

Housing and Property Chamber
First-tier Tribunal for Scotland



Notes on a Case Management Discussion of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 58 of the Private (Housing) (Tenancies) (Scotland) Act 2016 ("The Act")

Chamber Ref: FTS/HPC/PR/24/1995

Re: Property at 3 Kilmaurs Terrace, Edinburgh, EH16 5BZ ("the Property")

Parties:

Mr Andrew Watt, Mrs Patricia Watt, 29 Coulter Crescent, Edinburgh, EH16 6DZ ("the Applicant")

Mr Lachlan Riddell, Mrs Nuala Riddell, Deucherie, Dunbar, East Lothian, EH42 1TG ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") refused the Application.

Background

[1] The Applicants seek an Order under Section 58 of the Act for a Wrongful Termination Order under Section 59 of the Act. The Applicants allege that they were misled by the Respondents into ending a tenancy and leaving the Property. The Respondents had served a Notice to Leave on the Applicants on the basis that the Respondents wished to sell the Property in terms of ground 1 of schedule 3 of the Act. The Applicants claim that the Respondents failed to follow through on this and then re-let the Property to a new tenant for a higher rent. The Applicants do acknowledge that the Property appeared to be marketed for sale for a brief period prior to it being re-let.

The Hearing

[2] The Application called for a Hearing at George House, George Street, Edinburgh at 10am on 7 March 2025. The First Applicant, Mr Andrew Watt was personally present. He confirmed that he would be his only witness and that Mrs Watt did not wish to take part. The Respondents were represented by their Letting Agent, Mr Michael Logan who would also give evidence on behalf of the Respondents. Both sides had submitted written representations setting out their respective positions. The Tribunal began by ensuring that everyone understood the format of the Hearing and that everyone was familiar with the documentation which had been submitted to the Tribunal.

[3] Thereafter, the Tribunal began hearing evidence. After each party or witness gave evidence the other had the right to cross-examine the other. Following on from the conclusion of evidence, each party had the opportunity to make closing submissions specifically addressing any source of law or suggesting any approach which parties said the Tribunal ought to take to the case.

[4] The Tribunal comments on the evidence heard as follows.

Mr Andrew Watt

[5] Mr Watt gave evidence in a straightforward manner. He moved into the Property with his wife and children on 14 June 2019. They lived and worked happily in the Property until they received a Notice to Leave out of the blue on 10 October 2022. The notice to leave was due to expire on 5 January 2023 but the parties that the Applicants would remove themselves from the Property on 13 January 2023.

[6] Mr Watt noted and accepted that the Property was placed on the open market for sale and accepted that it was marketed until September 2023 when it was taken off the market. At that point the Property underwent renovations and was then placed on the rental market at a higher rent of £3,500.00 per month. A new tenancy commenced on 1 June 2024. Mr Watt gave evidence that he did not think the Respondents showed real commitment to selling the Property. He also pointed to the fact that the Applicants were initially told that the Property was to be sold so that the Respondents could "release capital" but clearly this didn't happen as it appeared that £40,000.00 of "capital" was then injected into the Property for renovations before it was re-let. Mr Watt accepted that he would not go so far as to say that the attempt to sell was "a sham" but that the Respondents didn't show commitment to the sale. Mr Watt came across as credible and reliable and the Tribunal had no reason to suspect that he was being anything other than truthful in his evidence. The Tribunal then heard evidence on behalf of the Respondent.

Mr Michael Logan

[7] Mr Logan works in lettings at Rettie. He was well informed about the facts of the case. He explained how the Respondents had genuinely wanted to sell the Property and placed the Property on the market for sale soon after the Applicant's tenancy ended. The Respondents accepted an offer below the home report value in an effort to secure a sale. However after a difficult process the prospective buyer ended the prospective purchase. The Respondents then tried to find another buyer but then took the Property off the market in September 2023. There were 29 viewings of the Property when it was on the market. Part of the difficulty might have been the Property was for sale at the top end of the market but the property next door had become a hostel of some sort for those in need of emergency accommodation and that had rather changed the nature of the street. Prospective purchasers may have been somewhat surprised when they viewed the Property.

[8] Mr Logan spoke to the efforts and communications exchanged between Rettie and the Respondents to try and sell the Property. He explained that there had been no effort to deceive the Applicants. He pointed out that the Respondents had lost significant sums of money in unsuccessfully marketing the Property and then not having it occupied from the period from 13 January 2023 until 1 June 2024. Mr Logan came across as credible and reliable and the Tribunal had no reason to suspect that he was being anything other than truthful in his evidence.

[9] Having heard from parties, the Tribunal made the following findings in fact.

Findings in Fact

- 1) *The parties entered into a tenancy agreement whereby the Respondents let the Property to the Applicants by virtue of a tenancy agreement dated 14 June 2019.*
- 2) *The Applicants lived and worked happily in the Property until they received a Notice to Leave out of the blue on 10 October 2022. The notice to leave was due to expire on 5 January 2023 but the parties agreed that the Applicants would remove themselves from the Property on 13 January 2023.*
- 3) *The Property was promptly placed on the open market for sale. The Respondents promptly accepted an offer to sell the Property at a sum below the Property's home report value. After a lengthy negotiation period, the prospective purchasers withdrew their offer.*

- 4) *The Property was placed back on the open market until September 2023 when it was taken off the market. At that point the Property underwent renovations and was then placed on the rental market at a higher rent of £3,500.00 per month. A new tenancy commenced on 1 June 2024.*
- 5) *The Respondents incurred wasted financial costs in attempting to sell the Property.*
- 6) *The Respondents corresponded with their selling agents about trying to encourage a sale before this Application was submitted.*
- 7) *The Respondents' failed attempts to sell the Property resulted in the Property going unoccupied from 13 January 2023 until 1 June 2024 when it was re-let to a new tenant. This resulted in wasted transaction costs and loss of rental income.*

Decision

[10] Having made the above findings in fact, the Tribunal considered that there was no basis for any finding that that Respondents misled the Applicants into leaving the Property. The Application therefore must be refused.

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.

Andrew McLaughlin

Andrew McLaughlin
Legal Member/Chair

07 March 2025
Date