

**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/24/4246**

**Re: Property at 8 (2f2) Fountainhall Road, Edinburgh, EH9 2NN (“the Property”)**

**Parties:**

**Miss Melissa Davidson, 15 Beechwood, Linlithgow, EH49 6SD (“the Applicant”)**

**Mr George Allan and Mrs Caroline Allan, 2 Gilmour Road, Edinburgh, EH16 5NF (“the Respondents”)**

**Tribunal Members:**

**Gillian Buchanan (Legal Member)**

**Decision**

A Case Management Discussion (“the CMD”) took place on 23 April 2025 by telephone conference. The Applicant was in attendance. The Respondents were also in attendance and were represented by their son, Mr Ross Allan.

Prior to the CMD on 13 March 2025 the Tribunal received written representations from the Respondents dated 11 March 2025 with attachments.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:-**

**Background**

The application concerns a Private Residential Tenancy (“PRT”) entered into between the parties relative to the Property that commenced on 28 February 2020. The rent agreed to be payable under the PRT was £900 per calendar month.

On 22 February 2024, the Respondents’ letting agent, DJ Alexander, served on the Applicant by email a Notice to Leave requiring the Applicant remove from the Property by 18 May 2024 on the basis that the Respondents intended to sell the Property under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”).

The Applicant asked to remain in occupation of the Property until 29 June 2024. The Respondents agreed to that request.

The Applicant vacated the Property on 29 June 2024 and the PRT ended that day. The Applicant moved in with friends at that time.

The Applicant subsequently entered into a Private Residential Tenancy Agreement relative to 9 Hermand Terrace from 16 August 2024 at a rent of £1,175 per month.

The Property was re-advertised for rent by DJ Alexander on 16 August 2024 at a rent of £1,430 per month.

None of these issues were in dispute.

### **The Applicant's Claim**

The Applicant seeks a wrongful termination order against the Respondents under Section 58 of the 2016 Act to include an award of damages.

Section 58 states:-

*"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."*

The Notice to Leave proceeded upon Ground 1 of Schedule 3 of the 2016 Act which states:-

*"(1) It is an eviction ground that the landlord intends to sell the let property.*

*(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*

*(a) is entitled to sell the let property,*

*(b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it , and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*

*(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*

*(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*

*(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market."*

### **The CMD**

At the CMD the Applicant made the following additional oral submissions: –

- i. Whilst the rent payable in terms of the PRT was £900 per calendar month, the rent was subsequently increased on two occasions to the latter amount of £988.80.
- ii. The Applicant moved from 9 Hermand Terrace to her current address on 19 December 2024.
- iii. The Applicant saw the Property advertised for let on 16 August 2024. There was only a short period between the end of the PRT and the advert appearing. The Landlord Registration Numbers contained within the advert were the Landlord Registration Numbers of the Respondents. The Respondents' Landlord Registration Numbers were stated on the PRT.
- iv. In response to a question from the Tribunal as to whether the Applicant had approached the Respondents or their letting agent, DJ Alexander, with regard to the re-advertisement of the Property for let on 16 August 2024, she stated that she did not have any contact details for the Respondents and decided to apply to the Tribunal.
- v. Notwithstanding the terms of the email between DJ Alexander and the First Respondent on 21 February 2024, the Applicant said she was never offered the possibility of purchasing the Property from the Respondents.
- vi. Further, the Applicant questioned why, if the Property was being sold by the Respondents to their son, Douglas Allan, and his wife, they did not sell to him with the Applicant as a sitting tenant.
- vii. The Applicant said she spent six months looking for a property to move to and took time off work. She was unsuccessful in her search and had to move far away from her work which caused stress and anxiety. She felt she was being misled by the Respondents.

Mr Ross Allan on behalf of the Respondents made the following additional oral submissions:-

- i. The Notice to Leave was served on the Applicant on 22 February 2024 and she finally moved out the Property on 29 June 2024.
- ii. The Respondents had previously spoken to DJ Alexander about selling the Property and had obtained a valuation from them. Evidence to that effect is contained within the Respondents' written submissions.
- iii. In January 2024 the Respondents did discuss with DJ Alexander selling the Property with the Applicant in occupation. However the Respondents were advised by DJ Alexander that buyers did not want that arrangement and therefore they decided to end the tenancy.
- iv. The Respondents had also approached Warners, Solicitors, for a quotation for selling the Property, again produced.
- v. In July 2024 the Respondents' other son, Douglas Allan, and his wife had spoken to a financial adviser and it was only at that point that an agreement was reached as to the way forwards, namely that the Respondents would sell the Property to Douglas Allan and his wife.
- vi. The Tribunal noted the title to the Property now being in favour of Douglas Allan and his wife, Lucinda Elliott, with effect from 31 July 2024 with a price of £310,000 having been paid.
- vii. Mr Ross Allan said he was not privy to the negotiations between his brother and his parents as to how that price was determined. However, they were agreed that £310,000 was a fair value.
- viii. DJ Alexander valued the Property at between £320,000 and £325,000. Selling costs would require to be paid. In addition Douglas Allan and his wife were happy to have the furniture in the Property left behind. If the Property had been sold on the open market it would have required to have been cleared and stored at additional cost.

- ix. No Home Report was obtained relative to the sale of the Property.
- x. The Respondents were unaware as to whether or not a sale to the Applicant had been discussed. That question would require put to DJ Alexander.
- xi. With regard to the Respondents' Landlord Registration Numbers appearing on the advert for re-let on 16 August 2024 the Respondents speculated that DJ Alexander had probably used the previous advertisement for the Property and had omitted to update the details to include the Landlord Registration Number for Douglas Allan.

### **Findings in Fact**

- i. The parties entered into the PRT relative to the Property that commenced on 28 February 2020. The rent agreed to be payable under the PRT was £900 per calendar month.
- ii. In January 2024 the Respondents discussed with their letting agent, DJ Alexander, selling the Property with the Applicant in occupation. The Respondents were advised by DJ Alexander that buyers did not want that arrangement and therefore they decided to end the tenancy.
- iii. On 21 January 2024 DJ Alexander valued the Property at £320,000 to £325,000.
- iv. On 22 February 2024, the Respondents' letting agent, DJ Alexander, served on the Applicant by email a Notice to Leave on the basis that the Respondents intended to sell the Property under Ground 1 of Schedule 3 of the 2016 Act.
- v. The Applicant asked to remain in occupation of the Property until 29 June 2024. The Respondents agreed to that request.
- vi. In June 2024 the Respondents also approached Warners, Solicitors, for a quotation for selling the Property. Warners' quotation was based on a selling price for the Property of £340,000.
- vii. The Respondents did not obtain a Home Report relative to the Property.
- viii. The Applicant vacated the Property on 29 June 2024 and the PRT ended that day.
- ix. As a result of discussions between the Respondents and their son, Douglas Allan, in July 2024 the Respondents agreed to sell the Property to Douglas Allan and his wife, Lucinda Elliott, at a price of £310,000. The sale took place on 31 July 2024.
- x. The Respondents' intention to sell the Property was genuine.
- xi. The Respondents did not mis-lead the Applicant.
- xii. The Property was sold at market value having regard to the valuation of DJ Alexander and the costs that the Respondents would have incurred clearing the Property and selling on the open market.
- xiii. The Property was re-advertised for rent by DJ Alexander on behalf of Douglas Allan and Lucinda Elliott on 16 August 2024 at a rent of £1,430 per month.
- xiv. The advertisement of DJ Alexander erroneously contained the Landlord Registration Numbers of the Respondents.

### **Reasons for Decision**

There is no basis for the Applicant's application. It is unfortunate she chose to raise Tribunal proceedings rather than first discussing the position with the Respondents or DJ Alexander. She did not check the title position either. Had she done so the actual factual position would have been clear.

The Notice to Leave contained no misrepresentations. The Respondents genuinely intended to sell the Property and did so. The evidence produced clearly shows their dialogue with DJ Alexander and Warners relative to a sale. In the event they sold the Property to their son, Douglas Allan, and his wife on 31 July 2024. Title to the Property is in the names of Douglas Allan and Lucinda Elliott from 31 July 2024. The sale was at market value or thereby having regard to the advice of DJ Alexander in particular as to the value of the Property and allowing for selling and clearance costs that would otherwise have been incurred by the Respondents if the Property had required to be placed on the open market.

The errors in the Landlord Registration Numbers contained within the advert of DJ Alexander of 16 August 2024 are unfortunate. It is readily understandable how that occurred by a previous advert being used but not fully updated. As stated above, had the Applicant queried the position with DJ Alexander that explanation would have been provided no doubt. The Respondents had sold the Property by that date and could not, on any view, have been the landlords in any new tenancy.

As a result the Application falls to be refused.

#### **Decision**

Application 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.

Gillian Buchanan

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Legal Member/Chair

Date 23<sup>rd</sup> April 2025