



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/24/1436

Re: Property at 9 Laggan Crescent, Glenrothes, KY7 6FY (“the Property”)

Parties:

Mr Tristan MacKenzie, 37 Hawthorn Terrace, Thornton, Kirkcaldy, KY1 4DZ (“the Applicant”)

Mrs Anne White, 23 Huntingtower Park, Glenrothes, Fife, KY6 3QF (“the Respondent”)

Tribunal Member:

**Fiona Watson (Legal Member)
Helen Barclay (Ordinary Member)**

Decision

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

- **Background**

1. An application was submitted to the Tribunal under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) seeking a Wrongful Termination Order under section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) on the basis that the Applicant was misled into ceasing to occupy the Property by the Respondent.
2. A Case Management Discussion (“CMD”) took place on 13 September 2024 by way of conference call. The Applicant was personally present and representing themselves. The Respondent was represented by Mr Gordon, of Thorntons solicitors.
3. Prior to the CMD, on 4 September 2024 the Respondent’s solicitor lodged written Answers to the application. Thereafter on 11 September 2024 the

Applicant lodged a response to those Answers. The Tribunal allowed the Answers to be received late.

4. The Applicant confirmed that they wished to proceed to seek a Wrongful Termination Order on the basis that they had been served with a Notice to Leave by the Respondent and which set out that the Respondent required to take repossession of the Property in order that she could move into it herself. It was submitted by the Applicant that the Respondent did not move into the Property and that the basis for serving the Notice had been false.
5. The Respondent's representative submitted that the Respondent did move into the Property following the departure of the Applicant, and that the Respondent was in the process of ingathering documentary evidence to be lodged with the Tribunal and to be relied upon at a future hearing. It was submitted that the terms of Ground 4 of Schedule 3 to the said 2016 Act had been met. It was also submitted that there was a typographical error in the Answers and in paragraph 2 where reference is made to the service of the Notice to Leave, it should read "October" rather than "November."
6. The CMD was adjourned and a Hearing fixed for evidence to be heard as to whether or not the terms of Ground 4 of Schedule 3 to the said 2016 Act had been met.

- **The Hearing**

7. A Hearing took place on 7 February 2025, in person. The Applicant was personally present and represented themselves. The Respondent was personally present and was represented by Mr Gordon, of Thorntons solicitors.

- **The Applicant's evidence**

8. The Applicant submitted that he was served with a notice to leave on 12 October 2023. He was given 12 weeks' notice to leave which ended on 31 January 2024. Over the Christmas period of 2023, the Applicant travelled to the US to visit family between 20 December 2023 and 4 January 2024. It was submitted that the Applicant knew that if he waited to find another property when he returned from his trip, he would not have enough time to find anything. The Applicant submitted that he took the Respondent at her word that she would be homeless and the Applicant thought that he would be kind and make sure that he moved out of the Property as soon as possible to allow the Respondent to move in.
9. The Applicant submitted that he searched for similar properties but the market for rental properties of a similar size and condition had rocketed. He was currently paying £695 per month. An identical property in an adjacent street was being advertised at £900 per month. All similar properties were of a higher rent, and this was a big jump financially for the Applicant. The Applicant submitted that he has two dogs, and most rental properties would not allow pets. The Applicant then decided that it would be more cost-effective for him to purchase a property. He did not qualify for a mortgage because he was not

employed and he had retirement savings so he was able to pay cash for a property. The Applicant found a property in Thornton which he submitted was not ideal, but he was running out of time, and he thought that he could fix it up and sell it or rent it out.

10. The Applicant submitted that in January 2024 his cancer returned and moved from stage three to stage four. The Applicant required to leave the property in Thornton because of smoke damage being caused from the downstairs neighbour. The Applicant described his dogs suffering from cannabis poisoning from the smoke passing into his property from the tenant below. The Applicant could not stay in the property due to his lung metastasis. The Applicant did not find another property until June 2024 which he rented at £795 per month. The Applicant's property in Thornton was vacant until it was recently sold for £62,500.
11. The Applicant referred to three questionnaire documents lodged within his productions which appeared to have been signed by neighbours, and which confirmed that the three neighbours did not see anybody at the Property following the Applicant's removal from same, other than to move the bins in and out on the appropriate days.
12. The Applicant submitted that he painted the Property before he left and that he disputed that the Respondent had required to paint the Property upon taking possession. The Applicant submitted that the Respondent had carried out work in the rear garden because he could see a change in the height of the shrubs in the photographs lodged. The Applicant submitted that he did not consider any changes have been made by the Respondent to the bathroom or kitchen nor to the flooring. The only difference noted was the rear garden.
13. The Applicant submitted that he gave his 28 days' notice to leave on 3 November 2023 with a move out date of 5 December 2024. The Applicant arranged for the carpets in the Property to be professionally cleaned at a cost of £160. The Applicant submitted that he did not need to do any of the painting or the carpet cleaning, but that he did so because he thought that the Respondent was going to be homeless and that it would be a nice thing to do for her to be able to settle straight into the Property so close to Christmas.
14. The Applicant submitted that the Respondent did not agree to the tenancy deposit being returned when the Applicant applied for same via the tenancy deposit scheme. It was submitted that the Respondent had no reason not to agree timeously and that this resulted in the Applicant having to wait 30 days before it was automatically returned to him on 22 January 2024.
15. The Applicant submitted that taking into account the costs incurred in erecting a new fence and shed at the Thornton property, his moving expenses, new carpet and tiles and legal fees, that overall he had suffered a net loss of £8,437 despite selling the property for the same valuation as he purchased it for, being £62,500. The Applicant submitted that it had been a very difficult year with his

health and having to move into the Thornton property and suffer the issues that he did with the neighbour down below, made it more stressful.

16. The Applicant referred to a report he obtained from 192.com which confirmed that the Respondent's address remained at the formal matrimonial home of 11 Kishorn Court, Glenrothes. The Applicant accepted in his evidence that there was a disclaimer on page 2 of the 192.com report which confirmed that they could not guarantee the accuracy or reliability of the information provided in the report. The Applicant confirmed that the report was not conclusive as to the Respondent's occupation of the property.
17. The Applicant confirmed in his evidence that he had not written to the Respondent prior to raising the application, to record his concerns and seek to resolve matters without proceeding to the Tribunal.
18. The Tribunal noted that whilst the Applicant had lodged three questionnaires which appeared to have been completed and signed by three neighbours, these were not sworn statements, nor were any of these neighbours in attendance at the hearing to give evidence and to give the Respondent an opportunity to cross examine them.
19. The Applicant accepted in his evidence that people can miss things and that they will not always see everybody coming and going at all times of the day and night.
20. The Applicant confirmed in his evidence that the property he purchased at Thornton was liveable, but the bathroom layout was inconvenient and there was some paint marks on the flooring. The Applicant confirmed that it was not uninhabitable and did not have any serious issues such as damp or roof disrepair.
21. The Applicant submitted that he had only met the Respondent on two or three occasions face-to-face regarding issues with the house when he first moved in and that this was prior to 2021. There had been issues regarding the garden and the driveway which the Respondent wanted to have cleaned, and there was also an issue with the front door key not working properly.
22. The Applicant submitted that the Respondent had refused to use the Applicant's name of Tristan Mackenzie and his pronouns following his transition to male, and that the Respondent had continued to refer to him as "Trish", "she" and "her". The Applicant confirmed in his evidence that he had been provided with an amended lease upon his change of name in 2021.
23. The heard evidence from Mrs Serena Mitchell, residing nearby the Property at 22 Tanna Drive, Glenrothes. Mrs Mitchell submitted that she had a corner garden that she and her husband spent a lot of time in during lockdown and she would often chat with people who walked past to go to the Lomond Hills Park and reservoir. Mrs Mitchell stated that this is how she met Mr Mackenzie and they became friends.

24. Mrs. Mitchell submitted that she had never met the Respondent and did not recall ever seeing her in the area. Mrs Mitchell stated that she regularly walks around the neighbourhood and has walked past the Property and along an adjacent path but did not see anybody living in the Property following Mr. Mackenzie moving out. Mrs Mitchell stated that she could not recall seeing a car in the driveway of the Property. Mrs. Mitchell stated that she could not recall if there had been a skip at the Property following Mr Mackenzie's removal.
25. Mrs Mitchell stated that the Applicant had told her that he had been asked to leave the property. Mrs Mitchell had helped the Applicant try to find an alternative rental property, but this proved difficult because many of the properties would not accept pets or had no garden or were not big enough. Mrs Mitchell stated that she sent approximately 12 to 15 suggested properties to the Applicant for a review.
26. Mrs Mitchell submitted that the Applicant had asked her for advice regarding how he would go about buying a property and she and her husband gave the Applicant advice regarding areas to look at and areas to avoid.
27. Mrs Mitchell submitted that she saw the Thornton property when Mr Mackenzie moved into it and that it was not equivalent to the standard of property that he had moved out of. Mrs Mitchell described it as a "downgrade." Mrs Mitchell stated that the area was not as nice, and that it was a smaller house with no attached garden, and that it needed attention. Mrs Mitchell stated that she had had stayed overnight in the property on one occasion and could smell the smoke coming from the property below. Mrs Mitchell accepted that the property was not uninhabitable and there was no dampness or disrepair.
28. Mrs Mitchell submitted that she was aware that the Applicant had made changes to the Thornton property prior to selling, and that she had helped him paint the hall and the living room, that her husband had wallpapered the bedroom and that her friend "Jim" had carried out work in the bathroom and laid a floor in the kitchen.

- **The Respondents' evidence**

29. The Respondent submitted that she was a retired midwife and nurse, aged 66 years old.
30. The Respondent submitted that during the Covid period, her letting agent Fife Properties had found the Applicant to lease the property. Fife Properties acted as managing agents and had day-to-day contact with the Applicant.
31. The Respondent submitted that at the start of the lease there were numerous calls to the letting agent regarding the state of the garden and that Fife Properties were calling the Respondent about it. The Respondent stated that

she attended at the Property to see what the problem was. The Respondent submitted that at the time she was caring for her elderly mother who was terminally ill with heart failure, and she was trying to protect her from Covid, so she did not want to spend a lot of time with anybody. The Respondent submitted that her mother required physical care, and she cancelled her carers because of the risk of transmission of Covid. Her late mother lived at 23 Huntingtower Park, Glenrothes, which property she owned. Her mother died on 9 June 2022.

32. The Respondent submitted that she jointly owned the property at 11 Kishorn Court, Glenrothes with her husband. The Respondent's brother resides at 16 Kishorn Court, Glenrothes. The Respondent submitted that she owned the property at Laggan Crescent in her sole name and had done so since December 2018.
33. The Respondent submitted that she is her late mother's executor, in terms of her late mother's Will, and the estate was to be divided between the Respondent and her two brothers, aside from her mother's jewellery and furnishings which were to pass to the Respondent. The house at 23 Huntingtower Park was to be split between the three siblings. The Respondent submitted that she had two brothers, Colin Murphy and Graham Dickie. Mr Dickie is a half-brother.
34. The Respondent submitted that she does not have a good relationship with Mr Dickie and that in the past Mr Dickie has assaulted her and threatened her. The Respondent had not reported matters to the Police because when her late mother was alive, Mr Dickie had also assaulted her mother, and the Respondent wanted to protect her mother. The Respondent submitted that she's terrified of her brother. The Respondent submitted that she has a good relationship with her other brother, Mr Murphy.
35. The Respondent submitted that she had served a notice to leave on the Applicant via her letting agent and that it was her intention to move into the Property to live. The Respondent and her husband were going to move into the Property while renovating their house at Kishorn Court. Shortly before service of the notice to leave, the Respondent and her husband were having a lot of arguments. The stress of losing her mother, as well as her husband's alcohol issues, resulted in the Respondent and her husband separating. The Respondent moved out of the matrimonial home and moved into the Property at Lagan Crescent herself.
36. The Respondent submitted that the property belonging to her mother at 23 Huntingtower Park had been put on the market for sale in September 2022. A number of people viewed the property but were giving a lot of negative feedback and were saying that too much work was needed and it was not attracting any

offers. The Respondent submitted that she was looking after her mother's house and was sleeping there at night because there was no insurance due to it being unoccupied. The Respondent stated that it was correct that she had nowhere else to stay and gave notice to leave so that she could move into the Property at Laggan Crescent. She could not reside at 23 Huntingtower Park because her half-brother Mr Dickie had made it obvious that he did not want her to do so and he had said that he thought if she lived there that she would try and keep it herself and he wouldn't get his share out of it.

37. The Respondent submitted that she moved into the property at Laggan Crescent on 12 December 2023. She was given two keys from the letting agents, one for the front door and one for the back door and was told that she'd need to go to the Leven office to collect the rest of the keys and sign them out. The Respondent submitted that when she attended at the office, nothing else was discussed with her by the letting agents.

38. The Respondent submitted that a friend of her brother's, Frank O'Neill, helped her in moving into the Property at Laggan Crescent on 12 December 2023. This was arranged by her brother.

It was submitted that 23 Huntingtower Park was vacant. The Respondent went back there at night-time to sleep so that people would think the property was being occupied and would reduce the risk of it being broken into. The Respondent submitted that she made microwave meals at Laggan Crescent, and was carrying out works in the garden and inside the property during the day. She was carrying out painting and decorating and gardening at Laggan Crescent. She was cooking her meals there and using the washing facilities there. The Respondent submitted that she had her clothing at Laggan Crescent as well as a small amount of furniture.

39. The Respondent submitted that she kept herself to herself and always used the back door of the house when coming and going. The back door was a sliding door and there were only a couple of steps, whereas there were more steps at the front door to get into the Property. The Respondent submitted that she had spoken to the neighbour at number seven who recommended a skip company. She also spoke to the neighbour at number 11 and apologise to him for the state of the garden. The Respondent submitted that between 12 December 2023 and March 2024, her principal place of residence was Laggan Crescent. The Respondent referred to electricity and gas bills lodged as productions, which were issued in her name during that period.

40. The Respondent submitted that she had contacted Fife Council to have the council tax account put in her name. They originally had her husband's name on the account and she had to ask them on numerous occasions to change it

to her name because his name should never have been on it. It took Fife Council until November 2024 to amend the name on the account. Reference was made to the utility bills and council tax statement lodged as productions. The Respondent confirmed that the local authority applied certain deductions to the council tax account for that period, including a single person discount. An unoccupied exemption was applied to the account from 5 December to 12 December 2023 when nobody was living there, as she did not move in until 12 December.

41. The Respondent submitted that the property at 23 Huntingtower Park belonged to her mother and was fully furnished. The Respondent didn't move her things into that property. She had some clothing and underwear there whilst she was caring for her mother, as well as some toiletries. The property was originally put on the market for sale in September 2022 through to early 2023 but with no success.
42. The Respondent submitted that she was not initially intending to sell the Property at Laggan Crescent, and she was planning on living there. She had hoped that she would stay there until she sorted matters out with her marriage and her husband's alcohol issues. The Respondent submitted that her half-brother Mr. Dickie wanted his money out of the Huntingtower Park property, and that the Respondent only had her pension and couldn't raise the funds needed, with Huntingtower Park not selling. She was scared of Mr Dickie and her only option was to sell the property at Laggan Crescent to realise the funds needed. The Respondent submitted that she put Laggan Crescent on the market in March 2024.
43. The Respondent submitted that she received no correspondence from the Applicant prior to him raising the application with the Tribunal. The Respondent submitted that she was finding it difficult to hear that the Applicant was suggesting that she was being deceitful. It was submitted that she had never treated anybody badly and that she hated the idea of being called dishonest that she feels she has lost the last seven months of her life whilst the Tribunal application process has been ongoing. The Respondent submitted that she also spent around £5000 in legal fees so far in defending the application.
44. The Respondent submitted that she is now residing at 23 Huntingtower Park as her principal home.
45. The Respondent submitted that she moved her belongings into the property at Laggan Crescent on 12 December 2023. She moved limited furniture because the intention longer term would be once the property at 23 Huntingtower Park had been sold, she was entitled to all of the furnishings in terms of her mother's Will and therefore would move the Huntingtower Park furnishings into Laggan

Crescent further down the line. The Respondent submitted that she spent the days Laggan Crescent, which is where most of her belongings were, and slept overnight at 23 Huntingtower Park for the security of the property. The Respondent submitted that she had two drawer units in Laggan Crescent, some kitchen utensils, a microwave and kettle and a couple of conservatory chairs.

46. The Tribunal heard evidence from the Respondent's witness, Frank O'Neill. Mr. O'Neill submitted that he was age 59 years old and was a self-employed welder/fabricator.

47. Mr O'Neill submitted that he had never met the Applicant and that he didn't know the Respondent very well but knew her brother. Mr O'Neill submitted that he attended at the property at Laggan Crescent in either the first or second week of December 2023. Colin Murphy had asked him to help with moving some boxes because Mr. O'Neill had a van. The boxes were labelled kitchen, living room etc and Mr O'Neill submitted that he understood that the boxes belonged to the Respondent. Mr O'Neill submitted that he did not know why the Respondent was moving at the time. A couple of weeks later he asked Colin Murphy how his sister and her husband were getting on and Mr Murphy had said that they had split up and that was why the Respondent had to move. Mr. O'Neill stated that he did not know how long she was going to be at the property and that this was none of his business.

48. Mr. O'Neill submitted that the Property was in a quiet cul-de-sac. He reversed his van up the driveway and put the boxes into the Property. The Respondent had offered him some money and he refused. Colin Murphy later gave him £20 for diesel. Mr. O'Neill stated that he didn't see anybody around when he was there, and there were only two or three houses nearby. Mr. O'Neill stated that he was not from that area and didn't know it very well.

49. Mr. O'Neill stated that he saw items on the kitchen counter such as a microwave. He did not go upstairs in the Property and did not use the bathroom. He saw a chair in the living room. Mr O'Neill stated that the Respondent looked apprehensive and distressed and he put it down to her moving house as it is stressful. He was only there for approximately 15 or 20 minutes.

- **Findings in Fact**

50. The Tribunal made the following findings in fact:

- (i) The parties entered into a private residential tenancy agreement which commenced 16 November 2021;
- (ii) The Applicant moved out of the Property on 5 December 2023;

- (iii) The Respondent served a Notice to leave on the Applicant on the basis of ground 4 of Schedule 3 to the said 2016 Act;
- (iv) The Respondent was entitled to rely on ground 4 of Schedule 3 to the said 2016 Act;
- (v) The Applicant vacated the Property following service of the Notice to Leave and without the granting of an Order by the Tribunal;
- (vi) The Respondent moved into the Property and occupied it as her only or principal home from 12 December 2023 until its' subsequent sale;
- (vii) The Applicant was not misled into ceasing to occupy the Property by the Respondent.

- **Reasons for Decision**

51. The Tribunal had regard to the application and productions of both parties in full, and to the submissions made at the CMD and Hearing, whether specifically referred to in this decision or not, in establishing the facts of the matter and that on the balance of probabilities.

52. The application is raised in terms of section 58 of the said 2016 Act and which states as follows:

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.

53. The Tribunal had regard to the specific terms of the ground upon which the Respondent sought to rely in the Notice to Leave served on the Applicant. This ground is set out below:

Landlord intends to live in property

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 by 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 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

54. The Tribunal was satisfied that, based on the evidence before it and that on a balance of probabilities, the Respondent occupied the property at Laggan Crescent as her only principal home for a period of at least three months following the Applicant's departure from the said Property.

55. The Tribunal reminded itself that the burden of proof rests with the Applicant. The Tribunal was not persuaded, based on the evidence before it, that there was sufficient evidence to satisfy the Tribunal that the Applicant had been misled by the Respondent into vacating the Property.

56. The Tribunal found the evidence of the Respondent to be both credible and reliable. The Tribunal was satisfied on the basis of the evidence before it, that the original intention behind serving the notice to leave and her reliance on Ground 4 of Schedule 3 to the said 2016 Act, was for the Respondent and her estranged husband to move into the Property pending works being carried out at the former matrimonial home at Kishorn Court. The Tribunal was also satisfied based on the evidence before it, that due to a change of circumstances and in particular the breakdown of the Respondent's marriage, the Respondent moved into the Property alone.

57. The Tribunal carefully considered the evidence of the Respondent in relation to her use of the Property at Laggan Crescent between 12 December 2023 and its' subsequent sale. The Tribunal had some sympathy with the Respondent in what had clearly been a set of very difficult circumstances for her in relation to

the breakdown of her marriage, nursing her mother through her terminal illness until she passed away, and the difficult relationship with her half-brother to whom she was responsible as executor in her late mother's estate.

58. The Tribunal was satisfied on the basis of the evidence before it that the Respondent spent her daytime at the Property at Laggan Crescent and that she slept overnight at 23 Huntingtower Park. The Tribunal noted the evidence of Mr O'Neill who assisted the Respondent in moving her belongings into Laggan Crescent in the early part of December 2023. The Tribunal noted the Respondent's evidence that she did not move significant items of furniture into Laggan Crescent as she knew that she would be taking possession of all of her late mother's furniture upon the anticipated sale of 23 Huntingtower Park. The Tribunal considered this to be a reasonable explanation as to why more furniture had not been moved into Laggan Crescent at the outset. The Tribunal noted the Respondent's evidence that she was carrying out gardening and painting works in Laggan Crescent during the day, that she prepared and ate her meals there, that she used the washing facilities there, but that she did not sleep overnight. The Tribunal noted the Respondent's evidence that the reason for sleeping overnight at 23 Huntingtower Park was for security of the property as it was not insured following her late mother's death. The Tribunal considered this to be an adequate explanation for such an arrangement.
59. The Respondent noted the Applicant's position that he did not consider that the Respondent was occupying the property at Laggan Crescent as her only or principal home as is required in terms of ground 4. The Tribunal considered the case of *Roxburgh District Council v Collins* 1991 SLT SC 49 in which Sheriff Principal Nicholson decided that when considering residence, one must look, on the facts of the case, as to whether the person concerned has such a real, tangible and substantial connection with the house that it, rather than any other place of residence, could properly be described as having been his only or principal home during the relevant period. The Tribunal also considered the case of *Beggs v Kilmarnock and Loudon District Council* 1995 SC 333, 1996 SLT 461 in which the court confirmed that occupation could be established by there being a *corpus possessionis* (physical signs of occupation) together with an *animus revertendi* (an intention to return that could be established by some visible state of affairs). The Tribunal was satisfied that the Respondent was occupying the Property at Laggan Crescent as her principal home.
60. The Tribunal noted the Applicant's position that he did not consider that the Respondent had been truthful when advising that she was homeless following the breakdown of her marriage, and the Applicant's contention that she was able to reside at 23 Huntingtower Park. The Tribunal accepted the Respondent's evidence that she was not the legal owner of 23 Huntingtower Park upon the death of her late mother and noted the terms of the Will which stated that the property at 23 Huntingtower Park was to be divided equally between the Respondent and her two siblings. Given the difficult nature of the relationship between the Respondent and her half-brother Mr Dickie, the Tribunal accepted the Respondent's evidence that she could not obtain agreement from both of her siblings to reside at 23 Huntingtower Park even if she had wanted to do so, which she confirmed in her evidence was not her wish

at that point in time. The Tribunal was satisfied that at that time in December 2023, the Respondent was not the legal owner of 23 Huntingtower Park nor did she have any right of occupancy or any ability to take possession of the property. Her role at that point was as Executor in her late mother's estate and to administer the estate in line with her mother's wishes under her Will. The Will clearly stated that the property at 23 Huntingtower Park was to be divided equally between the siblings and that did not confer any right of ownership or occupancy on the Respondent. The fact that the property at 23 Huntingtower Park was vacant following the Respondent's late mother's death, and the fact that the Respondent was nominated as the Executor under her late mother's Will, did not give the Respondent any right of occupancy. The Tribunal noted that the only property at that point of time to which the Respondent could seek a legal right of occupancy, was the said Property at Laggan Crescent of which she was the sole proprietor.

61. The Tribunal had sympathy with the Applicant's position and it was evident that the Applicant had been, and continues to suffer from, a serious health condition. It is accepted that having to move property when it is unexpected is a stressful event. The Tribunal noted the questionnaires lodged as productions by the Applicant and which appeared to have been signed by three neighbouring proprietors, all of which stated that the neighbours had not seen anybody living in the property during the period in question. The Tribunal found it unfortunate that none of these neighbours appeared at the hearing to give evidence and to enable the Respondent a right of cross examination. The Tribunal noted that these were not sworn statements and therefore the Tribunal was not minded to give particular weight to same. The Tribunal noted the evidence of Mrs Mitchell who stated that she had not seen anybody come and go from the Property during the relevant period. It was noted that in her evidence, the Respondent stated that she kept herself to herself and that she used the back door to come in and out of the Property. The Tribunal was not persuaded that the neighbours would have been absolutely aware of any and all movements in and out of the Property during the relevant period.
62. Taking into account the evidence before it, the Tribunal was not persuaded that there has been any intentional misleading on the part of the Respondent and which has resulted in the Applicant removing himself from the Property. The Tribunal was satisfied that the Respondent had moved her belongings into the property at Laggan Crescent and that during the relevant period she was occupying Laggan Crescent as her principal home, whilst sleeping overnight at 23 Huntingtower Park to fulfil her obligations as Executor in her late mother's estate.
63. The Tribunal noted that in his evidence, the Applicant has suggested that the Respondent should have served a notice to leave on the basis of ground 1 of schedule 3 to the said 2016 Act instead, which ground states that it is the landlord's intention to sell the property within three months of the tenancy to occupy. The Tribunal was satisfied on the basis of the evidence before it that it was not the Respondent's intention to sell the property at Laggan Crescent at the point of service of the notice to leave and that it was her intention to occupy the Property as her only or principal home. The Respondent stated in her

evidence that the property at Laggan Crescent belonged to her solely and that she considered it to be a place of safety. The Tribunal was satisfied on the basis of the evidence before it that due to a change in circumstances and the difficulties the Respondent faced in not being able to sell her late mother's property at 23 Huntingtower Park, that she felt she had no option but to sell Laggan Crescent to realise the funds needed to pay over to her brothers to satisfy their interest in her late mother's estate. Whilst it was suggested by the Applicant that the Respondent had misled him by relying on the wrong ground, the Tribunal was not satisfied that there was any merit nor any benefit to the Respondent in doing so. The Tribunal was satisfied that the correct ground was relied upon based on the Respondent's circumstances and intentions at that time.

64. The Tribunal noted the unfortunate position that the Applicant found himself in with his property in Thornton and the difficulties with the downstairs neighbour exacerbating his health condition and had some sympathy with this. Whilst the Tribunal noted the evidence of the Applicant relating to the losses that he considered he had incurred in his purchase and subsequent sale of the property in Thornton, the Tribunal was not satisfied on the basis of the evidence before it that these losses were attributable to any misleading on the part of the Respondent for the reasons outlined above.

Decision

65. The Tribunal accordingly refuses the application. This decision was 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.

Fiona Watson

Legal Member/Chair

Date: 21 February 2025