



**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/24/2438

Re: Property at 17 Durness Avenue, Bearsden, Glasgow, G61 2AH (“the Property”)

Parties:

Mr Bradley McKay and Mrs Gillian McKay, residing together at 13 Burnmouth Place, Bearsden, Glasgow, G61 3PG (“the Applicants”)

Sadco Properties Limited, a private limited company having their registered office at 2 Methven Avenue, Bearsden, Glasgow, G61 2AX (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines that the Applicants are entitled to a wrongful termination order under Section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016 (“the Act”) in that the Applicants were misled into ceasing to occupy the Property by the Respondent. Having made that the determination, the Tribunal, therefore, makes a payment order requiring the Respondent to pay to the Applicants the sum of £5000.

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 Respondent into ending a tenancy and leaving the Property. The Respondent had served a Notice to Leave on the Applicants

on the basis that a member of the Respondent's family intended to live in the let Property in terms of ground 5 of schedule 3 of the Act. The Applicants claim that the Respondent is a corporate entity and cannot have a family. The Applicants accordingly claim that the notice to leave gave false or misleading information and that they were misled into ceasing to occupy the let property. The Applicants seek payment of an amount not exceeding six months' rent in accordance with section 59 of the Act.

2. The Application included the following documents: -

- (i) application form in the First-tier Tribunal standard application form, together with a statement as to why the Applicants considered a wrongful termination order should be granted
- (ii) copy private residential tenancy agreement between the Parties dated 10th May 2019 relating to the Property and specifying a rent £1200 per month
- (iii) copy Notice to Leave (together with guidance notes) issued by the Respondent to the Applicants dated 9th March 2022 (which stated that the end of the Notice period was 12 June 2022) citing Ground 5 of schedule 3 of the Act, "Your Landlord's family member intends to live in the Let Property" as the reason for giving the notice
- (iv) Copy Rent Increase Notice dated 1st February 2022 issued by the Respondent to the Applicants which gave notice that the Respondent intended to increase the rent due under the tenancy between the parties to £1300 per month with effect from 1st May 2022.
- (v) Copy decision of the First Tier Tribunal dated 19th July 2023 in which the Tribunal had refused the Applicants' earlier application to recall a decision of the Tribunal, dated 22nd May 2023, to grant an order for payment in favour of the Respondent in the sum of £7200 in relation to rent arrears accrued by the Applicants during the period of the tenancy between the parties.

3. A Case Management Discussion ("CMD") took place on 1st November 2024 by tele-conference. All parties attended the CMD. The Respondent was represented at the CMD by Mr Saleem Sadiq, one of their directors. The Respondent had outlined their position in relation to the Application in an email to the Tribunal dated 11th October 2024. In that email the Respondent did not respond to the Applicants' claim that Ground 5 could not be relied upon by a corporate entity, but sought to further explain which family member had intended to move into the property and referred to rent arrears accrued by the Applicants. The Respondent denied the wrongful termination of the tenancy between the parties.

4. The Tribunal thereafter assigned 23rd May 2025 as the date for an evidential hearing.

5. On 15th May 2025 the Applicants lodged the following further documents with the Tribunal:
 - i. A timeline of payment dispute between the parties
 - ii. Copy letter dated 1st February 2022 titled “notice to Leave” from the Respondent to the Applicant which informed the Applicants that the Respondent “would like vacant possession of my property at the earliest possible time, but no later than 3rd April 2022 when you will have deemed to have been 6 months in arrears, unless some or all the outstanding rent is paid”
 - iii. Document dated 13th July 2023 titled “summary of questions to be discussed at Case Management Discussion hearing”.
6. On 18th May 2025 the Respondent lodged the following further documents with the Tribunal:
 - i. Further written statement from Mr Saleem Sadiq, a Director of the Respondent
 - ii. Copy rent statement in relation to the tenancy between the parties which showed rent arrears due in the sum of £7200 as at 1st April 2022,
 - iii. Copy statement from Mrs Nazia Sadiq Imran dated 15th May 2025.

The Hearing

7. A Hearing took place on 23rd May 2025 in Glasgow Tribunal Centre, 20 York Street, Glasgow. Both the Applicants attended the hearing. Only the first Applicant gave evidence at the hearing. The Applicants were represented at the hearing by their solicitor, Mr David Doig
8. The Respondents were represented at the hearing by one of their Directors, Mr Saleem Sadiq. Mr Sadiq gave evidence to the Tribunal. Mr Sadiq gave evidence.
9. The Tribunal members asked questions of all parties and witnesses.

Summary of Evidence

10. The First Named Applicant gave evidence to the Tribunal at the hearing.
11. The First Named Applicant explained in his evidence that the Applicants and their family had moved into the Property in May 2019. The Applicants had signed a tenancy agreement with the Respondent and the Applicants had

agreed to pay £1200 per month by way of rent. In 2020, primarily as a consequence of the COVID pandemic, the First Named Applicant's work as a mediator slowed dramatically and the family had a significant drop in income. Around the same time both the Applicants and their daughter all were all diagnosed with significant medical issues. As a consequence, the Applicants had fallen into arrears of rent due in terms of the tenancy agreement and by September 2021 the Applicants were due £7500 by way of rent arrears (although those arrears were thereafter cleared by October 2021). Thereafter the Applicants again began to accrue rent arrears and were unable to pay rent for a 6 month period from November 2021 onwards. The First Named Applicant confirmed that throughout this period he was hopeful of receiving income from work which he previously completed. The first named applicant explained that from December 2021 onwards the landlord was pursuing the Applicants relentlessly for payment of the rent and arrears. The Applicants had sought to stress to their landlord that they were trying to raise funds to make payments towards their arrears of rent but the landlord continued to make further demands for payment of rent and arrears.

12. The Applicants received a notice to leave from their landlord dated 9th March 2022. That notice stated that the landlord intended to let the property to a member of his family and referred to that matter as a ground which would entitle the landlord to recover possession of the property by the process of eviction.
13. The notice to leave gave further reasons for the landlord's decision to issue the notice leave. Those reasons included the amount of rent arrears which had been accrued. together with a statement that "my daughter moved out of her matrimonial home about a year ago, currently staying with her mum which is not convenient, she needs a home of her own, I intended to move her to this property."
14. The Applicants had been aware, from previous advice given to them, that they might be able to resist an application for eviction based on their rent arrears. However, when they received the notice to leave, they believed they would not have been able to resist the eviction as it had been issued on the basis that their landlord intended to allow a member of family to live in the Property. The first Named Applicant explained that it did not occur to the Applicants that a company could not have a family member. The First Named Applicant explained that the Applicants had assumed the notice to leave was "legal". They did not believe they could defend an action for eviction which was raised after service of the Notice to Leave.

15. Following receipt of the Notice to Leave the Applicants made the decision to “give in and get out of the property.” The First Named Applicant explained in his evidence that the Applicants had wanted to continue to reside in the Property as their family home, but they did not believe they could resist the Landlords intention to evict them on the basis that the Landlord wished to move a family member into the Property. Following receipt of the Notice to Leave the Applicants immediately began to seek alternative property. They found a property to let which was located near to the Property. They entered into a tenancy agreement for that alternate property. The rent for the alternate property was £1800 per month (being £600 per month more than the Property they had let from the Respondent). The Applicants occupied that additional property for a period of six months before moving on to another property. In addition to the higher rental charges incurred by the Applicants after they left the Property they also incurred costs of moving home and other ancillary costs related to their move from the Property.
16. The First Named Applicant’s evidence was that he and his family had wished to remain in the Property. They had made the decision to remove from the property after receipt of the notice to leave. They had believed the notice to leave allowed the landlord to seek their eviction on the basis that the landlord wished to move a member of their family into the property. They were misled into ceasing to occupy the Property as a direct consequence of the terms of the Notice to Leave which had been served upon them. They were aware that they could have defended any eviction proceeding based on rent arrears but genuinely believed that they would not have any basis upon which to defend an eviction where the landlord wished to be let a member of family live in the property.
17. Mr Saleem Sadiq gave evidence on behalf of the Respondent. He explained that he was one of the Directors of the Respondent. Other Directors of the Company included his brothers. He explained that the Respondent owned (and let) a portfolio of ten residential properties.
18. A large part of Mr Sadiq’s evidence to the Tribunal related to the rent arrears which the Applicants had accrued and the steps taken to recover those arrears. Mr Sadiq did not consider that the Respondent’s actions to encourage the Applicants to pay the rent and arrears had been unusual or threatening. Around the beginning of 2022 the Respondent had been arranging additional funding from their bank. It was important to the Respondent that they were able to demonstrate to the bank that they were recovering rental from the properties that they owned. In July 2023 the First Tier Tribunal had awarded the Respondent the sum of £7200 as due by the Applicants in respect of rent arrears accrued by the Applicants during their period of occupancy of the Property.

19. Mr Sadiq accepted, on behalf of the Respondent, that a limited company could not have a family member. He explained in his evidence that the Respondent had relied upon Ground 5 (Landlord's family member intends to live in the Let Property) as this was seen a faster route to eviction than if the Respondent had relied upon any of the rent arrears grounds for eviction.
20. Mr Sadiq explained that at the time the Notice to Leave was served upon the Applicants it had been the genuine intention of the Respondent to allow a member of Mr Sadiq's family to live in the Let Property. The Respondent had lodged a letter from Mr Sadiq's daughter which confirmed that she had considered buying the Property and moving into it.
21. Mr Sadiq confirmed in his evidence that he had no intention of misleading or threatening the Applicants at the time the Notice to Leave was served. He just wanted the Applicants to pay the rent and arrears they were due in terms of the tenancy of the Property.

Findings in Fact

22. The Respondent is the owner and heritable proprietor of the property at 17 Durness Avenue, Bearsden, Glasgow, G61 2AH.
23. The Respondent is a Limited Company having their registered office at 2 Methven Avenue, Bearsden, Glasgow, G61 2AX
24. From 1st June 2019 the Respondent leased the Property to the Applicants under a Private Residential Tenancy Agreement. The agreed rent to be paid by the Applicants under the terms of this tenancy agreement was £1200 per month. The rent due by the date the Applicants left the Property continued to be at the rate of £1200 per month.
25. By Notice to Leave dated 9th March 2022 the Respondent advised the Applicants that if they chose not to leave the Property by 12th June 2022 the Respondent intended to apply to the Tribunal for an eviction order in respect of the Property. Said Notice to Leave relied upon Ground 5 of Schedule 3 to the Private Housing (Tenancies)(Scotland) Act 2016.
26. Ground 5 of Schedule 3 to the 2016 Act states that "It is an eviction ground that a member of the landlord's family intends to live in the let property".

27. The Respondent is a corporate body. It cannot have a family. It cannot seek recovery of a tenancy by relying on Ground 5 of Schedule 3 of the Act.
28. The Notice to leave served by the Respondent upon the Applicant was misleading as it stated that the Respondent had a ground for eviction under schedule 3 of the 2016 Act, when it did not.
29. The Applicants were misled by the Respondent's misrepresentation in the Notice to Leave that Ground 5 was an eviction ground upon which the Respondent could rely.
30. The Notice to Leave was the material cause for the Applicants' decision to leave the Property
31. The Applicants moved from the Property on or around 31st March 2022. The reason for the Applicant moving out of the Property was as a direct result of the Notice to Leave being served on them. The Applicant would not have moved out of the Property at that time had it not been for the service of the said Notice to Leave.
32. The Applicants were 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.
33. The tenancy between the parties was wrongfully terminated by the Respondent without an eviction order.

Reasons for Decision

34. In considering their decision the Tribunal had regard to the terms of Section 58(3) of the Act which states:

58(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.

35. The Upper Tribunal gave consideration to the terms of Section 58(3) of the Act in the decision of Reynolds v Herny and Henry UTS/AP/24/0014

In that decision Sheriff Collins' analysis records at paragraph 13 that

“Section 58(3) of the 2016 provides that a wrongful-termination order may be made if “the former tenant was misled into ceasing to occupy the let property by the person who was the landlord”. This applies in the situation where the tenant has chosen to remove in the face of a notice to leave rather than to try and contest an application to the FTS for an eviction order. In effect, section 58(3) requires the FTS to decide whether the applicant has established four principal issues:

- (i) First, the landlord must have made some form of representation to the tenant (which might be by concealment of relevant and material facts). The landlord will necessarily have represented to the tenant that he has a ground for eviction in a notice to leave under the 2017 Regulations, since such a notice must have been served in order to terminate the tenancy under section 50 - a necessary precursor to an application under section 58. But conceivably other forms of written or oral representations may have been made to the tenant by the landlord, and if so might also be founded upon.*
- (ii) Second, the representation must have been objectively misleading. Where it consists of a notice to leave, a representation will - in particular - be misleading if it states that the landlord has a ground for eviction under schedule 3 of the 2016 Act when in fact he does not.*
- (iii) Third, the tenant must have actually been misled by the landlord’s representation. If the tenant knew, for whatever reason, that the landlord’s representation was false - for example because he knew that the landlord did not in fact have the ground for eviction stated in a notice to leave - then he will not have been misled by it and the application cannot succeed.*
- (iv) Fourth, the representation must actually have misled the tenant into ceasing to occupy the property, that is, it must have been at least a significant or material cause of him doing so. So if the tenant’s decision to leave the property was for reasons other than the landlord’s representation, then again, his application cannot succeed.*

Importantly, these are all issues of fact, on which the FTS should make clear findings in reaching its decision.”

36. In this case the Respondent made a representation to the Applicants in the form of a Notice to Leave. That notice represented to the Applicants that the Respondent had grounds to seek an eviction order, in terms of Ground 5 of Schedule 3 of the Act, as a member of the Landlord's family intended to live in the let property.
37. The Landlord in this case is a corporate body. It cannot have a family. This was accepted by the Respondent at the hearing. It follows therefore that a corporate body is not able to rely upon Ground 5 of Schedule 3 of the Act as a ground for eviction. As noted by Sheriff Collins in Reynolds a notice to leave will be misleading if it states that the landlord has a ground for eviction under schedule 3 of the 2016 Act when in fact it does not.
38. The Tribunal are satisfied from the evidence presented at the hearing that, on a balance of probabilities, the Applicants were misled by the Respondent's misrepresentation that Ground 5 was an eviction ground upon which the Respondent could rely. The Tribunal were satisfied that the evidence provided by the Applicants was credible and reliable. The Tribunal noted that the relevant evidence of the Applicants was not materially challenged by the Respondent.
39. The evidence presented on behalf of the Respondent demonstrated that the Respondent was confused about the legal position of the Respondent. Although the Respondent is a corporate body the Directors of that corporate body appeared to assume that they were able to treat the Property as if it were owned by one of them as an individual. Thus, the Respondent's Directors assumed that the Respondent could seek an order for eviction to allow those Directors to move their own family into the Property, if they so wished. That of course is not the case. In his evidence to the Tribunal the Respondent's representative accepted that the Landlord is the Company, and that the Company cannot have family. The representative accepted that the Company would not be able to rely upon eviction Ground 5 which could only apply where a natural person intended to allow a family member to live in the Property.
40. The First Applicant was clear in his evidence that, having taken some advice, he knew that he could seek to challenge an eviction order based on the fact the Applicants had accrued rent arrears. His evidence was however that he did not know that the Respondent, as a corporate body, were unable to rely upon Ground 5 of Schedule 3 as an eviction ground. When the Applicants had received the Notice to Leave which relied upon Ground 5 they considered that they would be unable to defend any eviction proceedings which proceeded on that particular ground and decided to seek

alternative housing suitable for the needs of the Applicants and their family, The Applicants did not understand that a corporate body could not rely upon Ground 5. They were told that a particular individual intended to occupy the let property. They were misled by the Respondent to believe that the Respondent could rely upon Ground 5 as a ground for their eviction. The considered that they had to leave the Property in these circumstances.

41. The Tribunal are satisfied that the misleading Notice to Leave was the material cause for the Applicants' decision to leave the Property. The Applicants did not leave the Property for any other reason. In his evidence the First Applicant considered that he had to "give in and get out of the Property" after they had received the Notice to Leave. The Applicants had to immediately seek alternative property as they could not wait for the end of the period in the Notice to Leave as the size and locality of an alternative property suitable for the needs of the Applicants and their family would be difficult to find. They could not risk becoming homeless if they waited to the end of the notice period to find such alternative accommodation.
42. For these reasons the Tribunal is satisfied that the Applicants have established the four principal issues identified by Sheriff Collins in Reynolds. The Tribunal are satisfied that the Applicants, as former tenants of the Property, had been misled into ceasing to occupy the Property as a direct result of the Notice to Leave issued by the Respondent, in terms of section 58(3) of the 2016 Act.
43. Having made a determination under Section 58 of the 2016 Act, the Tribunal then determined to make a wrongful termination order under section 59 of the Act. The Tribunal noted that the rent due throughout the period of the tenancy between the parties was £1200 per month. The maximum payment the Tribunal can order to be paid by the Respondent to the Applicants under Section 58 of the Act is amount not exceeding six months' rent. That maximum award in this case is therefore £7200. The Tribunal noted that the Applicants had accrued rent arrears during the tenancy, but that was not a matter which the Tribunal considered of relevance when considering the level of award to be made in the wrongful termination order. The Respondent had mistakenly believed that it could rely upon Ground 5 – even though they were a corporate body. They did not deliberately set out to mislead the Applicants, although that was the result. That said, the Respondent is an experienced landlord with a portfolio of properties. The Respondents representative had stated that he had understood the Respondent could have served a notice to leave using one the grounds where rent arrears had accrued. The Respondent had chosen not to rely upon one of the rent arrears grounds as it was considered "faster" to seek eviction on ground 5. The terms of the Notice to Leave served by the

Respondent led the Applicants to believe they had no choice but to leave the Property. The Respondent's intent was to recover possession of the Property and by relying upon ground 5 they misled the Applicants who might otherwise have sought to argue that they had a defence to an eviction action based upon a valid ground of eviction. The Applicants suffered loss and inconvenience as a consequence of moving from the Property. After they moved from the Property the Applicants rented another property where the rent was £1800 per month for a smaller property. They incurred removal costs. The Applicants required to leave the Property which had become their settled family home close to their children's school and other family members. Having taken into account all the facts and circumstances of the case presented to it, the Tribunal decided that an Order requiring the Respondent to pay to the Applicant the sum of £5,000 was proportionate, reasonable and fair.

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 Cowan

Legal Member/Chair

23 May 2025

Date