal considered these documents.
8. Before formally starting the CMD the Tribunal made it clear to parties that it considered a lot of the text messages between the parties relating to historical repairs to the Property to be irrelevant, although noting the more recent text messages regarding the boiler to be relevant.
9. The Tribunal asked parties whether they agreed that the tenancy agreement commenced on 14 June 2021, that Notice to Leave was served on 14 January 2024 and that the rent was £850 per month. Parties were in agreement on those facts. Further parties agreed the Applicants vacated the Property on 14 March 2024.

10. The Tribunal invited the Applicants to make their submissions. Mr Haynes explained that the Notice to Leave came out of the blue. They immediately started to look for another rental property. They took time off work to look for another property straight away and for viewings. They sorted the Property out and donated or sold some items before moving. This was extremely stressful for them. They hired a van to move. They were lucky to get the property they are now in. However, they now pay £350 per month more in rent.
  
11. After they moved out of the Property, they noticed the Property had been advertised on Gumtree as a holiday let at a rent of £950 per week. At first, they were not certain whether it was the same property they had just moved out of. They then saw the Property up for rent. They did not expect that as they had understood the Respondent was intending to sell the Property. They were really disappointed that this was happening and felt they had been misled.
  
12. In response, the Respondent explained the Applicants had been great tenants. There was a whole avalanche of events that led her to decide she needed to sell the Property. There were issues at her own home regarding a water leak which had caused damage, The insurance company only paid for part of that. She had been advised by her plumber that the boiler at the Property would need replaced at some stage as there had been ongoing issues with it. There was also the possibility she would need to fund her son through another year of study at an English university. These expenses were too much for her to bear and she decided to sell the Property. The Applicants left on 14 March 2024. Retties attended to value the Property on 15 March 2024. She instructed photos to be taken for the sale. At this time, she had also had an accident and was under a huge amount of pressure. As it would take a couple of months to sell the Property, she decided to advertise it on Gumtree as a holiday let so she could get some income before it was sold.
  
13. Ms Phelan explained she took financial advice from her friend Barbara Marshall and Henderson Loggie. As a result of these discussions, she became aware that the mortgage on the Property was not due to expire for a number of years which if sold, would result in a financial penalty. She then decided to sell another property which she owned, on the advice of Henderson Loggie as that mortgage was due to expire on 31 December 2024. She then asked Retties to advertise the Property for rent. As it turned out there were complicated title issues with the other property she was selling as a result of which she thought she would have to sell the Property despite the financial penalties. She accordingly asked Retties to take the advertisement down. It was taken down by Retties on 25 April 2024. The Property was never rented out by them. The solicitors dealing with the sale of the other property came back to her with regards to the timing for the sale of that property, despite the issues at it and she decided to proceed with selling it. At that stage, on or about May 2024 she advertised the Property for rent on Gumtree. New tenants moved into the Property in June 2024.

14. She explained that when the Notice to Leave had been served she had every intention of selling the Property. She felt she had lost great tenants. The whole process had cost her as the Property had remained vacant for a number of months. At the time of serving the Notice to Leave she had no choice but to sell as she was under a huge amount of financial stress. She had not been dishonest and had not misled the Applicants.

### **Findings in Fact**

15. The Applicants lived in the Property from 14 June 2021. The Applicants and the Respondent entered into a Private Residential Tenancy Agreement from 14 June 2021 in relation to the Property. In terms of Clause 8 the monthly rent was £850.

16. On 14 January 2024, the Respondent served a Notice to Leave on the Applicants in terms of Section 50 of the 2016 Act which stated the reason for the Notice was that the Respondent wanted to sell the Property by reliance on Schedule 3, paragraph 1 of the 2016 Act. The Notice required the Applicants to leave the Property by 30 April 2024.

17. At this time the Respondent was under some financial stress brought about by damage to her home, increasing repair costs at the Property and funding her son through university in England.

18. As a result of the Notice to Leave the Applicants searched for alternative accommodation. This was very stressful for the Applicants as they required to take time off work to view properties and to sort out their personal belongings. The Applicants secured alternative accommodation. They vacated the Property on 14 March 2024.

19. On 15 March 2024 the Respondent arranged for Retties to value the Property for sale.

20. On 24 March 2024 the Respondent advertised the Property for a holiday rental at a rent of £950 per week to provide some income before the sale was complete.

21. On or about March/April 2024 on taking financial advice the Respondent decided to sell another of her properties as she found out she would incur a financial penalty in selling the Property which still had a number of years left on its mortgage.

22. The Respondent thereafter instructed Retties to advertise the Property for rent. Retties advertised the Property for rent at a monthly rent of £1350 and as being available to rent from 5 April 2024.
23. On or about April 2024 the Respondent was made aware of a number of title issues at the property she was selling. She then decided she may have to sell the Property regardless of the financial penalties and instructed Retties to take the advertisement for rental down. The advertisement was taken down by Retties on 25 April 2024.
24. On or about April/May 2024 the Respondent received advice from her solicitors regarding the sale of her other property and decided to proceed with the sale. The Respondent thereafter advertised the Property for rent on Gumtree in May 2024. New tenants moved into the Property in June 2024.
25. The Respondent is registered as a Landlord of the Property with Edinburgh City Council.

### **Findings in Fact and Law**

26. The Respondent intended to sell the Property when she served the Notice to Leave in terms of Section 50 of the 2016 Act by reliance on paragraph 1 of Schedule 3 of the 2016 Act.
27. The Respondent did not mislead the Applicants into ceasing to occupy the Property in terms of Section 58(3) of the 2016 Act.

### **Reasons for Decision**

28. The Tribunal considered the Application together with all documents lodged and the oral submissions from both parties. It appeared to the Tribunal that the Respondent had every intention of selling the Property when she served the Notice to Leave on the Applicants. The Respondent appeared to the Tribunal to be honest and credible in her submissions.
29. The Tribunal accepted that the reasons given by the Respondent leading up to the service of the Notice to Leave had placed the Respondent under some financial strain and that she intended to sell the Property to alleviate this. In considering the question and meaning of “intends” the Tribunal considered the decision of Lord Justice Asquith in *Cunliffe v Goodman*[1950] 2K.B.237 at page 253:  
*“An “intention” to my mind connotes a state of affairs which the party “intending” – I will call him X – does more than merely contemplate: it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition. X cannot, with any due regard to the English language, be said to “intend” a result which is wholly beyond the control of his will. He cannot “intend” that it*

*shall be a fine day tomorrow: at most he can hope or desire or pray that it will. Nor, short of this, can X be said to "intend" a particular result if its occurrence, though it may be not wholly uninfluenced by X's will, is dependent on so many other influences, accidents and cross-currents of circumstance that, not merely is it quite likely not to be achieved at all, but, if it is achieved, X.'s volition will have been no more than a minor agency collaborating with, or not thwarted by, the factors which predominately determine its occurrence."*

30. The Tribunal considered that the Respondent had done more than contemplate the sale of the Property. She had taken positive steps towards putting the Property up for sale by instructing estate agents to handle the sale. It was only when she discovered that the sale of the Property may incur financial penalties which would add to her financial stress, did she decide not to sell it and to sell another property. Even then at that stage when it appeared there were a number of legal issues at the other property, the Respondent nevertheless accepted she may have no choice but to incur further financial penalties and sell the Property. However, as things transpired the sale of the other property was able to proceed. It was unfortunate that by then the Applicants had vacated the Property.
31. It appeared to the Tribunal that both parties deeply regretted the unfortunate string events leading up to this action. The Applicants naturally on seeing the Property being advertised for rent so soon after leaving the Property, felt they had been misled into leaving the Property by the Respondent. They cannot be criticised for bringing this action. However, as the Tribunal accepted the Respondent had the intention to sell the Property, the Applicants were not misled by the Respondent and so their action must fail.

### **Decision**

33. The Tribunal refused the Application.

## 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.

# S. Evans

8 December 2024

Legal Chair

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Date