

Housing and Property Chamber
First-tier Tribunal for Scotland



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/23/3307

Re: Property at 9/1 Great Junction Street, Edinburgh, EH6 5HX (“the Property”)

Parties:

Miss Julie Muniraj, UNKNOWN, UNKNOWN (“the Applicant”)

Mr Nadim Saif, 30 Windrush Drive, Edinburgh, EH6 4TN (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment for the sum of £1075 (ONE THOUSAND AND SEVENTY FIVE POUNDS) should be made in favour of the Applicant.

Background

1. An application was received by the Housing and Property Chamber dated 22nd October 2023. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Applicant being wrongfully evicted from the Property by the Respondent.
2. On 18th December 2023 all parties were written to with the date for the Case Management Discussion (“CMD”) of 12th February 2024 at 2pm by teleconferencing. The letter also requested that all written representations be submitted by 8th January 2024.

3. On 19th December 2023, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent. This was evidenced by Certificate of Intimation dated 19th December 2023.
4. On 5th January 2024, the Respondent emailed the Housing and Property Chamber stating that the Notice to Leave states that the Applicant should seek legal advice or visit the Citizens Advice Bureau. The Respondent narrated his position. He stated that he wished to refurbish the Property. No supporting evidence of the refurbishment was supplied.
5. On 4th February 2024, the Applicant emailed the Housing and Property Chamber with supporting statements.

The Case Management Discussion

6. A CMD was held 12th February 2024 at 2pm by teleconferencing. The Applicant was present and represented herself. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Tribunal noted that section 58(3) of the Private Housing (Tenancies) (Scotland) Act 2016 states that *"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."* The Tribunal noted that the central issue was whether the Applicant had been misled into leaving the Property. The Tribunal has the power to make an award for up to six times the value of the rent charge. The Applicant said the Notice to Leave was based upon the bathroom in the Property needing to be refurbished. She said that the bathroom was in a good state. There was an issue with the water temperature but that this was being addressed by a plumber. She did not know if any modifications has been done to the bathroom. The Applicant referred to the email that she had lodged. The Applicant had challenged the Respondent about the rent increases. She considers that the Notice to Leave was issue because she had done this. She had been told by him that if she said that she would pay the rent then she could stay in the Property. She believes that the Respondent has several properties. The Applicant accepted that she could have stayed in the Property until she was evicted by a Tribunal. She was intimidated by the Respondent and left immediately because of this reason. She has had her address removed from all public documents relating to this case removed because of this reason. The Tribunal was satisfied that the Applicant had been misled into leaving the Property.
7. On 26th February 2024 the Respondent emailed the Housing and Property Chamber to ask for the case to be recalled. He said in his email that he had a family emergency on 9th February 2024 in relation to his elderly father which he was focused on causing him to miss the CMD. The Respondent said that he wished to recall the case to put his evidence forward. He lodged statements from other tenants. The Recall was allowed. The Tribunal accepted that it was

in the interest of justice to allow the recall to be granted given that the Respondent could not attend due to a family emergency.

8. On 19th August 2024 the Respondent emailed the Housing and Property Chamber lodging a submission which contained emails of support regarding the Respondent as a landlord, a letter from the Respondent to the Housing and Property Chamber stating his position and invoices for work undertaken in the Property.

The hearing

9. A hearing was held on 2nd September 2024 at 10am by teleconferencing. The Applicant was present and represented herself. The Respondent was present and represented himself. The Tribunal Clerk made enquiries from both parties about whether the parties were calling from within the UK. The Applicant confirmed that she was calling from France. France is not on the list of countries that have automatic permission to take evidence from parties while they are in that country. The Tribunal did not consider that it could take evidence from the Applicant until that permission had been sought. It did not consider it was in the interests of justice to continue. The Tribunal adjourned the hearing to a further date. The Respondent said that he would be in Pakistan from probably mid October to mid November though those dates could change. He required to go to Pakistan to attend to his late father's estate with his sister. He said that the dates may move but he would not know until his sister returns from her holiday in mid September. He will inform the Housing and Property Chamber of the dates which he will be away as soon as he has spoken to his sister. The Tribunal noted that parties were free to negotiate regardless of there being a hearing fixed. If the parties do not wish to negotiate directly with the other party then they can appoint a representative to do it on their behalf. It should be noted that parties are not directed to negotiate by the Tribunal but do have the option should parties wish to do so. The Tribunal adjourned to a further date to allow for the appropriate permissions to be obtained from France to allow the Tribunal to take evidence from the Applicant. The Tribunal was issued a direction.
10. A further hearing date was set for 20th January 2025 at 10am. As the permission from the Applicant's resident country had not been given by the date of the continued hearing, the hearing had to be postponed for this permission to be granted.
11. On 4th February 2025, the Applicant emailed the Housing and Property Chamber lodging a submission with letters of support
12. On 5th February 2025, the Respondent lodged a submission. The submission stated that the bathroom refurbishment was undertaken in September/October 2023. The Property was rented out again on 1st November 2023.
13. A new date was set for 17th March 2025 at 10am. By the time the hearing was due to proceed the appropriate permissions by the Applicant's resident country

had not been received. The Tribunal had to postpone the date again to allow for this permission to be received.

14. Permission from the Applicant's resident country to take evidence from her was received by the Housing and Property Chamber on 2nd May 2025. A new date was set for the continued hearing of 11th June 2025 at 2pm by teleconferencing.
15. On 19th May 2025 all parties were written to with the date for the hearing of 11th June 2025 at 2pm by teleconferencing.

The continued hearing

16. A hearing was 11th June 2025 at 2pm by teleconferencing. The Applicant was present and represented herself. The Respondent was not present and was not represented. The Tribunal proceeded in terms of Rule 29 of the Rules.
17. The Applicant restated her position as it was at the CMD on 12th February 2024. Her position remained that although the bathroom was refurbished it was not done until after she had left. She did not consider that a major refurbishment was required. She considers that the Respondent's motivation was to remove her from the Property to increase the rent which could be charged to another new tenant.
18. The Tribunal considered all the information that it had before it and granted an order for £1075.

Findings and reason for decision

19. A Private Rented Tenancy Agreement commenced 1st May 2023.
20. On 18th July 2023, the joint tenant gave notice to the Respondent that he was going to leave the Property. On the same date the Respondent emailed the Applicant to say that she could take on the tenancy on her own, find a new flatmate or leave at the same time as her flatmate.
21. The Respondent found a new flatmate and had got her to contact the Respondent.
22. On 25th August 2023 the Applicant's flatmate left the Property. The Respondent attended the Property to inspect the Property for the Applicant's flatmate and to return his deposit. The Applicant was advised by the Respondent that the rent would increase from £1075 to £1200. The Applicant did not want to pay the higher amount.
23. On 25th August 2023, the Respondent emailed the Applicant to say that his offer of her paying the increased amount of £1200 had been withdrawn. On the same

date the Applicant emailed to ask for a reason why this had been done. The Respondent emailed back on the same date to say that he did not need to give her a reason but needed the Property as at 1st October 2023.

24. On 26th August 2023, the Respondent said that the bathroom was in a state of disrepair. He needed the Applicant to leave to undertake the repairs.
25. On 26th August 2023, a further email was sent by the Respondent to the Applicant stating that the Property was on the market for £1345. The email said that there were to be viewings by potential tenants on the following Monday. The Applicant was asked to allow these viewings but the Applicant refused.
26. A Notice to Leave was served upon the Applicant by the Respondent dated 28th August 2023. This was based on ground 3 namely that the Respondent was to undertake refurbishment to the Property. This was specified as a refurbishment of the bathroom.
27. The Applicant moved out of the Property on 29th August 2023.
28. The Respondent offered to remove the Notice to Leave if the Applicant consented to pay the higher rent charge.
29. The Respondent asked the Applicant to make the Property available for viewings for potential new tenants.
30. The invoices lodged stated the work undertaken. It did not demonstrate why the Applicant could not have remained in the Property during the bathroom refurbishment, or the date of instruction for the work to be undertaken.
31. Section 58 of the Private Housing (Tenancies)(Scotland) Act 2016 states at subsection (3) that
“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 then tenancy immediately before it was brought to an end.”
It is clear from this that the Tribunal is focused on the word ‘misled’ and whether the tenant was misled into leaving the Property.
32. Considering the matter as a whole the Tribunal were satisfied, on balance, that the Respondent had misled the Applicant when she said that she was to refurbish the bathroom. The meaning of “intention” was considered by the Supreme Court in the case of *S Franses Ltd v. Cavendish Hotel (London) Ltd* (2019 AC 249). The Court applied the test outline in the speech of Lord Justice Asquith in *Cunliffe v. Goodman* (1950 2 KB) which states that the question is “if the plaintiff did no more than entertain the idea ...if she got no further than contemplative it as a (perhaps attractive) possibility then one would have to say...either that there was no evidence of a positive “intention” or that the word intention was incapable as a matter of construction of applying to anything so tentative and so indefinite.” The party must “do more than contemplate” but must have decided to proceed on that basis and must have a “reasonable

prospect' of so doing. In subsequent cases, it has also been established that a landlord must show that the intention is not only "genuine" but also "firm and settled".

33. The Tribunal determined that an award of £1,075, equivalent to the Applicant's share of two months' rent at the rate of £1,075 per month, was appropriate and proportionate in all the circumstances. This was made under section 59(1) of the Private Housing (Tenancies) (Scotland) Act 2016, which empowers the Tribunal to award a wrongful-termination payment of up to six times the monthly rent where a tenant has been misled into leaving a property. The Tribunal noted that the Applicant had specifically requested compensation equivalent to two months' rent in her application and considered that an award at this level appropriately reflected the seriousness of the Respondent's conduct. The Respondent had engaged with the process to a limited extent by providing some information prior to the Case Management Discussion but did not attend the final hearing. In his email to the Applicant dated 26 August 2023, he indicated an intention to re-let the property at a higher rent and initially declined to give a reason for requiring her to leave. When directly asked, he did not refer to any need for refurbishment. It is reasonable to conclude that if refurbishment were genuinely required at that time, he would have mentioned it. The Tribunal therefore considered that refurbishment was not his primary motivation, but rather something undertaken after the Applicant had left. This undermined the legitimacy of the Notice to Leave served under Ground 3 and supported the conclusion that the Applicant had been misled. The Tribunal also considered the legal context of joint tenancies. Although the Applicant's flatmate had given notice and left, the tenancy continued in law. A single joint tenant cannot unilaterally terminate a private residential tenancy. Unless a new tenancy is expressly created, the landlord must keep the rent unchanged, may only increase it once in any twelve-month period and must provide three months' written notice. In this case, the landlord sought to pressure the Applicant either to accept a rent increase or to vacate, including offering to withdraw the Notice to Leave if she agreed to the higher rent. This further undermined the credibility of the claimed intention to carry out necessary works. Although the Applicant was misled into vacating the property, she did not provide evidence of significant financial loss, such as relocation expenses or higher rent paid elsewhere, nor was there evidence of lasting personal or emotional impact. She vacated the property promptly following service of the Notice to Leave and did not have to engage in Tribunal eviction proceedings. In all the circumstances, the Tribunal concluded that an award of £1,075 struck a fair and proportionate balance. It reflected the seriousness of the Respondent's breach while also taking account of the limited evidence of harm and the Respondent's partial engagement with the Tribunal process.

Decision

34. The Tribunal determines that the Applicant was misled into leaving the Property that an order for the payment by the Respondent of £1075 should be granted in favour of the Applicant.

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.

G.Miller

11th June 2025

Legal Member/Chair

Date