



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/25/0869

Re: Property at 66 Muirhall Street, Coatbridge, ML5 3EX (“the Property”)

Parties:

Mr Michael Graham, 0-1, 49 Caledonia Street, Paisley, PA3 2JJ (“the Applicant”)

Mrs Jill Love, Mr Jason Love, 2 Methlick Avenue, Airdrie, ML6 9XT (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application.

Background

1. This is an application for a wrongful termination order under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a Private Residential Tenancy Agreement between the Applicant and the Respondents dated 26 April 2024, a Notice to Leave with letter dated 13 November 2024, various text messages, an advertisement for the Property from Your Move showing it was available for let on 19 February 2025 at a rent of £750 per month.
3. The Respondents lodged written submissions and a timeline in response to the application accompanied by various text messages, emails from Your Move to the Respondents dated 31 December 2024, 10, 20 and 30 January and 10 February 2025, an email from the Respondents to Your Move dated 11 February 2025, an email dated 12 February 2025 from Your Move to the Respondents, an email dated 7 May 2025 from Your Move to the

Respondents with an email from the Applicant, an email from the Respondents to Your Move dated 1 July 2025, and an email from Your Move to the Respondents dated 2 July 2025.

Case Management Discussion

4. The Tribunal proceeded with a Case Management Discussion (“CMD”) on 5 December 2025. All parties appeared. Mr Love confirmed he would speak for him and his wife Mrs Jill Love.
5. The Tribunal had before it the Private Residential Tenancy Agreement between the Applicant and the Respondents dated 26 April 2024, the Notice to Leave with letter dated 13 November 2024, various text messages lodged by both parties, the Your Move advertisement, various text messages, email from Your Move to the Respondents dated 31 December 2024, 10, 20 and 30 January and 10 February 2025, an email from the Respondents to Your Move dated 11 February 2025, an email dated 12 February 2025 from Your Move to the Respondents, an email dated 7 May 2025 from Your Move to the Respondents with an email from the Applicant, an email from the Respondents to Your Move dated 1 July 2025, and an email from Your Move to the Respondents dated 2 July 2025. The Tribunal considered these documents.
6. The Tribunal asked parties whether they agreed that the tenancy agreement commenced on 26 April 2024, that Notice to Leave was served on 13 November 2024 on the basis that a family member of the Respondents intends to live in the Property and that the rent was £700 per month. Parties were in agreement on those facts. Further parties agreed the Applicants vacated the Property on 7 February 2025 and that the Property was then advertised for rent of £750 per month with Your Move
7. The Tribunal invited the Applicant to make his submissions. He explained that when he moved out of the Property he had nowhere else to live and was classed as homeless. He came across the Property which was put up on Your Move’s site on 19 February 2025. He was looking for somewhere to live. He thought that it was another of the flats in the block but from the photos it looked like the Property. He explained that he worked in retail and when the Notice to Leave was served it was in the run up to the festive period and the busiest time of year. As he had previously rented in England, he did not realise that he would not have had bailiffs at the door as soon as the Notice to Leave expired. He therefore vacated the Property despite not having anywhere else to stay. He got a colleague from work to contact Your Move to purposefully pinpoint the exact address and arrange a viewing. That viewing did not go ahead. When he found out it was the Property that was being advertised for rent, he called Your Move and explained he was the previous tenant, but Your Move would not give him any information regarding the Property being up for rent. He explained he stayed with a friend for a while. He was then put up in a hotel by the Council and then was moved to temporary accommodation for about 4 months. He has since

secured a tenancy with a local housing association in Paisley at a rent of £375.72 per month plus a service charge of £10 per month. He had to give up his job which was in Motherwell as he could not travel there every day and is now on Universal Credit.

8. The Tribunal queried whether the Applicant had incurred any losses such as removal costs or mail redirection. He explained although the Property was let unfurnished, he had very little in it and was able to move out with the help of a friend with a few car trips. He kept his belongings at his friend's. He has now redirected his mail when he got his current tenancy.
9. The Applicant confirmed he was happy for the Tribunal to use its discretion in the amount it would award in the event of making a wrongful termination order.
10. In response, Mr Love explained that it had been their intention for their son Nathan to move into the Property. Nathan had moved back home after a relationship breakdown in September 2023. Nathan moved between their home and the home of his ex wife, Nathan's mother, who lived with her partner. His wife Jill, who is Nathan's stepmother was using his bedroom as a home office. The Applicant moved into the Property in April 2024. By October/November 2024 tensions at home were rising and with reference to the text messages lodged Mr Love explained that they only gave a brief indication of those tensions. There were arguments all the time. Nathan had asked if he could move into the Property. They had initially refused that, but things did not get better despite trying to make the living arrangements at home better, By November 2024 they were at breaking point. They instructed Your Move to serve the Notice to Leave on the Applicant. They did so in good faith as their intention was that Nathan move into the Property. That was their sole intention.
11. During that time Nathan met another girl. On the weekend the Applicant was moving out Nathan's girlfriend suspected she might be pregnant. The pregnancy was not planned. Nathan was concerned he might not be able to afford to support his girlfriend and baby and pay the rent at the Property. Mr Love explained they discussed things over the weekend with Nathan who had decided he could not afford to move to the Property. As well as rent, he was concerned about the utilities, Council Tax etc. They instructed Your Move on 11 February 2025 to put the Property on the market for rent. The pregnancy was confirmed on 12 February 2025. Further discussions took place and Nathan decided he would live at his mother's and stepfather's house rather than between the two houses. When the Property was still being advertised for rent, Nathan's girlfriend suffered a miscarriage. Nathan was 24 years old at the time, and he had made up his mind to move in with his mother.
12. In response to questioning from the Tribunal as to whether Your Move had contacted them when the Applicant had called them, Mr Love explained Your Move had not contacted them. It would have been the ideal outcome

for them if the Applicant wanted to move back. They had assumed that with giving the Applicant three months' notice, he had found another Property. If Your Move had contacted them, it would have saved on marketing fees and loss of rent due to the time it took to get a new tenant in. He found it frustrating that they had not been told that. Unfortunately, due to the unexpected change of circumstances Nathan did not move in. Listening to the Applicant he realised the service of the Notice had a big impact on the Applicant and he acknowledged that impact.

Findings in Fact

13. The Applicants and the Respondent entered into a Private Residential Tenancy Agreement from 26 April 2024 in relation to the Property at a . monthly rent of £700.
14. Mr Love's son Nathan had moved in with the Respondents in or about September 2023. There was tension in the household leading to arguments. By November 2024, they had reached breaking point. At this time the Respondents' intention was that Nathan would move into the Property to ease tensions at home.
15. On 13 November 2024, the Respondents served a Notice to Leave on the Applicant in terms of Section 50 of the 2016 Act which stated the reason for the Notice was that the Respondents intended to have a family member move into Property by reliance on Schedule 3, paragraph 5 of the 2016 Act. The Notice required the Applicant to leave the Property by 8 February 2025.
16. The Applicant left the Property on 7 February 2025 with the help of a friend. The reason for the Applicant moving was as a direct result of the Notice to Leave being served on him. 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. The tenancy terminated on 7 February 2025.
17. The Applicant was homeless as he had been unable to find alternative accommodation. He initially stayed with a friend.
18. On or about 8 February 2025 Nathan's girlfriend suspected she was pregnant. Following discussions over the weekend with the Respondents, Nathan decided he could no longer afford to live in the Property with the extra costs of becoming a parent. Nathan decided he would live with his mother and stepfather.
19. On 11 February 2025 the Respondents instructed Your Move to advertise the Property for rent. The Property was thereafter advertised for rent at £750 per month.

20. Nathan's girlfriend suffered a miscarriage shortly thereafter. Nathan moved in with his mother and stepfather.
21. The Applicant made enquiries with Your Move about the Property, advising them he had been the previous tenant. They did not release any information regarding the circumstances as to why the Property was up for rent. Your Move did not advise the Respondents that the Applicant had been in contact with them on seeing the Property advertised for rent.
22. The Applicant was homeless for a number of months. He stayed with friend and was then put up in a hotel and in temporary housing by the Council. He has since secured a tenancy with a housing association.

Findings in Fact and Law

23. The Respondents intended that a family member move into the Property when they served the Notice to Leave in terms of Section 50 of the 2016 Act by reliance on paragraph 5 of Schedule 3 of the 2016 Act.
24. The Respondents did not mislead the Applicants into ceasing to occupy the Property in terms of Section 58(3) of the 2016 Act.

Reasons for Decision

25. Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) provides:-
- (1) This section applies where a private residential tenancy has been brought to an end in accordance with section 50.*
 - (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 ("the former tenant").*
 - (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.*
 - (4) In a case where two or more persons jointly were the landlord under the tenancy immediately before it ended, the reference to the landlord in subsection (3) is to any one of those persons.*
26. Section 59 (1) of the 2016 Act provides: –
- (1) "In this section and in sections 57, 58 and 60, "a wrongful-termination order" means an order requiring the person who was the landlord under the tenancy immediately before it ended to pay the person who made the application for the wrongful-termination order an amount not exceeding six months' rent."*
- Section 59 (4) of the 2016 Act provides: –
- "In subsections (1) and (3)(b), "rent" means—*

*(a) the amount that was payable in rent under the tenancy immediately before it ended, or
(b) in a case where two or more persons jointly were the tenant under the tenancy immediately before it ended, the amount mentioned in paragraph (a) divided by the number of persons who were at that time joint tenants under the tenancy”*

27. In *Reynolds v Henry* (2024 S.L.T. (Tr) 185) Sheriff Collins in the Upper Tribunal gave consideration to Section 58(3) of the 2016 Act and laid out a four stage test in relation to whether or not there has been a wrongful termination as follows:-

“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.”

28. The Tribunal considered the Application together with all documents lodged and the oral submissions from both parties. It appeared to the Tribunal that

the Respondents had every intention of moving Mr Love's son into the Property when they served the Notice to Leave on the Applicants. All parties appeared to the Tribunal to be honest and credible.

29. The Tribunal accepted that the reasons given by the Respondents leading up to the service of the Notice to Leave had seen the Respondents' household under some strain which had led to arguments and tension. Their intention was clearly to have Nathan move into the Property to alleviate this. In considering the question and meaning of "intends" the Tribunal considered the decision of Lord Justice Asquith in *Cunliffe v Goodman*[1950] 2K.B.237 at page 253:

"An "intention" to my mind connotes a state of affairs which the party "intending" – I will call him X – does more than merely contemplate: it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition. X cannot, with any due regard to the English language, be said to "intend" a result which is wholly beyond the control of his will. He cannot "intend" that it shall be a fine day tomorrow: at most he can hope or desire or pray that it will. Nor, short of this, can X be said to "intend" a particular result if its occurrence, though it may be not wholly uninfluenced by X's will, is dependent on so many other influences, accidents and cross-currents of circumstance that, not merely is it quite likely not to be achieved at all, but, if it is achieved, X's volition will have been no more than a minor agency collaborating with, or not thwarted by, the factors which predominately determine its occurrence."

30. The Tribunal considered that the Respondents had done more than contemplate moving Nathan into the Property. The Tribunal accepted that events took a very different turn the weekend the Applicant had moved out when Nathan's girlfriend suspected she was pregnant. It was clear to the Tribunal that this was a very stressful time for the Respondents and their family and that after discussions Nathan decided he could no longer afford to move into the Property, hence the Respondents' decision to contact Your Move to advertise the Property for rent so soon after the Applicant had moved out. This was all very unfortunate and unexpected. After Nathan's girlfriend unfortunately lost the baby shortly thereafter, Nathan decided that he would still move in with his mother. All of these events were out with the Respondents' control. They were trying to cope with a very difficult set of circumstances and support Nathan through this time.
31. It appeared to the Tribunal that both parties deeply regretted the unfortunate string events leading up to this action. The Applicant naturally on seeing the Property being advertised for rent so soon after leaving the Property, felt he had been misled into leaving the Property by the Respondents. He cannot be

criticised for bringing this action. However, as the Tribunal accepted the Respondents had the genuine intention to have Nathan move into the Property, the Applicant was not misled by the Respondents and so his action must fail.

Decision

33. The Tribunal refused 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.

S.Evans

7 December 2025

Legal Chair

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Date