



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

Chamber Ref: FTS/HPC/PR/24/3085

Re: Property at 10/2, Great King Street, Edinburgh, EH3 6QL ("the Property")

Parties:

Ms Marina Woods, 11/9 Hopetoun Crescent, Edinburgh, EH7 4AU ("the Applicant")

Mrs Fatima Mahmood, 172 Craigleith Hill Avenue, Edinburgh, EH4 2NA ("the Respondent")

Tribunal Members:

Mr. A McLaughlin (Legal Member) and Ms. S. Brydon (Ordinary Member)

Decision

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

Background

[1] The Applicant seeks an Order under Section 58 of the Act for a Wrongful Termination Order under Section 59 of the Act. The Applicant alleges that they were misled by the Respondent into ending a tenancy and leaving the Property. The Respondent had served a Notice to Leave on the Applicant on the basis that the Respondent wished a family member to move into the Property in terms of ground 7 of schedule 3 of the Act. The Applicant claims that the Respondent failed to follow through on this and then re-let the Property for a higher rent.

The Hearing

[2] The Application called for a Hearing at George House, George Street, Edinburgh at 10 am on 5 June 2025. The Applicant, Ms Marina Woods was personally present. On behalf of the Applicant, Ms Kate Webb gave evidence remotely by video link and the Applicant's father, Mr Frank Woods gave evidence by conference call.

[3] The Respondent was present together with her representative, Mr Jonny Nisbet, solicitor. The Respondent's daughter, Ms Maryam Hussain also gave evidence remotely by video link. 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. The Applicant raised one preliminary matter. She wished to lodge some further documents bearing to be printouts of online adverts showing the Property being marketed for let. On closer inspection, these were documents the Tribunal already had before it except for one page which showed a slightly expanded section of the online material. The Respondent opposed the document being received. The Tribunal heard submissions about the issue and decided that the document would be allowed as it was a document already included in the papers with only very slightly expanded material. The extra words now visible in the document appeared also to the Tribunal to be highly relevant to the issue at hand. Excluding the document appeared to increase the likelihood that the Tribunal may make a decision in ignorance of the key facts. The Tribunal explained that as it had allowed the documents to be received, the Respondent would be afforded the opportunity of an adjournment to discuss matters with Mr Nisbet or even to adjourn the Hearing to another day to allow any further evidence to be produced. However, the Respondent confirmed that they were content to proceed with the Hearing.

[4] 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.

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

The Applicant -Ms Marina Woods

[6] Ms Woods moved into the Property as a tenant on 25 May 2021, occupying one of the three rooms which were subsequently then let separately to other tenants. The Applicant's monthly rent was £670.00. The evidence suggests that the Applicant was very happy in the Property and maintained good friendships with her two flat mates, Kate Webb and Vivienne Le Bon. The Property was handy for the Applicant's employment as an accountant. The Applicant reported that on 26 April 2023, the

Respondent arranged to speak to the Applicant and her flatmates in the Property. The Respondent attended at the Property and informed the tenants that her daughter would be moving into the Property and that regrettably the Respondent would have to bring the tenancies to an end. The Applicant was upset by this as she enjoyed living in the Property.

[7] The Applicant then described how on 15 May 2023, the Respondent duly served a Notice to Leave in terms of ground 7 and which stated that:

"My father-in-law passed away last year and my Mother in law has been critically ill for last 5 months. Our daughter Maryam was working in London and travelling frequently to visit her grandmother and support the family. Our daughter is now working as a freelancer and has freedom to work from Edinburgh. She will be moving to the flat at 10/2 Great King Street. This was home for Maryam for 7 years and this is one street away from her grandmothers home who lives in Northumberland Street"

[8] The Notice to Leave stated that an Application would not be submitted to the Tribunal for an Eviction Order before 10 August 2023. On 27 May 2023, the Applicant then emailed the Respondent providing 28 days notice that she would be moving out of the Property on 24 June 2023. The Applicant then found alternative accommodation and moved out of the Property. The Applicant had agreed with her flatmates that they would all reconvene at the Property on 16 July 2023 to carry out a deep clean of the Property. They waited until this date because Kate Webb was not moving out until then.

[9] The Applicant then explained that on 17 July 2023, she became aware that the Property was being marketed for let on the websites *booking.com* and *spareroom.co.uk*. It was on this date that the Applicant first checked these websites and saw with her own eyes that the Property was being marketed for let. She had not seen nor had reason to suspect that the Property was being marketed for let before then. The Applicant referred the Tribunal to the marketing materials which had been submitted to the Tribunal with the Application. These included the slightly expanded version received by the Tribunal as a preliminary matter. The marketing materials were typical of what you might find in such adverts but of particular interest to the Applicant was the inclusion of the words: *"Prime Location Victorian flat has been welcoming Booking.com guests since 23 June 2023"*.

[10] The Applicant founded upon this as proof that the Respondent had deceived her as the Respondent's account of the situation was that she only attempted to re-let the Property when her daughter told her that she wouldn't be moving into the Property at some point at the very end of June/start of July. The Applicant adopted the position that this unequivocally showed that the Respondent was being deceptive. She also founded upon the fact that the level of cleaning the Respondent had asked of the Applicant and her flatmates was above the level that might be expected in advance of the Respondent's daughter moving in. The Applicant stated that the standards expected seemed more in keeping with the Property being re-let out again to third party tenants. Despite

discussing this with the Applicant, the Tribunal could not accept that this point seemed a legitimate grounds of suspicion. Nevertheless, it was these two issues- the adverts and the cleaning- which comprised the full reasons as to why the Applicant felt misled by the Respondent. These being aside from the fact that the Respondent's daughter of course never actually did take occupation of the Property. Beyond this, the Applicant told the Tribunal about the stress and inconvenience she suffered and which she attributed to this matter. The Applicant explained that she had to rent another property which was more expensive and she also explained that she suffered an exacerbation of a skin condition that she said her doctor had attributed to stress.

[11] The Tribunal took the view that the Applicant was not someone who would attempt to mislead the Tribunal. Her evidence appeared credible to the Tribunal. However, the Tribunal could not help but conclude that much of her evidence was based on innuendo. The Tribunal considered that in order to find that the Respondent "*misled*" the Applicant, the Tribunal would require a clear evidential basis that justified such a positive finding. In that regard the Applicant's evidence was light on sufficient evidence to justify the Applicant's own conclusion that she was misled.

Ms Kate Webb

[12] The Tribunal heard video evidence from the Applicant's first witness, Ms Kate Webb. Ms Webb largely corroborated the Applicant's account of the facts of the situation and her scepticism of the Respondent's actions. She also described how she and her flatmates had attended at the Property on 16 July 2023 to give it a thorough clean at the end of their tenancy and then became aware of the adverts. The Tribunal had no reason to doubt the truthfulness of Ms Webb's evidence. However, the Tribunal could not accept Ms Webb's conclusion that these facts meant that the Applicant and the other tenants had therefore been misled.

Mr Frank Woods

[13] The Applicant's father, Mr Frank Woods gave evidence by telephone. He spoke to his daughter being upset by having to find alternative accommodation and this exacerbating his daughter's skin condition. His evidence was restricted to this area and was in short compass. The Tribunal had no reason to doubt Mr Wood's credibility or reliability.

[14] Having heard from the Applicant and her witnesses, the Tribunal then proceeded to hear from the Respondent and her witness.

The Respondent- Ms Fatima Mahmood

[15] Ms Mahmood was and remains the owner of the Property which she purchased as her family home in or around the year 2000. She began letting the Property out in around 2007. The Respondent explained that her daughter, who had been working in London, had explained to her that she wanted to move back to Edinburgh and into the Property. This was because the Respondent's mother-in-law (her daughter's grandmother), was seriously unwell. The grandmother lived in close proximity to the Property. The Respondent referred the Tribunal to a contemporaneous private email sent by the Respondent to her daughter confirming this proposal. This email was dated 27 April 2023. The email stated that the Respondent had already: "*given them (the tenants) verbal notice to start looking for other places to move.*" This corroborated the Applicant's own evidence and the Respondent's evidence that the Respondent had attended at the Property on 26 April 2023 to tell the tenants verbally that the Respondent's daughter would be moving into the Property and that a notice to leave would be forthcoming.

[16] The Respondent then explained that a notice to leave was then duly served on 15 May 2023 with the expiry of the period of notice within that notice being dated 10 August 2023. The Respondent corroborated the Applicant's account of the tenants then moving out and finding alternate accommodation before then.

[17] The Respondent's evidence was that at some point at the very end of June 2023, her daughter told her that she had secured a job opportunity in London that was too good to pass up. Her daughter said that she would not now be moving into the Property. The Respondent's daughter, Ms Maryam Hussain, was a freelancer in London designing retail experiences. Previously she had worked remotely from London meaning she could have moved back to Edinburgh and kept her working arrangements in place, but now she had been presented with an opportunity to work for the global fashion brand Burberry. This would require regular physical attendance at their offices in West London.

[18] The Respondent explained that at this point the Applicant had already moved out and signed a new tenancy agreement elsewhere and that Ms Kate Webb had already texted the Respondent to say that she was going to move in with her boyfriend. The Respondent denied misleading the Applicant.

[19] The Tribunal discussed the online adverts with the Respondent. The Respondent explained that she had set these up with the assistance of a friend. The Respondent's evidence about when these adverts went live was vague and unconvincing. The Respondent couldn't really explain when she started advertising the Property for let. The Respondent's evidence was that this would have been done after Maryam had told her that she wasn't moving into the Property at the end of very end of June 2023. The Respondent could offer no coherent explanation for why the online advert said, "*Prime location Victorian flat has been welcoming Booking.com guests since 23 June 2023.*"

[20] This was important to the Applicant because she said it showed that the Respondent intended to re-let the Property before her daughter had ever been offered the Burberry job or Burberry had ever been mentioned by Maryam. Initially, the Respondent said that when the advert mentioned “June” - this must have been a mistake - and that it was supposed to say “July”. But then there was evidence in the online advert print outs of the Respondent answering online queries to potential customers before then which meant that the month couldn’t reasonably have been input incorrectly in this manner. This whole issue was pitched to the Tribunal in both the Respondent’s evidence and the Mr Nisbet’s closing submissions as being somewhat “*of a mystery*”.

[21] The Tribunal concluded that the Respondent’s evidence was largely corroborated by the contemporaneous email sent to her daughter; the Applicant’s own timeline of the events; the messages and correspondence exchanged between her daughter and her contact at Burberry and Burberry’s employment engagement documentation. In this regard the Tribunal accepted the Respondent’s evidence as being largely credible and reliable although the Tribunal was left with a question mark about precisely when the Property was first advertised for let online. In that area, the Respondent’s evidence was unsatisfactory and fell short of addressing the natural concerns that the Tribunal and indeed the Applicant might have about the specific timings. The Respondent also described how she had applied for a short term let licence with City of Edinburgh Council. There was an email before the Tribunal which suggested this had been completed and submitted to the council on 7 July 2023. That was not inconsistent with the Respondent’s position.

[22] Thereafter the Tribunal heard from the Applicant’s daughter, Ms Maryam Hussain.

Ms Maryam Hussain

[23] Ms Hussain joined by video call from London. She explained how she had told her mother that she wanted to move back to the Property in April 2024. At that point, she was financially somewhat insecure in London and wanted to move back to her former family home in Edinburgh to care for her grandmother who lived in close proximity. Ms Hussain would also continue her work as a freelance retail experience designer remotely from Edinburgh.

[24] Ms Hussain then took the Tribunal to contemporaneous correspondence relating to her unexpectedly being offered work with Burberry. These included text messages exchanged between Ms Hussain and someone called Robyn Grant who the Tribunal was told was another freelancer who had introduced Ms Hussain to Burberry. These messages appeared to show that it was on 29 June 2023 that Ms Hussain was first told about this new opportunity being available and requiring her physical presence in London with Robyn Grant. There were also then messages produced which had been exchanged between the same parties dated 12 July 2023 which appeared to show Ms Hussain then duly attending at the offices of Burberry in West London and meeting

Robyn Grant as planned. Ms Hussain also took the Tribunal through the documentation she received from an entity called *Guidant Global* dated 4 July 2023 which confirmed the formal arrangements of the job offer with Burberry.

[25] The Tribunal had no reason to doubt the veracity of what Ms Hussain was saying. Her evidence appeared credible and reliable. She had told her mother that she wanted to move back to the Property which was her former family home. This appeared a genuine and rational proposal. Ms Hussain appears to have intended fully to move back to the Property until she unexpectedly got a job offer which required her presence in London and which was too good to turn down. Whilst it was not permanent, it would be highly beneficial to Ms Hussain's career and might be extended or lead to other opportunities arising from it. Ms Hussain explained that, as it happened, the role was not extended but it did greatly improve Ms Hussain's career prospects, and she is still benefiting from the work connections made. This was all corroborated by the documentary evidence put before the Tribunal.

[26] 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 Respondent let the Property to the Applicant with the Applicant taking occupation on 25 May 2021.*
- 2) *The Applicant lived happily in the Property along with two other flatmates until the Respondent physically attended at the Property on 26 April 2023 and explained that her daughter would be moving into the Property. This meant that regrettably the occupants would require to find alternative accommodation as their tenancies would be brought to an end.*
- 3) *On 15 May 2023, the Respondent formally served a Notice to Leave on the Applicant in terms of ground 7 of Schedule 3 of the Act. The Notice explained that the Respondent's daughter wished to move into the Property and explained that this would allow her to care for the Respondent's mother-in-law who lived in close proximity to the Property.*
- 4) *The Applicant thereafter moved out of the Property on 23 June 2023 and entered into a new tenancy in separate accommodation. One of the flatmates, Ms Kate Webb moved out of the Property on 16 July 2023 and told the Respondent by text message sent on 27 May 2023 that she would then moving in with her boyfriend.*

- 5) *On or around 17 July 2023, the Applicant became aware that the Respondent was advertising the Property for let online.*
- 6) *On or around 29 June 2023, The Respondent's daughter, Ms Maryam Hussain received an unexpected job opportunity to work for a leading global fashion business in London. This would require her to attend in person in London for certain days of the week. Ms Hussain considered this too good an opportunity to turn down. By this point, the Applicant had already left the Property and taken on a new tenancy.*
- 7) *The Respondent took steps to try and make the best of the situation by remarketing the Property for let. There is insufficient evidence to conclude when these adverts were placed online. There is a reference to the Property being available for rent from 23 June 2023. That date is not consistent with the narrative that the Respondent only attempted to re-let the Property once she heard about her daughter securing employment at Burberry and no longer wanting to move to the Property.*
- 8) *The Respondent states that she only attempted to relet the Property once she knew that her daughter would not be moving in which was after the Applicant had moved out.*
- 9) *There is insufficient evidence to conclude that the Respondent attempted to mislead the Applicant.*

Decision

[27] Having made the above findings in fact, the Tribunal considered that there was a legitimate question to be asked about when the Respondent first marketed the Property for let and whether that was consistent with her broader evidence. The Tribunal did note that reference to the Property being marketed since 23 June 2023 was problematic for the coherence of the Respondent's explanations. But this really marked the only evidence the Applicant could find that undermined the Respondent's position. The Tribunal could not conclude that, in isolation, this amounted to a 'smoking gun' that exposed the Respondent's case as a sham. The documentation and information produced to the Tribunal by the Respondent corroborated her position. Nothing had been produced or said by the Applicant that undermined the integrity of the messages and emails produced which supported the Respondent's position. Similarly, the Applicant's contention that the level of cleaning required by the Respondent was inconsistent with her daughter moving in and more consistent with third party tenants moving in, seemed illogical. The Tribunal could not identify a different standard of cleaning in either scenario as being either obvious or sensible in such circumstances. The

Tribunal also had no reason to conclude that the Respondent's daughter was lying or being anything other than candid. She was perhaps the best source of evidence given that it was she who was to be moving into the Property.

[28] Section 59 of the Act requires the Tribunal to decide whether the Respondent '*mised*' the Applicant into ceasing to occupy the Property. The Tribunal cannot come to that conclusion. Whilst the true position regarding when exactly the online adverts were placed is less than clear, the best evidence that does exist demonstrates that the Respondent genuinely expected her daughter to move into the Property until after the Applicant had already moved out and secured alternative accommodation.

[29] The Tribunal therefore concludes that there is no legitimate basis for concluding that the Applicant was misled into moving out and ceasing to occupy the Property. Accordingly, the Tribunal refuses 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.

A McLaughlin

Legal Member/Chair

10 June 2025

Date