



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 57 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/24/5333

Property : 54 Robertson Road, Dunfermline KY12 OAP (“Property”)

Parties:

Elizabeth Kirkham, 117 Craigside Road, Cardenden, Lochgelly KY5 OLY (“Applicant”)

Steven Richardson, 90 Thimblehall Drive, Dunfermline KY12 7RP (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined not to make a wrongful termination order.

Background

1. The Applicant sought a wrongful termination order in terms of section 57 of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”). The Applicant had lodged Form G along with supporting documents.

CMD on 10 July 2025

2. A CMD took place before the Tribunal on 10 July 2025. The Applicant and the Respondent were both in attendance. At the conclusion of the CMD the Tribunal noted that an evidential Hearing was required at which the Tribunal would require to determine whether, at the date of service of the Notice to Leave and at the date on which the eviction order was granted, the Respondent genuinely intended to live in the Property, even if, for whatever reason, that intention had not come to fruition.

Documents

3. The documents lodged on behalf of the Applicant were :

- A listing for the Property with Fife Lettings at a rent of £925 per month.
- Excerpts from a tenancy agreement between the Applicant and the Respondent for the Property which commenced on 27 April 2018 and in which the rent was £550 per month.
- Copy letters dated 26 October 2022 and 24 July 2023 from the Respondent to the Applicant.
- A copy statement from the Respondent dated 19 October 2023 in which the Respondent stated he wished to live in the Property.
- Copy text messages dated 28 October 2024 and 13 December 2024.
- Copy Notice to Leave addressed to the Applicant dated 24 July 2023
- Copy section 11 notice
- Copy email from Debbie Paterson, who resides at 50 Robertson Road, Dunfermline, dated 30 June 2025
- A written statement dated 28 July 2025
- Copy letters from the Respondent to the Applicant dated 26 October 2022 and 24 July 2023
- Excerpt from the register of landlords
- Copy text messages
- Photographs of the Property

4. The documents lodged on behalf of the Respondent were :

- Copy emails
- Acceptance of offer to purchase a property at 23 Guildhall St dated 11 July 2024 issued on behalf of the Respondent
- Council tax invoices for the Property addressed to the Respondent dated 27 September and 13 November 2024 and letter re council tax dated 20 September 2024
- Copy emails

- Invoices addressed to the Respondent at the Property dated 2 August and 27 September 2024
- Vehicle registration certificate addressed to Jemma Richardson at the Property
- Invoices from Complete Clarity dated 29 June and 28 July 2023
- Copy receipts from B&Q
- Written statements from Stuart Richardson, Jemima Richardson, Sarah Richardson, Loki Hamilton, the Respondent and Joanne Dinsley all dated May 2025
- Photographs taken in the Property
- Screenshots showing the date and location of photographs
- Screenshots from a strava account
- Sale particulars for a property at Guildhall Street
- 68 invoices for goods to be delivered to the Respondent at the Property dated between 28 June and 9 October 2024
- Check in report for the Property dated 27 April 2018
- Gas and electricity statements for the Property
- Emails dated 16 and 17 October 2024 regarding letting the Property

Hearing

5. A Hearing took place at Dunfermline Sheriff Court on 10 October 2025. The Applicant was in attendance and was supported by her husband, Philip Kirkham. The Respondent was also in attendance.
6. The Tribunal asked the Parties if the following was agreed and they confirmed that it was : The tenancy agreement between the Parties commenced on 27 April 2018. A Notice to Leave was served by the Respondent on the Applicant dated 24 July 2023. An eviction order was granted by the Tribunal on 17 April 2024 on the basis of ground 4 (landlord intends to live in the property). The Applicant vacated the Property on 14 June 2024. The rent was £550 per month when the tenancy ended. The Property was listed to let with Fife Properties in October 2024 at a rent of £925 per month

Evidence of the Applicant

7. Mrs Kirkham told the Tribunal that after she vacated the Property she was messaged on facebook by a neighbour, Samantha Win, who told her that the Property was being marketed for rent and that Mr Richardson had not moved into the Property. She said she understood that Mr Richardson had sold the property owned by him at Guildhall Street. She said he would have to store the furniture from Guildhall Street somewhere and it was stored at the Property.
8. The Tribunal noted the various photographs lodged which were taken at the Property between June and October 2024. Mrs Kirkham said that Mr Richardson had access to the Property and could use it for family events. She said she could do the same taking photographs in an Air BnB. The Tribunal noted the photograph of the kitchen which showed pots and pans, a kettle, toaster and other appliances. The Tribunal suggested that indicated the Property was lived in. Mrs Kirkham said the photograph indicated goods were being stored in the Property. The Tribunal noted the 68 invoices lodged by Mr Richardson covering the period June to October 2024 which indicted goods were being delivered to Mr Richardson at the Property during that period. Mrs Kirkham said the Property was simply being used as a delivery address.
9. Mrs Kirkham said she checked the register of landlords in September 2024 and the address given for Mr Richardson was 152 Townhill Road. She said that Samantha Win had moved away from Robertson Road. She said that a second neighbour, Debbie Paterson, had also told her that Mr Richardson did not live in the Property. She said that Ms Paterson was not prepared to give evidence due to her mental health.
10. The Tribunal noted that the submissions lodged by Mr Richardson referred to a smell of smoke in the Property after Mrs Kirkham vacated and asked her to comment. Mrs Kirkham said that she and her husband did smoke but they did so outside the Property. She said that Mr Richardson attended the Property once each year to service the boiler and cooker and he had never mentioned a concern about the smell of smoke in the Property.
11. The Tribunal asked Mrs Kirkham what happened after she vacated the Property on 14 June 2024. She said that she and her husband were firstly placed in the Windsor Hotel for 6 weeks. She said people accommodated there included refugees and people with convictions. After that she said they were placed in a hostel in Dunfermline for 2 weeks. After that she said they were placed in a scatter flat in Dunfermline and were there for about 5 months. She told the Tribunal that the accommodation was awful with heroin on the ceiling and

shards of glass in the carpet. She said that she and her husband then got their own property on 7 March 2025.

Evidence of the Respondent

12. Mr Richardson told the Tribunal that when the Notice to Leave was served it was his intention to live in the Property. He said that he wanted to leave the property in Guildhall Street as he had been assaulted close to that property, his car had been damaged and there was no parking. He said that after the eviction order was granted in April 2024 he marketed Guildhall Street and the sale concluded in July 2024. He said that the Townhill Road address on the register of landlords was his partner's address. He said that the register would not allow him to use the address of the Property as it was a rental property. He said that the Property had been his family home between 2014 and 2017, after which he let the Property. He said there was one tenant before Mrs Kirkham.
13. Mr Richardson told the Tribunal that after he sold Guildhall Street he moved to the Property on 17 June 2024. The Tribunal noted that the council tax demand lodged dated 27 September 2024 was for the period 17 June 2024 to 31 March 2025. He said that his daughters lived with him one week and their mother the next. He said this was a "week on / week off" arrangement. He told the Tribunal that his younger daughter is at a school local to the Property, Queen Ann High. He said that his older daughter has just qualified as a nurse and works in Glenrothes.
14. Mr Richardson told the Tribunal that the photographs lodged showed that he did live in the Property. He noted they showed pets at the Property. He said he had no idea that the current application was a possibility and he therefore questioned why he would manufacture evidence. He said that the message sent by Samantha Win to Mrs Kirkham was malicious and he did not know why she sent it.
15. Mr Richardson said that when he moved into the Property in June 2024 it was in a poor condition and smelled of smoke. He said he had not noticed the smell of smoke on previous visits to the Property. He said that he returned Mrs Kirkham's deposit in full as he sympathised with her situation. She had been evicted and he understood her husband was unwell.
16. Mr Richardson told the Tribunal that he proceeded to clean and paint the walls throughout the Property. He said that he also replaced the carpets in the bedrooms. He said that he decided to let the Property, rather than stay there, due to the smell of smoke. He said that the plan had been for his partner, Joanne Dinsley, to move into the Property but she had been treated for breast

cancer and was uncomfortable with the smell of smoke. He said that the Property was let to a new tenant but they left after three months because of the smell of smoke. He said that another tenant was now occupying the Property.

17. Mr Richardson told the Tribunal that evicting Mrs Kirkham was not part of a plan to achieve a higher rent. He said he could have increased the rent at any time during the tenancy but did not do so. He said that Mrs Kirkham was a good tenant. He said that his mortgage on the Property was on a 5 year fixed rate so he had no need to increase the rent. He said that when the fixed term ended in autumn 2024, the mortgage payments doubled.
18. The Tribunal asked Mr Richardson if he used the Property merely as a delivery address. He said that he did not. He said the evidence showed that he lived in the Property. He had goods delivered there, he parked a vehicle there, he had family gatherings there. He said that when he left the Property he went to live with his partner. He said that their relationship started in July 2022.

Evidence of Joanne Dinsley

19. Ms Dinsley told the Tribunal that in July 2023 when the Notice to Leave was served, Mr Richardson intended to move into the Property. She said that the property she owned had 2 bedrooms and her daughter was still living at home. She said her son was at university and would “come and go” to her house. She said that the Property has 3 bedrooms. She said that in April 2024 it was still Mr Richardson’s intention to live in the Property. She said that she did not move into the Property at all as she decided it was not suitable. She said that she and Mr Richardson decided that she would sell her property and they would buy somewhere together.
20. Ms Dinsley said that the Property was not suitable due to the smell of smoke. She said she was having ongoing treatment for breast cancer and was very aware of what she was breathing in. She said the walls in the Property were washed and painted but the smell of smoke was still there. She said she could smell the smoke on her clothes long after she had left the Property. She said that Mr Richardson did not use the Property simply for family events. She said that the property she and Mr Richardson bought together at Thimblehall Drive has 5 bedrooms and the two families can live together.

Evidence of Jemima Richardson

21. Ms Richardson told the Tribunal that she is 21 years old and has just finished university. She said that she is starting a job as a nurse. She told the Tribunal that she lived one week on and one week off with her father, Mr Richardson. She said that the property at Guildhall Street had 2 bedrooms. She said that in

April 2024 she was working on placements and doing odd hours which was not ideal for her sister who shared a bedroom with her. She said the family needed more space. She told the Tribunal that the family moved into the Property in June 2024. She said it had 3 bedrooms so that solved the space problem. She said that in the summer of 2024 her father's relationship with Joanne Dinsley was not at the stage that they all wanted to live together. She said that when they moved into the Property it was not in the best condition and even once her father had done work to the Property she could still smell smoke. She said that the family lived in the Property from June 2024 until October 2024.

Evidence of Loki Hamilton

22. Mr Hamilton told the Tribunal that he is Jemima Richardson's boyfriend and that they have been together since January 2022. He said that he was aware that the family wanted to move to the Property. He said he helped to move furniture from Guildhall Street to the Property in June 2024. He told the Tribunal that he visited the Property 3 or 4 times each week that Jemima Richardson was staying there. He said he would help Jemima and Sarah Richardson move their bags from their mother's house to the Property when they stayed there. He said that he helped to repaint the Property and to clean the walls in Jemima Richardson's bedroom which were covered in cigarette residue. He said that Mr Richardson moved in with Joanne Dinsley to Thimblehall Drive as it was the right house at the right time.

Evidence of Sarah Richardson

23. Ms Richardson told the Tribunal that she is aged 17 and attends Queen Ann High School which is within walking distance of the Property. She said that in the summer of 2023 the family wanted to move from Guildhall Street as the town was too busy and there was no parking. She said the family moved from Guildhall Street to the Property. She said they had to clean the walls and paint them as there was nicotine staining. She said that some carpets were also replaced. She said that the family moved into the Property early July 2024 and moved out in October 2024. She said that the family lived in the Property and visited Joanne Dinsley's home. She said they did not stay overnight there. She said that Loki Hamilton visited the Property frequently in the summer of 2024.

Final Submissions

24. Mrs Kirkham told the Tribunal that social media indicated that Mr Richardson and Ms Dinsley's relationship began in January 2022, not July 2022. She said she knew that Ms Dinsley had sold a property at Dover Drive in September 2022. She said that Mr Richardson first contacted her about evicting her from

the Property in October 2022. She said that in September 2024 Mr Richardson's address on the register of landlords was Townhill Road. She said that in October 2024 Ms Dinsley sold Townhill Road to buy Thimblehall Drive. She said that she thought the reason why Mr Richardson had evicted her from the Property was to achieve a higher rent for the Property and thereby increase the annual yield from the Property.

25. Mr Richardson told the Tribunal that the situation had been ongoing for 3 years. He said he was entitled to have his property back. He said that the accusations made against him were baseless. He said that Mrs Kirkham had offered no evidence in support of her position. He said that he was being characterised as a greedy landlord but that was not the case. He said he could have increased the rent for the Property during Mrs Kirkham's tenancy but had not done so. He said it was not credible to suggest that he had been involved in a 3 year conspiracy.

26. With the agreement of the Parties, Ms Dinsley told the Tribunal that she sold a property at Dover Drive in implementation of her divorce terms. She said that she began her relationship with Mr Richardson in July 2022.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement which commenced on 27 April 2018 ("Tenancy Agreement").
2. The Respondent issued a Notice to Leave to the Applicant dated 24 July 2023 which stated that the ground for eviction was that the landlord intended to live in the Property.
3. At the date of issuing the Notice to Leave the Respondent intended to live in the Property once possession was obtained.
4. The Tribunal granted an order for eviction of the Applicant from the Property by Decision dated 17 April 2024.
5. At the date on which the order for eviction was granted the Respondent intended to live in the Property once possession was obtained.
6. Having obtained possession of the Property the Respondent lived in the Property between 17 June 2024 and 10 October 2024.
7. The Respondent let the Property to a third party in October 2024.

Findings in Fact and Law

The Tribunal made the following findings in fact and law :

1. The Respondent did not mislead the Tribunal into making the Decision dated 17 April 2024.

Reasons for the Decision

27. Section 57 of the 2016 Act states :

57. Wrongful termination by eviction order

- (1) This section applies where a private residential tenancy has been brought to an end by an eviction order.*
- (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.*
- (3) The Tribunal may make a wrongful termination order if it finds it was misled into issuing the eviction order by the person who was, immediately before the tenancy ended, the landlord under the tenancy.*

28. The issue for the Tribunal to determine is whether the Tribunal that made the eviction order on 17 April 2024 was misled. The Respondent relied on ground 4 when serving the Notice to Leave which is that the landlord intends to occupy the let property as the landlord's only or principal home for at least three months. What was in dispute was whether the Respondent intended to live in the Property at the date of service of the Notice to Leave and at the date of the grant of the eviction order.

29. The explanatory notes to the 2016 Act at paragraph 90 state :

"the test will be whether the landlord genuinely intended to use the property in the way that the eviction ground required (even if, for some reason, that intention has not come to fruition)."

The meaning of "intends" has been examined by the English Courts when looking at the application of the statutory test in section 30(1)(f) of the Landlord and Tenant Act 1954 which relates to the renewal of business tenancies in England and Wales. In English cases regarding the 1954 Act it has been established that the landlord has to prove (1) that it has an intention which is both 'genuine' and 'firm and settled' to carry out qualifying works and (2) that it would be able to carry out those works.

30. The case of *S Franes Ltd v Cavendish Hotel (London) Ltd* 2019 AC 249 concerns the first part of the intention test : whether the landlord has a genuine

firm and settled intention to carry out the works. On that matter the Court developed the previous case law articulating the following principles :

- There has to be a genuine firm and settled intention on the part of the landlord to carry out the relevant work.
- It does not have to be the landlord's only intention, or even its primary one, provided that it is a firm and settled intention.
- The landlord's motive for carrying out the works is irrelevant, save as material for testing whether such a firm and settled intention exists.
- Since the statutory test assumed that the landlord's intention was being obstructed by the tenant's occupation, that intention could not be conditional on the works being necessary to get the tenant out of the premises. Rather, the test had to be whether the landlord would intend to do the same works if the tenant left voluntarily.

31. The Tribunal understood why the marketing of the Property within a matter of months after the Applicant vacated the Property would cause the Applicant to question the use of ground 4 in the Notice to Leave. Having heard the evidence, the Tribunal was however of the view that the Respondent had a genuine, firm and settled intention to live in the Property at the time of service of the Notice to Leave and at the time of the order for eviction being granted for at least three months as required by ground 4. This was supported by the evidence of the Respondent, Joanne Dinsley, Jemima Richardson and Sarah Richardson.

32. The Respondent's evidence was that as a matter of fact he did live in the Property between 17 June 2024 and 10 October 2024. His evidence was supported by the evidence of Joanne Dinsley, Loki Hamilton, Jemima Richardson and Sarah Richardson. It was also supported by the documentation lodged regarding council tax which indicated that the Respondent commenced occupation of the Property on 17 June 2024. The Respondent's evidence was also supported by the screenshots showing the date and location of photographs taken in the Property dated July, August, September and October 2024 and by the 68 invoices for goods to be delivered to the Respondent at the Property dated between 28 June and 9 October 2024

33. The Applicant disputed that the Respondent lived in the Property between June and October 2024. Her position was that he used the Property for family events and as a delivery address. The Applicant did not however put forward any evidence in support of her position.

34. The key issue for the Tribunal to determine is whether the Tribunal that granted the eviction order on 17 April 2024 was misled. The Tribunal determined that as at 17 April 2024 the Respondent had a genuine, firm and settled intention to live in the Property as his only or principal home for at least 3 months. He then

proceeded to do so between 17 June and 10 October 2024. The Tribunal concluded that the Tribunal that granted the eviction order was not misled.

Decision

35. The Tribunal refuses to grant a wrongful termination order.

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.

**Joan Devine
Legal Member**

Date : 10 October 2025