



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/24/2560

Re: Property at 23 Thornwood Drive, Glasgow, G11 7TS ("the Property")

Parties:

Ms Virginia Forbes, Flat 2/2, 1 Hayburn Court, Glasgow, G11 6EA ("the Applicant")

Mrs Giola Modlin, Flat 2/2, 14 Beaton Road, Glasgow, G41 4LA ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Jane Heppenstall (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 of ground 4 of schedule 3 of the Act- "*landlord intends to move into let property*". The Applicant claims that the Respondent failed to follow through on this and then sold the Property. The Application is defended by the Respondent. Both sides have submitted representations setting out their respective positions.

The Hearing

[2] The Application called for a Hearing by video call at 10 am on 12 August 2025. The Applicant was personally present together with her representative, Mr Stephen Lawson, Money Advice Officer of Partick Housing Association. The Respondent was personally present. 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. This included submissions by the Applicant and an affidavit and medical information produced by the Respondent setting out her position.

[3] Thereafter the Tribunal began hearing evidence. After each party gave evidence, the other had the right to cross-examine. 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.

The Applicant -Ms Virginia Forbes

[5] The Tribunal heard from Ms Forbes who addressed the Tribunal directly. The Tribunal asked questions throughout and Mr Lawson was then encouraged to ask any questions of Ms Forbes he felt she ought to answer.

[6] Ms Forbes gave evidence that she moved into the Property as a tenant on 1 February 2019. The Property is a one-bedroom, ground floor flat in a desirable area of Glasgow's west end. The Respondent lives alone and is retired. She received a Notice to Leave dated 27 October 2023 calling upon her to vacate the Property before 22 January 2024. The Notice to Leave was in terms of Ground 4 of Schedule 3 of the Act- "*the Landlord intends to move into the let Property*". The Applicant ultimately removed herself from the Property when she found alternative accommodation in February 2024. The crux of the Application is that the Respondent never did move into the Property but instead sold the Property in August 2024.

[7] The Applicant described how it was a very difficult time for her when she received the notice and had to move out and find new accommodation. She described it as a traumatic time.

[8] Ms Forbes suggested that she thought that she was evicted because the Respondent really intended to increase the rent. Ms Forbes accepted however when questioned by the Tribunal on this, that the Respondent had not increased the rent or even actually ever said that she intended to increase the rent. Ms Forbes' evidence on this point

seemed to ignore the fact that at no point did the Respondent re-let the Property for a higher rent which would have appeared to somewhat undermine this suspicion.

[9] The Applicant described how she felt that the Property would not in any event have ever been appropriate for the Respondent's late husband's health condition. The Applicant made observations about the Property which she said supported this which included reference to the kitchen being small and the front garden area also being rather modest.

[10] When asked by the Tribunal, the Applicant confirmed that at no time prior to these proceedings had she sought clarification from the Respondent about the basis of the Notice to Leave or ever had her representative write any letter seeking any clarification from the Respondent. The Applicant said that she had read the Respondent's affidavit but that this did not change her position.

The Respondent

[11] Mrs Giola Modlin is now a widow of 70 years of age. Ms Modlin had submitted a signed and notarised affidavit which she adopted as her evidence in chief. She also gave additional evidence providing further evidence regarding the circumstances of her late husband's death and her dealings with the Property. Her late husband, Mr Seymour Modlin passed away on 20 September 2024.

[12] The Respondent acquired the Property around ten years ago as an investment. She spoke fondly of the Property and clearly knew it well. She described in her affidavit how at the time of the service of the Notice to Leave, her husband had stage 4 kidney disease with other complications. He was in very poor health and receiving significant medical treatment. The Respondent's husband was clearly a very unwell man.

[13] The Respondent described how the Property is a ground-floor flat with main door access. It has a private front garden. The Respondent explained that this would have been ideal for her husband and could have improved his quality of life. This is why the Respondent issued the Notice to Leave. The Respondent also stated in her affidavit that when the Applicant moved out, the Respondent redecorated the Property in preparation for moving in there with her husband. The Respondent explained that unfortunately by May 2024, it became clear that her husband's health was deteriorating quickly. They concluded that a house move was going to be too traumatic for him. The Respondent decided that it was best emotionally and financially to sell the Property. It was marketed at the end of May 2024 and it was sold in August 2024. The Respondent remained hopeful that her husband's health might improve prior to his passing to allow them to move into the Property. Unfortunately, the situation did not improve and the Respondent's husband passed away in September 2024.

[14] The Respondent's position was corroborated by medical information submitted which set out the details of her late husband's final stages of treatment. This included the death certificate. The Tribunal appreciated how difficult it must have been for the Respondent to relive these moments in such a setting and was impressed and grateful for the Respondent's evidence. It had not even been a year since her husband's death. The Tribunal had no reason not to accept what the Respondent was saying as anything other than entirely credible or reliable.

[15] In light of the above it was a matter of regret that Mr Lawson subjected the Respondent to an unnecessarily forensic analysis of her husband's end of life care. This involved asking questions that displayed no sensitivity or understanding of the Respondent's recent bereavement and which were asked in a less than sympathetic manner.

[16] Mr Lawson had submitted representations to the Tribunal which appeared to include Mr Lawson's own opinions about the Respondent's late husband's end of life care. Mr Lawson appeared intent to challenge the Respondent about this. Mr Lawson wrote in his representations that "*If the Respondent's health had been 'deteriorating quickly' it is hard to understand how a transplant could still have been considered as an option*". The Tribunal considered this line of questioning to be most distasteful and unnecessary.

[17] The Tribunal asked Mr Lawson whether he had any medical evidence or other evidence that might gain say the Respondent's own account of her late husband's final treatment and passing. He acknowledged that he did not. Despite this, he continued to challenge and probe aspects of the Respondent's husband's care and death. His questioning style showed little respect for the sensitivity of these issues. Mr Lawson's questions were often not relevant and included almost rhetorical questions such as asking the Respondent whether she had hoped her husband might survive and they could have some more years together.

[18] The Tribunal had to intervene and tell Mr Lawson that his questioning was inappropriate. The Tribunal adjourned and told Mr Lawson that he should use the time in the adjournment to consider and frame his questions more carefully.

[19] The purpose of this line of questioning was never truly revealed. Certainly nothing was said about the evidence supposedly adduced by Mr Lawson on this theme in closing submissions.

[20] In her answering of the questions posed of her, the Respondent was also able to comprehensively address the notion that the Property might not have been appropriate for the Respondent and her husband. She described how although her husband was very unwell, he did not require a wheelchair. She talked through all the rooms of the Property and explained how it would be much better suited to him. This included that it

was on the ground floor and so had no stairs and had a private outdoor space to sit out and enjoy simple things like a glass of wine.

Submissions

[21] Mr Lawson made much of an alleged lack of commitment on the part of the Respondent to move into the Property. He had included in his representations excerpts from a dictionary about the definition of to “*intend*”. He stated that to “*intend*” is to “*have as a plan or a purpose*”. His position in submissions was that the Respondent’s plan to move into the Property was vague and that the Respondent and her husband didn’t genuinely intend to move into the Property. However, that would have involved directly disbelieving the Respondent who told the Tribunal that she and her husband had planned to move into the Property. The Tribunal asked Mr Lawson why the Tribunal might decide to disbelieve the Respondent or decline to accept what she was saying as truthful. No real answer was provided. Mr Lawson’s other submissions were to highlight the non-controversial fact that the Respondent hadn’t moved into the Property and also to highlight that the Respondent had not said anything about her husband’s condition in the notice to leave. Mr Lawson also submitted that the Property wouldn’t have been suitable for the Respondent’s husband’s health needs.

[22] There had been an evidential dispute about whether the Respondent had or had not discussed her husband’s health situation with the Applicant in advance of serving the Notice to Leave. The Respondent said that she had mentioned it in conversations with the Applicant and the Applicant denied this and claimed that to be a lie. The Tribunal decided to accept the Respondent’s evidence in that regard. The Tribunal had already decided that the Respondent’s evidence was credible and reliable and in contrast found the Applicant’s evidence to be rather unusual. The Tribunal found for example that the Applicant’s suspicion about the Respondent intending to increase the rent was strange given that the Applicant, when pressed on the matter, acknowledged that the Respondent had not increased the rent or actually said anything about increasing the rent. The Applicant also went on to say that the Respondent was quick to pull the Applicant up about late payments of rent. The Tribunal did not consider that to be out of the ordinary. In fact, it made the Tribunal somewhat suspicious of the Applicant’s evidence that she might voice these suspicions without really having any evidence to support them. Similarly, the Tribunal also found the Applicant’s evidence to be unusual because it seemed to completely ignore the great sadness of the Respondent’s situation. The lack of any apparent understanding of how that impacted on the Respondent’s decision making gave the Tribunal pause to consider how credible and reliable the Applicant’s account really was. The Tribunal preferred the Respondent’s evidence.

[23] The Tribunal noted that the Applicant had very little evidence at all that she had been misled into leaving the Property. The Tribunal was somewhat taken aback at the Applicant’s description of her receiving the Notice to Leave as being a traumatic time for

her when she now well knew that the Respondent's husband was ultimately extremely unwell and then died. The Applicant appeared to display little sympathy for this at all throughout the Hearing. The Tribunal also could not understand what the logic or purpose of the Respondent "misleading" Ms Forbes might be- whilst the Applicant made reference to the Respondent wanting to increase the rent – this was incongruous with the fact that ultimately the Respondent sold the Property rather than let it out. The Respondent had also failed to provide vouching of her alleged losses set out in the Application despite having been ordered to produce these.

[24] The Respondent's submissions were brief and to the point. She had not misled the Applicant into leaving the Property. She had intended to move into the Property with her husband due to his health issues. Sadly, this could not come to fruition and the Respondent's husband passed away soon after. She sold the Property. The Tribunal considered that the Applicant appeared to have a lack of perspective on what actually happened. The unfortunate questioning of the Respondent further demonstrated that point. The Tribunal also considered it unfortunate that the Applicant had at no point tried to communicate with the Respondent to try and find out more about what happened prior to bringing this Application. Especially since she had been assisted by Mr Lawson from the start.

[25] 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 1 February 2019.*
- 2. The Applicant lived happily in the Property until 27 October 2023, when the Respondent formally served a Notice to Leave on the Applicant in terms of ground 4 of Schedule 3 of the Act- "landlord intends to move into let property". The Notice did not provide a detailed description of the Respondent's reasoning. At no point does it appear that the Applicant sought any further explanation from the Respondent about why she wanted to move into the Property.*
- 3. The Respondent intended to move into the Property with her husband who was very unwell at the time and had stage 4 kidney disease with other serious complicating conditions. It was hoped that he might be treated with kidney dialysis and potentially even receive a kidney transplant.*
- 4. The Property is a groundfloor flat with main door access. It has a private front garden where the Applicant's husband could have easily accessed and enjoyed a small outdoor space. The Respondent and her husband believed that this would have improved her husband's quality of life. The Respondent and her husband intended to live together in the Property which would be more suitable for their health needs than the second floor flat*

they then resided in together. That property has 40 steps leading up to it with no private outdoor space of its own. When the Applicant moved out, the Respondent redecorated the Property in preparation for her and her husband moving in.

- 5. By May 2024, it tragically became clear that the Respondent's husband's health was deteriorating quickly. They concluded that a house move was going to be too traumatic. The Respondent decided that it was best emotionally and financially to sell the Property. It was marketed for sale at the end of May 2024 and it was sold in August 2024.*
- 6. The Respondent remained hopeful that her husband's health might improve to allow them to move into the Property right up until it was sold. Unfortunately, the situation did not improve and the Respondent's husband passed away in September 2024.*
- 7. The Applicant suffered the typical inconvenience associated with a single person reluctantly moving home. The Applicant has not provided any vouching of the financial losses she claims to have suffered as a result of her alleged wrongful eviction.*
- 8. The Respondent did not mislead the Applicant into ending her tenancy and leaving the Property.*

Decision

[26] Section 58 of the Act requires the Tribunal to decide whether the Respondent 'misled' the Applicant into ceasing to occupy the Property. Having heard evidence and considered the relevant documentation and made the above findings in fact, the Tribunal cannot come to that conclusion.

[27] 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.

Andrew McLaughlin

Legal Member/Chair

20 August 2025
Date