



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 58 and 59 of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/23/4171

Re: Property at 17 Albury Garden, Albury Road, Aberdeen, AB11 6FL (“the Property”)

Parties:

Mr Matthew Carrol, 84 May Baird Wynd, Aberdeen, AB25 3RQ (“the Applicant”)

Jacqueline Sutherland, 2 Burnside Gardens, Aberdeen, AB25 2QW (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines that the Applicant is entitled to a wrongful termination order under Section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016 in that the Applicant was misled into ceasing to occupy the Property by the Respondent. Having made that the determination, the Tribunal, therefore, makes a payment order requiring the Respondent to pay to the Applicant the sum of £2500.00.

1. Background

1.1 By application, dated 20 November 2023, the Applicant sought an Order under Sections 58 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) for wrongful termination without eviction and an Order for payment. The Applicant states that a Notice to Leave was served on the basis that the Respondent as landlord intended to live in the Property. However, two weeks after leaving the Property, the Applicant found it to be occupied by the Respondent’s nephew. As a result, the Applicant submitted an application to

the First Tier Tribunal for Scotland alleging wrongful termination of his tenancy and seeking the maximum compensation of six months' rent being £4,200,00.

- 1.2 A Case Management Discussion ("CMD") took place on 2 May 2024. The tribunal on that occasion considered that the matter could be determined without a Hearing and refused the Application. The Applicant lodged an appeal and on 4 July 2024, the Upper Tribunal for Scotland quashed the decision of 2 May 2024 and remitted the application back to the First-tier tribunal to be reconsidered by a differently constituted tribunal.
- 1.3 At a further CMD held on 6th November 2024, a Hearing was fixed, and a Direction was issued to the Applicant and Respondent requiring a numbered and indexed list of productions to be lodged 14 days before the date of the Hearing
- 1.4 By emails dated 23 and 24 December 2024, the Respondent and Applicant respectively complied with the terms of the Direction.

2 The Hearing

- 2.1 A Hearing took place by teleconference at 10.00 on 10 January 2024. Both Parties appeared personally and were unrepresented.
- 2.2 At the Hearing, the Tribunal had before it the following documents:-
 - i. Application for unlawful termination without eviction.
 - ii. Copy of the Lease dated 25 January 2023.
 - iii. Notice to Leave dated 18 August 2023 stating the ground for eviction to be "Your Landlord intends to live in the Let Property"
 - iv. Copy email from the Respondent's letting agent dated 17 August 2023 sending the Notice to Leave to the Applicant
 - v. Copy emails between the letting agent and the Applicant dated 18 August 2023 giving information about the reason for the eviction notice and details of rent paid.
 - vi. Email from the Respondent dated 31 March 2024 to First Tier Tribunal in response to the application
 - vii. Email from the Applicant dated 3 April 2024 with copy text messages
 - viii. Decision from the First Tier Tribunal for Scotland Housing and Property Chamber dated 2 May 2024
 - ix. Email requesting permission to appeal from the Applicant dated 8 May 2024.
 - x. Decision of the First Tier Tribunal refusing request to appeal dated 15 May 2024.
 - xi. Decision of the Upper Tribunal for Scotland dated 21 May 2024 granting permission to appeal.

- xii. Decision of the Upper Tribunal for Scotland granting the appeal and remitting the application to be reconsidered by the First Tier Tribunal dated 4 July 2024
- xiii. Further submissions from the Applicant dated 28 October 2024
- xiv. Further submissions from the Respondent dated 14 October 2024
- xv. Copy death certificate for Mr. James Sutherland dated 7 October 2023
- xvi. Copy letters from Mr. Frost consultant surgeon re medical appointments for Mr. George McKinnon
- xvii. Letter from BMI Albyn Hospital dated 2 April 2021
- xviii. Email from Albyn radiology department
- xix. Miscellaneous documents from Scottish Power and Aberdeen City Council
- xx. Further submissions from the Respondent by email dated 7 November 2024
- xxi. Further submissions from the Respondent by email dated 23 December 2024, including a list of witnesses, comprising Mr. George McKinnon; Mr. Michael Keller; Mrs. Ruth Main
- xxii. Further submissions from the Applicant by email dated 24 December 2024, which also named Ms. Nicole Graham as a witness.

2.3 As a preliminary matter, the Chair noted that a further email from the Applicant had been sent to the Tribunal at 21.32 on the day before the Hearing , 9 January 2024). Given that the submission was very late and appeared to contain a summary of the Applicant's evidence, the Chair ruled that it would not be considered by the Tribunal. This was accepted by the Applicant.

3. Applicant's Evidence

3.1 The Applicant, Mr. Carrol, gave evidence. He stated that he vacated the Property on 31 October 2023 but understood that the keys were not collected by the Letting Agent until around 9 or 10 November 2023. Mr. Carrol stated that the contractual end of his tenancy was 17 November 2023. In the days following his departure from the Property, he had visited the Property on several occasions and tried to collect mail. On each occasion, there was no reply from the door buzzer and the Property appeared unoccupied. He said he could see into the Property as it is on the ground floor and there are bay windows in the living room. He had left the blinds open on vacating the Property, and it didn't look like anything had changed, and he could see there was no television in the lounge.

3.2 On 17 November 2023, he again returned to the Property with a friend, Nicole Graham. Initially, the Property appeared to be empty and as, no one responded to the door entry system, he returned to the car park. As he was about to leave, he noticed that lights had been turned on in the Property and so he tried the door entry system again. On this occasion, the door was answered by a man he now knows to be Mr. Michael Keller, the nephew of the Respondent. He heard dogs barking in the Property. He recalled that the Respondent had advised him she was

allergic to dogs and found it odd that dogs were in the Property if the Respondent was in residence.

3.3 He and Mr. Keller had a conversation at the doorway to the Property and established that they had a mutual friend and had played football together some years earlier. Ms. Graham was present during this conversation with Mr. Keller. Mr. Keller confirmed it was his aunt's Property and he'd moved in following a break-up with his partner. The dogs were shared between him and his partner. Mr. Keller did not mention living with his aunt and uncle at the Property and did not mention anyone else being present in the Property at that time. Mr. Carrol stated that he collected his mail and exchanged social media contacts with Mr. Keller. Later that evening Mr. Carrol mentioned his visit to the Property to a friend who worked at Stonehouse Leasing and who advised him that he may have a claim for wrongful termination. He submitted the application to the First Tier Tribunal shortly afterwards.

3.4 Mr. Carrol went on to set out various inconsistencies in the Respondent, Ms Sutherland's written evidence which related to the timeline of Mr. Keller's breakup, the need for Mr. Keller to move in to the Property to look after his uncle and Ms Sutherland's intention to move into the Property on a permanent basis. Mr. Carrol also asked the Tribunal to note that Mr. Keller was paying the council tax on the Property, although it was not clear if he was claiming the single-person discount as Ms. Sutherland had chosen not to provide evidence of this. Mr. Carrol further noted that Ms. Sutherland moved out of the Property on 20 March 2024, which was only one week after her partner's back treatment. He claimed that the letting agent had told him that the Property was relet in November 2024.

3.5 The Respondent, Ms. Sutherland, asked Mr Carrol several questions and frequently simply asserted that Mr. Carrol was lying and raising irrelevant matters. She challenged his evidence in several areas, including the date on which the Property returned to the rental market, in what way Mr. Carrol could be sure that Mr. McKinnon and she were not in the Property when he visited on 17 November 2023 and in what way he could be certain the Property was vacant on the days he visited prior to 17 November 2023. Mr. Carrol maintained that the Property appeared to him to be unoccupied before his visit on 17 November 2023 and that Mr. Keller appeared to be the only occupant on that date.

3.6 In response to questions from the Tribunal, Mr. Carrol said he was asking the Tribunal for the maximum penalty to be applied as he had been forced out of the Property by a Notice to Leave issued after only seven months living in the Property. He stated that he had incurred various costs as a result of taking the tenancy, for example he had taken out a Sky package and was still paying the two-year broadband contract he had entered with Vodafone. This had caused significant upheaval and he was now living back with his mother. He said that he believed

the reason for asking him to leave the Property was that the Respondent wanted her nephew to have the Property.

3.7 Ms. Graham gave evidence. She is a friend of the Applicant. She stated that she was with Mr. Carrol on 17 November 2023 when they visited the Property. She said that she spoke with Mr. Keller and was a party to the conversation when Mr. Keller said that he had separated from his girlfriend and that it had been awkward sharing a property with her for a few months after that. Ms. Graham said that as a result of the conversation she found out that Mr. Carrol and Mr. Keller had a mutual friend and had played football together some years earlier. Mr. Carrol and Mr. Keller then agreed to swap social media details. She noted that there was a lot of mail in the mailbox. In response to questions from Mr. Carrol, she said she did not get the impression that there was anyone else living in the Property with Mr. Keller.

3.8 Ms. Graham answered questions from Ms. Sutherland. She was asked if the word “evicted” had been used in the conversations between Mr. Carrol and Mr. Keller, and she said she did not think so. She also said she could not answer the question about whether she would say who lives with her when she answers her own door as she lives alone.

4. Respondent’s Evidence

4.1 Ms. Sutherland then gave evidence. She said her partner, Mr. George McKinnon, has had back issues for some years. Whilst an operation had helped matters in 2021, it flared up again in 2023. A doctor had then suggested that the stairs in their property were a problem and it would be better if they lived on one level. The Property is on one level and so is suitable. As Mr. McKinnon was having such a hard time, she contacted her letting agent, which she had used for over 11-12 years, to ask for advice on getting the Property back. She was told that, as she needed the Property for her own use, she could get it back by giving the tenant three months’ notice, which she found to be a considerable amount of time for the tenant to find a new place. The letting agent dealt with the recovery of possession process and issued the Notice to Leave.

4.2 Ms. Sutherland stated that she was pleasantly surprised that Mr. Carrol moved out before the end of the notice period, and so, the Property was cleaned so that Mr. McKinnon could move in on 7 November 2023. She stated that she had intended to stay there on a permanent basis with Mr. McKinnon, but unfortunately around August 2023, there was a life-changing event when her father had a series of strokes that eventually led to his death. Her world completely changed as this was first parent she had lost and they were really close. She struggled to come to terms with this and also had to support her mother. She said to Mr. McKinnon that she was not mentally well enough to move in with him permanently. She stated that

Mr. McKinnon is also registered blind, being partially sighted, and sometimes cannot cope in unfamiliar surroundings. Ms. Sutherland then thought she would ask her nephew, Mr. Keller, to stay with Mr. McKinnon. She knew Mr. Keller was staying with his mother because he had recently split from a long-term relationship. As they are a close family, Mr. Keller said this would not be a problem. He would be in the Property to help, particularly in the evenings, if required. Ms. Sutherland said that Mr. Keller offered to pay rent but Ms. Sutherland refused this offer. Instead, an agreement was reached that Mr. Keller would pay the council tax and utilities.

4.3 Ms. Sutherland explained that Mr. McKinnon was on various medications prior to his treatment on 13 March 2024 when he received his final injection. Luckily, that was successful and the medical staff felt that he would be able to deal with the stairs at their main home. Therefore, she and Mr. McKinnon moved back into their own home.

4.4 Ms. Sutherland concluded by saying that the family had had a horrendous time, that she had done nothing wrong, was telling the truth and had provided the Tribunal with the evidence of staying in the Property.

4.5 In response to questions from the Tribunal, Ms. Sutherland stated that she lived on and off at the Property, whilst Mr. Keller was able to support Mr. McKinnon the rest of the time. She said that, at the beginning of Mr. Carrol's tenancy in 2023, they did not know that they would need to use the Property and so were happy to let it to Mr. Carrol. It was only later when they were advised by medical staff that they should move to a property all on one level that they decided to end the tenancy. Ms. Sutherland stated that she did not consider putting her own house on the market at that time, as she loved the location. The move to the Property was to let Mr McKinnon recover, and they did not know how that would go.

4.6 Questioned about the council tax payments for the Property, Ms Sutherland stated that her nephew paid the council tax and she thought Mr. Keller had claimed a single-person discount for the Property. She pointed out that the Council was getting the full council tax on her and Mr. McKinnon's own property. She also confirmed that Mr. Keller moved out of the Property shortly before Mr McKinnon's successful treatment, that she took over-the-counter medication to deal with her allergy to Mr. Keller's two dogs which were in the Property, and, that, as she had a spare set of keys, she could access the Property before the remaining three sets of keys were collected from the letting agency around 10 November 2023.

4.7 Mr. Carrol asked various questions of Ms. Sutherland. She confirmed various matters relating to Mr. McKinnon's medical issues, his use of stairs, and that her own house had no ground-floor toilet. Ms. Sutherland said that she was in the Property on the evening of 17 November 2023 when Mr. Carrol had visited the

Property and spoken with Mr. Keller. She said that she did not answer the door when Mr. Carrol rang at first as she does not answer the door to callers who “are trying to sell things”. She stated that the Property was in darkness and that she did not have the lights on. She denied inconsistencies in her written submissions as to how Mr. Keller came to move into the Property. She confirmed that she and Mr. McKinnon used the bedroom nearest the bathroom in the Property.

4.8 Mr. McKinnon then gave evidence. He spoke of his medical issues and the events leading up to the issuing of the Notice to Leave. He noted that three months’ notice had been given to the tenant, at which point he was reminded by the Chair that this is a legal requirement. He said that Ms. Sutherland and he followed their letting agent’s instructions. He stated that he moved into the Property on 7 November 2023 and that, as he is blind in one eye, light is a problem for him, and so they keep the lights off. He said that the treatment for his back problem in March 2024 worked and that Ms. Sutherland and he were able to move back home shortly after that.

4.9 In response to questions from the Tribunal, Mr. McKinnon stated that it had never been his and Ms. Sutherland’s intention to live in the Property permanently. He also said he did not watch television so did not bring a television to the Property.

4.10 Mr. Carrol then asked Mr McKinnon several questions. Mr. McKinnon confirmed his health issues and the history of the problems with his back. He said he was in the Property on 17 November 2023 but had not heard the buzzer as he was in bed sleeping. He said Ms. Sutherland was in the living room of the Property and the lights were likely to have been off as she was on her phone. Had he heard the buzzer that day he would have answered the door. He said he did not hear the dogs barking. He said he was in the bedroom nearest to the toilet.

4.11 Mr. McKinnon answered various questions about his visit to the Property in February 2023 to inspect a broken bed and denied that he had been able to open the bed or bend down to inspect it. He said that following the visit he had immediately ordered a new bed. He denied Mr. Carrol’s assertion that the letting agent had instructed a joiner to inspect the bed and that the joiner had contacted Mr Carrol to arrange a time to repair the bed. Mr. McKinnon stated that he had contacted the letting agent who had confirmed that a joiner had never been instructed to attend the Property. In response to a question from the Tribunal, he was unsure why he had asked the letting agent to confirm this particular point.

4.12 Mr. Michael Keller then gave his evidence. He said he wanted to help Mr. McKinnon. His grandad had recently passed away and so his aunt was dealing with that. He could not confirm the exact date he moved into the Property but thought he was still moving his stuff in on the 17 November 2023. He stated that he had yet to spend a night there. Mr. Keller stated that on 17 November 2023, he

had gone to collect items for his dogs and when he returned to the Property, he answered the door to Mr. Carrol and had a conversation with him when ex-partners were mentioned.

4.13 Mr. Keller spoke of the arrangement to pay for council tax and utilities instead of rent. He said that Mr. McKinnon had spoken to him shortly after moving in about Mr. Keller taking over the tenancy when Mr. McKinnon and Ms. Sutherland had returned to their own home. Mr. Keller stated that, as he had since moved to Edinburgh, there was no need for this to happen.

4.14 In response to questions from the Tribunal, Mr. Keller said he did not claim the single person discount for the council tax. He said he finally moved out of the Property around August 2024 but could not remember an exact date. He stated he had left items in the Property for some months and had been living elsewhere.

4.15 In response to questions from Mr. Carrol, Mr. Keller said that, when he returned to the Property on 17 November 2023, his aunt was sitting in bed with Mr. McKinnon and the house was in darkness. He denied it was unusual to be speaking about taking over the tenancy when, at that time, the prospects for Mr McKinnon's recovery were unknown. He answered various questions relating to the timeline of his separation from his former partner and returning to his family home after that. He explained that he had used his aunt and uncle's bedroom next to the bathroom in the Property for a staged photo on Instagram on Valentine's Day.

4.16 Mrs. Main then gave evidence. She is Mr. Keller's mother and the Respondent's sister. Mrs. Main said her son split with his partner in 2023 and for a period after that had lived with her. He then moved in with Mr. McKinnon to assist him in early November 2023. In response to a question from the Tribunal, she stated that her son moved from the Property sometime in March 2024.

4.17 In response to questions from Mr Carrol, she confirmed that her son had lived with his ex-partner for some months after their separation and that this had been awkward. Mrs. Main said when he lived with her, her son did not pay rent or utilities, although she knew that he paid for utilities and council tax when living with his aunt and uncle. She repeated that he had moved out in March 2024 but had left various items in the Property probably until around August 2024.

4.18 Both the Applicant and Respondent then summed up their cases. Mr Carrol highlighted alleged discrepancies in Ms. Sutherland's defence and noted the mental distress and costs to him.

4.19 Ms. Sutherland stated that she had been truthful and that the Property was needed because of Mr. McKinnon's health issues. She said that if the panel were to find in favour of Mr. Carrol, then it should take into account that Mr. Carrol has a well-paid job in the oil industry and that renting carries risks as any landlord may need to get their property back.

5. Findings in Fact

5.1 From the information before it and the evidence heard at the Hearing, the Tribunal made the following findings in fact:-

- i. The Respondent is the heritable proprietor of the Property.
- ii. The Respondent leased the Property to the Applicant in terms of a Private Residential Tenancy agreement that commenced on 25th January 2023 at a rent of £700 per calendar month.
- iii. The Respondent asked her letting agents for advice on how to recover possession of the Property;
- iv. The letting agents advised that she could recover possession if she needed the Property for her own use;
- v. The Respondent's letting agents, on her behalf, issued a Notice to Leave dated 18 August 2023 to the Applicant;
- vi. The Ground noted on the Notice to Leave was Ground 4, the landlord intends to live in the Property;
- vii. On request by the Applicant for reasons for the Notice to Leave, the Respondent's letting agents stated that "Property required due to a change in the Landlord's personal circumstances".
- viii. The Notice to Leave gave notice to the Applicant to leave the Property on or before 13 November 2023.
- ix. The Applicant vacated the Property on 31 October 2023 as result of receiving the Notice to Leave;
- x. The Respondent's partner, Mr. McKinnon, had ongoing back problems from 2021 until he was successfully treated in March 2024.
- xi. The Respondent's father died on 7 October 2023.
- xii. The Applicant vacated the Property on 31st October 2023
- xiii. The Respondent's nephew, Mr. Keller, did not have a permanent residence after splitting –up with his girlfriend during 2023 and lodged with his mother until November 2023;
- xiv. The Respondent's nephew resided in the Property from around 17th November 2023, moving out in March 2024, although he continued to store items in the property until around August 2024.
- xv. The Respondent's nephew paid the council tax and utility bills for the Property during this time;

- xvi. The Respondent did not put her own house on the market and continued to pay full council tax at that address;
- xvii. The Respondent did not pay council tax for the Property;
- xviii. The Respondent did not reside in the Property permanently or as her only or principal home at any time;
- xix. The Respondent and her partner did not consider their move to the Property to be permanent and wished to return to their own house should Mr. McKinnon's health conditions improve.
- xx. In November 2023, discussions were held with the Respondent's nephew about him taking on the tenancy of the Property.
- xxi. The Property has since be relet to another tenant.

6. Tribunal's assessment of the evidence.

6.1 The Tribunal accepted the various documents lodged as part of the tribunal process at face value and had no reason to challenge them.

6.2 The Tribunal found the Applicant, Mr. Carrol, and his witness, Ms. Graham, to be credible and reliable in their evidence which they gave without exaggeration or attempt to deceive

6.3 The Tribunal found the Respondent, Ms. Sutherland, to be less reliable and identified discrepancies in the evidence provided by her and her witnesses, save for Mrs. Main. For example, their accounts of the events on 17 November 2023 varied. The Tribunal acknowledges that, given the passage of time, it may be difficult to recall precise details, such as whether the lights were on or off, however, the Tribunal considers it unlikely that Ms. Sutherland and Mr. McKinnon were present in the Property on that evening. The Tribunal noted, as it did on the day, that Ms. Sutherland appeared to be coaching Mr. McKinnon in his evidence.

6.4 The Tribunal accepted that Mr. McKinnon's health issues require him to need care and assistance and accepted, that at times, the Property may have been more suitable to his needs than his and Ms. Sutherland's own home. However, the Tribunal does not accept that this was the sole reason for requiring possession of the Property and that Mr. Keller's need for home of his own was also a factor.

6.5 The Tribunal considered the suggestion that a Valentine's Day photograph was staged by Mr. Keller in his aunt and uncle's bedroom due to the untidiness of his own bedroom to be implausible and untrue. The Tribunal took the view that the larger of the two bedrooms was his as his aunt and uncle did not reside in the Property on a permanent basis.

7. Issues for the Tribunal

7.1 The issues for the Tribunal are: did the Respondent mislead the Applicant to vacate the Property, and, if so, what is the amount of any payment order to be made to the Applicant?

7.2 The relevant legislation is Ground 4 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016, which states: “4 (1) It is an eviction ground that the landlord intends to live in the let property.(2) The First-tier Tribunal may find that the ground named in sub-paragraph (1) applies if (a) the landlord intends to occupy the let property as the landlord’s only or principal home for at least three months” and Section 58 (3) of the Private Housing (Tenancies) (Scotland) Act 2016, which states: “(1) This section applies where a private residential tenancy has been brought to an end in accordance with section 50.....(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.”

8. Decision and reasons for the Decision

8.1 With regard to the first issue, did the Respondent mislead the Applicant, the Tribunal had no hesitation in finding that the Notice to Leave which was issued by the Respondent’s letting agents misled the Applicant into vacating the Property. The Respondent’s position, by her own admission and her witnesses’ evidence, was that at no time, from the issue of the Notice to Leave to the Applicant vacating the Property, did she intend to occupy the Property as her only or principal home. The Applicant’s position was that he vacated the Property because he had received the Notice to Leave.

8.2 Even if the Respondent’s intention was that Mr. McKinnon would move into the Property and that she would reside there at weekends, this intention does not satisfy the statutory requirement to occupy the property as her “only or principal home.”

8.3 The Respondent’s evidence is that she took no steps to market her own house for sale, she continued to reside in her own house for most of the time, she paid full council tax there and she intended to return to her own house in due course. None of which supports an intention to occupy the Property as an only or principal home

8.4 Furthermore, Mr. Keller, the Respondent’s nephew, paid the council tax and utilities at the Property. Given that he did not contribute financially to his lodgings with his mother, the Tribunal found it implausible that he would contribute financially to the running of a household which he considered to be temporary, particularly as he was paying in kind by way of care for his uncle. The Tribunal found that it was more likely

the intention was that Property would become Mr. Keller's only or principal home in due course

8.5 Therefore, on the balance of probabilities and for the reasons set out immediately above, the Tribunal is satisfied that the Notice to Leave was issued by the Respondent wrongfully. The stated ground, a purported intention to live in the property as her only or principal home for at least three months, was not genuine and so the Applicant was misled into vacating the Property. Accordingly, he has established a breach of Section 58(3) of the Private Housing (Tenancies) (Scotland) Act 2016 and is entitled to an order for payment under Section 59(3).

8.6 The Tribunal then had regard to Section 59 (3) of the Private Housing (Tenancies) (Scotland) Act 2016 which states: "*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*".

8.7 The Tribunal had regard to the wording in Section 58(3) that it "may" make an order and firstly considered if it should it make an Order. The Tribunal then considered, if so, the amount of the Order.

8.8 The Tribunal accepts and acknowledges the inconvenience, distress and costs incurred by the Applicant due to the wrongful termination of his tenancy. The Tribunal accepts that he has been left with financial outlays which he cannot recoup. The Tribunal recognises that the Applicant complied with the Notice to Leave and did not compel the Respondent to raise proceedings for eviction.

8.9 The Respondent's argument in mitigation was that renting inherently carries the risk of a landlord recovering the property and so flagrantly disregards the legislative intent to provide tenants with security of tenure unless valid grounds for eviction are established. The Tribunal found this to be a disappointing attitude for a landlord of over eleven years.

8.10 Accordingly, the Tribunal had no difficulty in deciding that it should exercise a discretion and make a payment order.

8.11 While the Tribunal does not accept that the Respondent ever intended to move into the Property as her principal home, certain mitigating circumstances were noted.

8.12 The Tribunal gave consideration to the fact that Mr. McKinnon had ongoing health issues at the relevant time and that a single-level property might have been useful to him, albeit temporarily during his treatment. Additionally, Ms Sutherland's father passed away shortly after a period of ill health, which may have disrupted her plans.

8.13 Taking all circumstances into account, the Tribunal concludes that a payment of £2,500.00 is appropriate to reflect the inconvenience, costs, and distress suffered by the Applicant mitigated by the Respondent's own circumstances.

9. Decision

9.1 The Applicant is entitled to a wrongful termination order under Section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016 in that the Applicant was misled into ceasing to occupy the Property by the Respondent, and a payment order in the sum of £2,500.

9.2 This Decision is unanimous.

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.

K.Moore

23 January 2025

Legal Member/Chair

Date