



**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/24/2409**

**Re: Property at 90 1/2 Braidholm Road, Giffnock, G46 6DF (“the Property”)**

**Parties:**

**Miss Eilidh Maciver, 17 Fairfield Drive, Clarkston, G76 7YH (“the Applicant”)**

**Ms Kathleen Brawley, 28 Briar Road, Glasgow, G43 2TX (“the Respondent”)**

**Tribunal Members: Shirley Evans (Legal Member) and Robert Buchan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in favour of the Applicant in the sum of FIVE THOUSAND TWO HUNDRED AND FIFTY POUNDS (£5250) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.**

**Background**

- 1. This is an application for a wrongful termination order for £5250 under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**
- 2. The Tribunal proceeded with a Case Management Discussion on 23 October 2024 by way of teleconference. A number of findings in fact were made on matters which were not in dispute. The Tribunal decided it wanted to hear full evidence at a Hearing to determine: –**
  - i. Whether the Respondent had an intention to sell the Property;**
  - ii. Whether the Applicant was misled by the Respondent into giving up the tenancy by the Respondent;**

- iii. In the event that the Applicant has been so misled, the amount of any wrongful termination order.

### **Hearing**

3. After a number of postponements, the Tribunal proceeded to an in-person Hearing on 14 November 2025 at the Glasgow Tribunal Centre. The Applicant was in attendance. She was supported by Terry Dickson. The Respondent was also in attendance. She was supported by Craig Gardiner from Gardiner Waters, Letting Agency.
4. The Tribunal had before it the Private Residential Tenancy Agreement with an Inventory between the parties dated 18 January 2021 signed by the Applicant and on behalf of the Respondent by Lets Direct (Southside) Ltd, a Notice to Leave dated 19 June 2023 on the basis the Respondent intended to sell the Property and which expired on 14 September 2023, an advertisement for the Property on Right Move from Open Rent showing the Property was available for rent of £1395 from 6 October 2024, an advertisement for the Property on Right Move from Gardiner Waters showing it had been let at a rent of £1200 per month as of 17 November 2023, emails between the Applicant and 1<sup>st</sup> Lets (Scotland) Ltd dated 19 June -2 August 2023, a letter dated 3 May 2021 from Lets Direct, a copy of title number REN111140 for the Property and an excerpt from Landlord Registration, the Respondent's written submissions in response to the application, statements from HMRC dated February 2024 and 10 April 2024, a letter dated 21 September 2023 from Corum Estate Agents, valuations for other properties at the development, various photographs and reviews of Lets Direct. The Tribunal considered these documents.
5. The Tribunal ascertained that neither party had any witnesses, but would each give evidence on their own behalf. The Tribunal explained the procedure to be followed emphasising that there would be flexibility in the proceedings bearing in mind that both parties were unrepresented.
6. A large body of evidence was undisputed, findings in fact having been made at the Case Management Discussion. The differing evidence mainly related to an advert where the Property was advertised for rent after the tenancy terminated and whether the Respondent had a genuine intention to sell the Property at the time the Notice to Leave was served or whether she had misled the Applicant.

### **Miss MacIver's Evidence**

7. The Applicant's evidence expanded on her submissions at the Case Management Conference. She gave undisputed evidence that she rented the Property from 18 January 2021 to 14 September 2023 at a rent of £875 per month. Lets Direct and then 1<sup>st</sup> Lets were the letting agents. They had told her when she first rented the Property that the Landlord "*would never sell*". She was shocked when she received the Notice to Leave which required her to vacate the Property by 14 September 2023. This coincided with the start of

the autumn term for universities and colleges; demand was high and she was competing with students to find somewhere else to live.

8. She emailed 1<sup>st</sup> Lets on 20 June 2023 after receiving the Notice to Leave asking if the Respondent would be interested in selling the Property to her so she did not have to move again. 1<sup>st</sup> Lets replied on 20 June 2023 and advised they did not have that information but would send a request to the Respondent that day. The Applicant emailed 1<sup>st</sup> Lets again on 19 July 2023 asking whether they had heard anything further from the Respondent. 1<sup>st</sup> Lets replied on 20 July 2023 that they had written to the Respondent regarding the Applicant's request but had had no contact from the Respondent.
9. Miss McIver went on to give evidence that for fear of being homeless she rented another property for £1300 per month. This was £425 per month more than she had been paying for the Property although the new property was smaller and less convenient. To secure that property she had to sign a lease which started from 28 August 2023. She had to pay rent and Council Tax for two properties between 28 August 2023 – 14 September 2023. The double rent alone was £726. She had to take time off work and ask for family assistance. She had removal costs including the rental of a van for £270 and mail redirection of £72. She had to take time to close and set up the utility accounts at both properties. She also had to buy new furniture as some of her existing furniture did not fit into her new flat.
10. Despite just moving, the Applicant kept her eye on the rental market in the hope she could find a cheaper property to rent. On 2 October 2023 the Applicant was shocked to find the Property was advertised for rent by Open Rent on Right Move at a rent of £1495, over £600 more than what she had been paying. This was reduced to £1395 and then £1300 by the end of October 2023. The Property was then relisted by Gardiner Waters for £1200 per month and noted as *"let agreed"* at the end of November 2023.
11. She gave evidence with reference to the advert that it contained the Respondent's Landlord Registration number and had photographs of the Property which had been redecorated. On one of the Open Rent pages the administrator for the rental page was shown as Colette Conley who she understood to be the Respondent's sister.
12. When asked by the Tribunal if Colette Conley was her sister, the Respondent confirmed she was.
13. The Applicant submitted the Respondent never have any intention to sell. Lets Direct had told her the Respondent would never sell. However, she accepted when questioned by the Tribunal that circumstances could change. She submitted that there had been no valuation before she moved out and that the Property had not been advertised for sale within three months. Miss McIver referred to the Respondent's position that only one estate agent, Corum, was consulted with a view to selling and that when Corum gave their estimate of the market value they only mentioned that the kitchen needed to be replaced

and that the Property needed some redecoration; there was no mention that the bathroom needed replaced. No quotes for any of this work were obtained and instead the Property was immediately put up for rent within a week of Corum's letter and within two weeks since she left the Property.

14. She emphasised that it appeared that in order to end the relationship with her letting agents the Respondent told them she wanted to sell so she would not have to deal with them again.
15. With reference to the Respondent's position that she wanted to sell because her partner had a "*huge tax bill*", she submitted the HMRC statements lodged were dated 24 February 2024. The Tribunal pointed out that these were dated from 31 August 2023 with a payment of £711.09 shown dated 15 September 2023. The Applicant confirmed her point that there was no prior statement to that which would have covered the period up the Notice to Leave and up to the end of August 2023. The Respondent had not consulted with a financial adviser regarding the "*huge tax bill*" and how it could be paid. Further, there had been no reply to her query about buying the Property.
16. She submitted the Respondent had never had any intention to sell and in fact had profited from her leaving the Property by the increase in rent of £325 per month which equated to £7800 over the 24 months since she had vacated the Property.
17. Ms Brawley was given an opportunity to ask Miss MacIver questions. She made a statement that she had not received any email from 1<sup>st</sup> Lets about the Applicant's enquiry about buying the Property. She asked the Applicant how she could be sure the photos shown in the advert showed the Property as no full address was shown and all flats had the same layout. The Applicant accepted that all flats had the same layout but stated she recognised the Property.
18. The Tribunal queried if there was anything in the advert that showed this was in fact the Property. In response, the Applicant referred to the floor coverings and the curtains which she stated were in the Property when she left. She referred to the fact the Respondent's Landlord Registration number was also shown.
19. On further questioning she advised she would have been in a position to buy the Property. She followed up her initial query about the price with 1<sup>st</sup> Lets but she was nervous about being made homeless and felt she had to take the other property at a far higher rent. She went onto explain she had been saving and had the backing of her parents. The Respondent queried why the Applicant had not tried to buy some of the other flats that had been up for sale. The Applicant explained she had not wanted to move. Ms Brawley queried whether she would have been in a position to pay £280 000. The Applicant explained she would have been in a position to pay a good price for the Property with reference to another flat that had sold for £240 000 in June 2023.

20. She requested the Tribunal grant an order for six months rent being £5250.

### **Ms Brawley's evidence**

21. The Respondent gave evidence that she had purchased the Property in November 2002 for £156 000. There was no mortgage on the Property. She lived there until 2014 when she rented it out to family and friends at a rent of £700 per month and then £750 per month from 2016.
22. In 2017 she had just had her first child and the regulations around Landlords were getting tighter and she decided to rent the Property out with Lets Direct. 2017 was the last time she had been in the Property. The contract with Lets Direct was for 5 years to October 2022. Various tenants lived in the Property until 2021. She received £750 per month from 2017. The Tribunal referred her to the tenancy agreement and pointed out that in terms of Clause 8 the Applicant's rent was £875 per month. It appeared the difference was Lets Direct's agent's fee.
23. Throughout this time, she had very little contact with Lets Direct. It was up to Lets Direct to carry out visits and arrange for any repairs. She had never been told any repairs were required and had never been invoiced for anything. The cream carpets that had been in the Property had been replaced. She had never been charged for the carpets in the Property. When asked by the Tribunal as to whether she asked for updates on the Property the Respondent advised she had not. She explained she had a lot going on. She had a new baby and then she lost a baby. She thought Lets Direct were dealing with everything.
24. The Respondent went on to explain that her partner is a karate coach. Prior to COVID, her partner operated a pay as you go system so people would just pay for individual classes. Throughout COVID he did not receive any income as he could not teach. After COVID, he changed the way people paid to direct debit, and he got hit with a tax bill.
25. Around this time, she had heard that the owner of Lets Direct had been struck off the register of letting agents. There were bad reviews on social media. There were various company name changes. She was still getting paid £750 every month and had not noticed that the payer had changed from Lets Direct to 1<sup>st</sup> Lets.
26. She was not happy that there was no communication or any contact with the letting agent. She had never been told that the Property was then being managed by 1<sup>st</sup> Lets.
27. In about May 2023 she decided that it would be a good idea to sell the Property. She saw this as a way out of her dealings with the letting agent. The Tribunal questioned why she did not just change letting agent. She explained

she did not know she could do that. She also thought this was a good way to clear some of their debt. She phoned 1<sup>st</sup> Lets up and when they called her back, she told them she wanted to sell. They explained there would be three months' notice but they never told her when the Notice had been served. They never contacted her to advise the Applicant had enquired about buying the Property. When asked by the Tribunal as to whether she enquired whether Notice had been served, she advised she had not.

28. On 15 September 2023 1<sup>st</sup> Lets handed the keys back to the Respondent. She then went to the Property. This was the first time she had been in the Property since 2017. The wallpaper had been taken down and replaced with lining paper. The cream carpets had been changed. There were no carpet dividers. The custom made curtains were no longer there. The kitchen worktops were water damaged. There was a broken freezer drawer. The kitchen lights were flickering from water damage. The Tribunal queried whether she contacted 1<sup>st</sup> Lets about the damage and the return of the deposit. The Respondent advised she did not contact them about the state of the Property as she did not want to have anything to do with them.
29. On being questioned about there being no viewers to the Property after the Notice was served, the Respondent advised that she would not have had viewers in the Property when the Applicant was still living there. She wanted to see what the Property was like for herself.
30. She asked Corum to give her a valuation. When she met with Corum she had the figure of £280 000 in her head as being what the flat was worth. Corum identified some renovation works. Although their letter of 21 September 2023 did not mention either the main bathroom or the ensuite bathroom, Corum had pointed out that the shower in the ensuite would need replacing. The valuation was £250 000.
31. After getting the valuation the Respondent explained she worked out how much selling would cost her. She explained it was difficult to get anyone to come to the Property to give her estimates for the works. She got some estimates over the phone. One builder, Top Class gave her an estimate of about £26 500.
32. She worked out she also would have to pay 28% capital gains tax on the profit she made from the flat. There would be selling fees for Corum. She hoped to be able to buy another flat to rent and there would be stamp duty to pay. After she had worked everything out she would be left with £40 000. This was not a lot of profit since 2002. She decided that selling was not the best decision for her and her family.
33. The Tribunal queried the position with HMRC. The Respondent explained that her partner had been speaking with HMRC and reached an agreement with them at the end of August 2023 to pay the tax bill by instalments. The Tribunal queried if she thought at that stage she should withdraw the Notice. She said she did not. She wanted to get the flat under her control and reduce the

amount of things in her “worry basket”. When she was faced with the valuation and what she would have to pay she decided she would not sell and would rent the Property out again. She explained she makes some decisions quickly.

34. She instructed Best -2-Let to complete all the compliance certificates which should have been done by 1<sup>st</sup> Lets. She met with them on 2 October 2023 at the Property.
35. The Respondent explained she did not know anything about the Rightmove advert on Open Rent. When questioned by the Tribunal as to how there were what appeared to be photos of the Property in the advert she thought they had maybe been taken by Best-2 -Let. When queried as to how her sister's name appeared on the advert, she explained she did not know but that a possible explanation was that she and her sister had had a previous property together and Best -2- Let had perhaps got her name from that. Best-2-Let may have been confused. The Tribunal queried who had access to the flat after she took possession of it. She explained she had received the keys from 1<sup>st</sup> Lets and Best-2 -Let were in on 2 October 2023.
36. In October/ November 2023 the Respondent spoke to a number of letting agents and decided to go with Gardiner Waters. She went on to explain that it was Mr Waters who pointed out the advert to her. She immediately called Open Rent and asked them to take the advert down. The Tribunal asked the Respondent if she asked Open Rent how the advert came to be on their website. She advised she did not ask them. She just asked them to take the advert down. She was not curious. She never asked them to advertise the Property and would never have chosen a London based agency especially when she had had a distant relationship with Lets Direct and 1<sup>st</sup> Lets.
37. The Tribunal asked the Respondent as to whether she had taken financial advice. She advised she did not. The Tribunal then questioned her about other properties she rented out as she had indicated in her written response that she was registered with East Renfrewshire Council and Glasgow City Council as a Landlord. The Respondent explained she had two other properties in Glasgow which were rented out. The Tribunal queried as to why she chose the Property to sell when there were two other properties that she owned. She explained that she knew what she wanted to sell the Property for. The other two properties were bought for rental.
38. The Respondent apologised to the Applicant that her decision had caused her any financial losses. She would not have done what she did if she had known the Applicant was going through what she went through.
39. The Applicant then questioned the Respondent. She put it to the Respondent that for the advert to appear someone would have to have paid for it. The Respondent answered that she did not know. The Applicant then put it to her that it was bizarre that the advert first appeared on 2 October 2023 which was the same date the Respondent had instructed Best-2-Let to prepare the

various certificates when the advert showed it was ready to be let from 6 October 2023. The Respondent responded that it was actually 3 October 2023 that she met Best-2-Let to carry out the certifications. The Tribunal queried how the Applicant knew the Property was first advertised on 2 October 2023. She referred to the Listing History which she had obtained from the advert. She explained this showed the Property was first advertised on 2 October 2023 at a rent of £1495 per month. This was then reduced to £1395 on 4 October 2023. A copy of the Listing Information was copied and passed to the Legal Member and the Respondent.

40. The Applicant also put it to the Respondent that her sister's name was shown as the administrator and that the Respondent must have known that the advert was going to be put up. The Respondent denied that. She surmised that a possible explanation was that her sister was also using Best-2-Let at that time to carry out certification and perhaps Best-2-Let were trying to be helpful by putting the advert up but had confused the Property with her sister's property. When questioned by the Tribunal as to whether she thought of bringing them to the Tribunal to give evidence on her behalf she advised she had not. On further questioning as to whether she was had been aware of the legislation regarding wrongful termination, she confirmed she had been.

### **Findings in Fact**

41. The Applicant and the Respondent entered into a Private Residential Tenancy of the Property on 18 January 2021. In terms of Clause 8 of the tenancy agreement, the Applicant agreed to pay a monthly rent of £875.
42. The Respondent purchased the Property in November 2002 for £156 000. She has no mortgage on the Property.
43. The Respondent instructed Lets Direct as her letting agent from 2017. She had previously managed the Property herself having let it out to friends and family. The Respondent's contract with Lets Direct was for 5 years to October 2022.
44. On 3 May 2021 Lets Direct sent a letter to the Applicant to advise their business was being transferred to 1<sup>st</sup> Lets from 1 June 2021.
45. The Respondent received £750 per month from Lets Direct and then from 1<sup>st</sup> Lets throughout the period of the tenancy with the Applicant.
46. In or around 2023 the Respondent's partner received a tax demand from HMRC for £15 659. The Respondent was worried about this. The Respondent owns two other properties which she rents out as well as the Property. She did not seek financial advice.
47. The Respondent became increasingly concerned about being associated with 1<sup>st</sup> Lets having read adverse social media reviews. She no longer wanted to deal with them. She did not think to change letting agents.



48. The Respondent instructed 1<sup>st</sup> Lets in or about June 2023 that she wanted to sell the Property. 1<sup>st</sup> Lets served a Notice to Leave on the Applicant on 19 June 2023 by way of email. The ground of repossession contained in the Notice to Leave was that the Respondent wanted to sell the Property. The Applicant was required to leave the Property by 14 September 2023.
49. On 20 June 2023 the Applicant emailed 1<sup>st</sup> Lets to ascertain whether the Respondent would consider selling the Property to her. The Applicant did not want to move. 1<sup>st</sup> Lets replied on 20 June 2023 to advise they would contact the Respondent to make enquiries regarding selling the Property to the Applicant.
50. On 19 July 2023 the Applicant emailed 1<sup>st</sup> Lets again to ask whether they had heard anything from the Respondent. 1<sup>st</sup> Lets responded on 20 July 2023 to advise they had written to the Respondent regarding the Applicant's request but had had no contact from the Respondent.
51. The Respondent looked for alternative accommodation and secured a tenancy from 28 August 2023 at a rent of £1300 per month, £425 per month more than the rent for the Property. She had to pay rent and Council Tax for the new property and the Property between 28 August 2023 – 14 September 2023. The double rent was £726 for this period.
52. The Respondent's partner reached an agreement with HMRC in August 2023 to pay the tax by instalments. The first instalment was paid on 15 September 2023.
53. Between 19 June -14 September 2023 there were no viewings of the Property, nor did any valuers attend the Property. The Respondent did not contact 1<sup>st</sup> Lets during this period to ascertain whether the Notice to Leave had been served.
54. The Applicant left the Property on 14 September 2023. The reason for the Applicant moving was as a direct result of the Notice to Leave being served on her. 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 14 September 2023.
55. The Applicant incurred removal costs including the rental of a van for £270 and mail redirection of £72. She also incurred further costs in buying new furniture. She spent time sorting out the utilities for both properties.
56. The Respondent obtained the keys on 15 September 2023 and visited the Property. She did not find the Property to be in the same state as she had left it in 2017. The wallpaper, carpets and curtains had been replaced. The kitchen worktops were water damaged. There was a broken freezer drawer. The kitchen lights were flickering from water damage. The Respondent did not

contact 1<sup>st</sup> Lets about the state of the Property or the return of the deposit. She did not want anything more to do with 1<sup>st</sup> Lets.

57. The Respondent met with Corum Estate Agents at the Property to give her a valuation of the Property. On 21 September 2023 Corum sent the Respondent a letter valuing the Property at £250 000. This was about £30 000 less than the Respondent had thought the Property was worth.
58. The Respondent did not obtain any further valuations. No attempt to market the Property for sale was made by the Respondent. The Respondent decided she would let the Property out again.
59. On 2 October 2023 the Respondent met with Best-2-Let at the Property and instructed them to prepare various compliance certificates.
60. On 2 October 2023 the Property was advertised for let through Rightmove on Open Rent a rent of £1495 per month. On 4 October 2023 the rent was reduced to £1395. The Respondent's sister was named as the administrator. The Respondent's Landlord Registration number was contained in the advert.
61. The Respondent instructed Gardiner Waters to advertise the Property for let. The Property was let from about November 2023 at a rent of £1200 per month.
62. The Applicant was misled into ceasing to occupy the Property by the person who was the landlord under the tenancy immediately before it was brought to an end.
63. The tenancy was wrongfully terminated by the Respondent without an eviction order.

### **Reasons for Decision**

64. 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.*

65. 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”.*

66. Ground 1 of Schedule 3 of the 2016 Act provides:-

*“(1) It is an eviction ground that the landlord intends to sell the let property.*

*(2) The First-tier Tribunal may find that the ground named by subparagraph*

*(1) applies if the landlord—*

*(a) is entitled to sell the let property, and*

*(b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*

*(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*

*(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*

*(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.”*

67. The tenancy came to an end without the need for an eviction Order. The Respondent instructed the Notice to Leave to be served by reliance on Ground 1 of Schedule 3 to the 2016 Act. The Applicant did not want to leave the Property. She enquired about buying the Property but after she received no response to her enquiry, she moved out on 14 September 2023. This application therefore falls under section 58 of the 2016 Act.

68. 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."*

69. In this case the Applicant, after making enquiries to purchase the Property, accepted the Notice to Leave and moved out of the Property. There is no evidence to suggest that she thought she was being misled, and the Tribunal is satisfied that she moved out in good faith. The question for the Tribunal is whether or not the representation, i.e. the Notice to Leave using Ground 1, was effectively misleading.

70. There is no dispute that the Respondent owns the Property and is legally entitled to sell it. However, the Tribunal found the Respondent's evidence to be full of anomalies. Whilst it is understandable that she was stressed by the financial pressure caused by the HMRC tax demand, she is the owner of three properties all of which were rented out, but yet she did not take financial advice before instructing the Notice to Leave, as to issues such as capital gains tax. Further, she is an experienced Landlord, but yet claims not to have known she could change letting agents even though she was not happy with the service she was receiving. The Respondent emphasised throughout her evidence that she never heard from her letting agents during the tenancy. On

the one hand she stated that she was concerned about the lack of communication, but on the other she did not communicate with the letting agents herself, including enquiring whether the Notice to Leave had been served. If she had a genuine intention to sell the Property one would have expected her to have at the very least asked if the Notice had been served, and what if any response to that had been. The letting agents had clearly advised the Applicant of the change of business name. The letting agents had responded quickly to the Applicant's emails enquiring about the possibility of her buying the Property. It seems odd that the letting agents would communicate with the tenant and not with the Respondent. The Tribunal was at pains to understand why, having received a lower valuation of the Property than she expected, the Respondent did not obtain other valuations as would be expected if she had a genuine intention to sell. The Tribunal was also at pains to understand why, on her evidence, on finding out there was an advert placed by Rightmove through OpenRent, the Respondent did not enquire as to who placed the advert when she asked for it to be taken down. She stated it did not concern her. That struck the Tribunal as being incredible, particularly when she confirmed when questioned by the Tribunal, that she was aware of the legislation concerning wrongful termination. The Respondent was not able to offer any plausible explanation as to how the Property came to be advertised for let a little over two weeks after the Applicant had left. Nor was she able to provide an explanation when challenged by the Applicant, as to why the advert first appeared on 2 October 2023 which was the same date she met Best-2-Let at the Property to carry out various certifications, other than to surmise that Best-2-Let may have got confused and advertised the Property. The Respondent's evidence changed when challenged about this date at which point she stated she met Best-2-Let on 3 October and not 2 October 2023. It appears on the balance of probabilities that the advert, which contained both the Respondent's Landlord Registration number and the Respondent's sister's name as administrator, would not have been removed unless at the request of the person who placed the advert in the first place.

71. The Tribunal preferred the evidence of the Applicant who gave her evidence in a straightforward manner. The Tribunal noted that the relevant evidence of the Applicant was not challenged by the Respondent. It was clear from the evidence given by the Respondent that she no longer wanted anything to do with her letting agents. The Tribunal considers that this was the reason that she wished to bring the tenancy to an end and perhaps naively had not thought things through properly. The Respondent took no financial advice despite owning three rental properties prior to serving the Notice to Leave. Despite her partner entering into an arrangement with HMRC in August 2023, she did not think to withdraw the Notice. Her motive appears to have been to sever all links with the letting agent so she could get the Property under her control. She did not get any further valuations and did not test the market. The Tribunal considers therefore that the Respondent had no genuine intention to sell the property for market value as she was not prepared to accept the market value of the Property was lower than she had expected. The Tribunal is satisfied from the evidence presented that on the balance of probabilities, that the Applicant was misled into ceasing to occupy the Property and that an order in terms of section 58 of the 2016 Act can be made.

72. In terms of Section 59 (1) of the 2016 Act the Tribunal can make a wrongful termination order of up to six times the monthly rent. The 2016 Act does not give any guidance as to relevant considerations as to how the order should be calculated. It is therefore at the discretion of the Tribunal. On the one hand, the Applicant through no fault of her own, and having enquired about buying the Property, experienced and still continues to experience financial loss and inconvenience. She is paying £425 more in rent per month, a loss of £10200 between September 2023 – September 2025. In addition she had to pay double rent for the first few weeks of her new tenancy. She incurred removal and mail redirection costs. She had to purchase some new furniture to fit into her new flat. On the other hand, the Respondent is an experienced Landlord who appears to have prioritised her own desire to distance herself from her former letting agents above her legal obligations towards the Applicant as her tenant. She continues to receive £325 per month more than the rent under the tenancy agreement with the Applicant. This equates to at least £7800 more in rent since September 2023. 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 £5250 was proportionate, reasonable and fair.

### **Decision**

73. The Tribunal makes a wrongful termination order of £5250 payable by the Respondent to the Applicant. The decision of the Tribunal is unanimous.

### **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.**

# Shirley Evans

**Legal Member**

**Date: 30 November 2025**