



**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/24/3770**

**Re: Property at 3 Abbotsknowe, 52 Abbotsford Road, Galashiels, Scottish Borders, TD1 3HP ("the Property")**

**Parties:**

**Mrs Lynda Martini, Mr Craig Martini, 1 Lustruther Cottage, Chesters, Hawick, Scottish Borders, TD9 8TN ("the Applicant")**

**Jeanette O'Connell, 65 Bank Street, Galashiels, TD1 1EL ("the Respondent")**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

**[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") refused the Application.**

**Background**

**[2] The Applicants seek an Order under Section 58 of the Act for a Wrongful Termination Order under Section 59 of the Act. The Applicants allege that they were misled by the Respondents into ending a tenancy and leaving the Property. The Respondents had served a Notice to Leave on the Applicants on the basis that the Respondents wished to sell the Property in terms of ground 1 of schedule 3 of the Act.**

[3] There had been a Case Management Discussion (“CMD”) which had addressed procedural matters and set timescales for the production of evidence. The Application was then continued for a Hearing by conference call for evidence to be heard and a final decision to be made.

## **The Hearing**

[4] The Application called for a Hearing by conference call at 10am on 22 October 2025. The Applicants were personally present. The Respondent was present together with her solicitor, Mr Greig McDonnell. Both sides had submitted written representations setting out their respective positions. The Respondent had submitted an inventory of productions shortly before the Hearing. These had been received and considered by the Applicants. There was no objection taken to their late submission. The Tribunal accordingly allowed the papers to be received. The Tribunal thereafter ensured that everyone understood the format of the Hearing and that everyone was familiar with the documentation which had been submitted to the Tribunal.

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

[6] The Tribunal comments on the evidence heard as follows.

*Ms Lynda Martini*

[7] Ms Martini explained how the Applicants moved into the Property on 27 April 2021. The rent was initially £625.00 per month then it increased to £675.00. She explained how she was told when she moved in that they would be there on a long let. They were there for about two years before they received a notice to leave in March 2024 calling upon them to leave before 3 June 2025. They moved out on 30 May 2024. The Applicants “*didn’t have a problem with the Property being sold*” but stated that they struggled to find somewhere else suitable in which to live. However, a few weeks after moving out, the Applicants were given an option of moving back in on an increased rent. They were told that due to financial and legal problems, there was an issue selling the Property. The new rent would be £950.00 per month which the Applicants pointed out in their evidence was significantly higher than what they were paying before. They formed the view that they had been asked to leave simply because the Applicant wanted a higher rent. The Applicants declined the offer, although in their email to the Respondent’s agents to that effect they did little more than simply state that they declined the offer.

[8] The Applicants appeared to accept that the Respondent had then gone on and sold the Property after re-letting it for a short period to another tenant. The Applicants accepted that the Respondent had gone to the expense of organising a home report to try and sell the Property as soon as the Applicants left. The Applicants also were not in a position to challenge the Respondent's account of the legal difficulties that meant that selling the Property was far from straightforward. They did not dispute the will process but seemed to have retrospectively judged the Respondent to have moved to sell too quickly, and in advance of the necessary paperwork, and that '*she should have known*'.

[9] The Applicants even went as far as accepting, when asked in cross examination, that at the time they were served with the notice to leave and vacated the Property they had not been misled and the Respondent genuinely wished to sell the Property. That seemed to confirm that their belief that they were misled was made well in retrospect of the events. The Applicants subsequently moved into another Property where they continue to reside.

### **Mr Craig Martini**

[10] Mr Martini's evidence largely mirrored that of his wife, Ms Lynda Martini. Under cross examination he stressed that they had sought advice on the matter after they moved and decided that Application to the Tribunal was '*a decent way to go*'. They clearly felt aggrieved at the inconvenience they had experienced through having to move, but he restated that they did not suggest that there was intention to mislead at the point of the notice to leave but that '*she should have known*'.

### **Comment on the Applicants' evidence.**

[11] The Applicants appeared to have virtually no evidence that they were misled into leaving the Property. They could not offer any meaningful counter to the explanation put forward by the Respondent as to the legal issues which delayed the sale process. It was not clear when they said they were misled or how. They acknowledged they hadn't been misled when they received the notice to leave and that the Respondent wanted to sell the Property at that point. They accepted she had taken steps to sell, including obtaining a Home Report and Sales Report after they moved out of the property. The only thing which they seemed to base their Application on was the fact that after leaving the Property, they received an offer of moving back in, albeit on new financial terms. But in pursuing this Application, they do not seem to have applied their minds at all to considering the explanation for the delay in selling the Property put forward by the Respondent.

[12] They presented their case as something of a fishing exercise to see what might come from it. The Tribunal also noted that they had made no formal enquiry whatsoever to the Respondent before raising this Application. While there appears to be no strict requirement for a letter of claim to be made before raising these proceedings, it does

seem somewhat unsatisfactory for an Application like this to be lodged without first having made any effort to find out the Respondent's response to their concerns.

[13] The Tribunal thereafter heard from the Respondent.

### **Janette Margaret O'Connell**

[14] The Tribunal then heard evidence on behalf of the Respondent. She is 60 years of age. She explained she intended to sell the Property along with two other neighbouring properties she owned. She explained that there were unexpected and extensive delays in her being able to sell the Property. Her late husband's will had been lost and a court action had to be raised to resolve the difficulty that created. There were also difficulties in obtaining confirmation from Edinburgh Sheriff Court which included having to seek an opinion from Irish qualified counsel as the Respondent's late husband's will was made in Ireland. The Respondent spoke to solicitor's file notes and contemporaneous correspondence which documented and corroborated her entire account of events.

[15] The correspondence reveals the Respondent expressing exasperation to her solicitors about the length of time it was taking to have the Property sold. Eventually, she decided she would have to try and generate some money whilst this all was resolved as she had relied on rental income and so she decided to try and rent the Property out again. Her first port of call was to ask the Applicants if they would be interested in re-renting the Property. Rent was set at a higher level to take account of repainting and recarpeting. The Tribunal viewed that as a sensible and understandable approach in the circumstances. The Property was re-let to another tenant for a period of nine months before the legal hurdles were all overcome and the Property was then eventually sold in September 2025. An earlier offer to purchase the Property had previously fallen through which resulted in further delays in completing the sale.

### **Comment on Respondent's evidence**

[16] The Tribunal found the Respondent's evidence to be entirely credible and reliable. It was corroborated by clear documentary evidence. The Tribunal was sympathetic to the Respondent. She had lost her husband, had to endure multiple legal setbacks in selling the Property and now had to answer allegations of having misled the Applicants into leaving the Property. The Tribunal could find no basis whatsoever to come to the conclusion that at any point, the Respondent misled the Applicants into leaving the Property.

[17] Having considered the documentary evidence and having heard from parties, the Tribunal made the following findings in fact.

### **Findings in fact**

- 1) The Applicants moved into the Property on 27 April 2021.
- 2) The Respondent was the landlord in terms of a Private Residential Tenancy between the parties.
- 3) The rent was initially £625.00 per month then it increased to £675.00.
- 4) In March 2024, The Applicants received a notice to leave calling upon them to leave the Property before 3 June 2025.
- 5) The notice to leave was based on ground 1 of the Act in that the Respondent intended to sell the Property.
- 6) The Applicants moved out of the Property on 30 May 2024.
- 7) The Respondent arranged a Home Report valuation around that same time and tried to take forward the sale of the Property.
- 8) The Respondent however encountered a series of legal difficulties in carrying out the necessary executory and conveyancing processes in order to allow her to lawfully sell the Property.
- 9) When the extent of these difficulties became apparent, the Applicants were given an option of moving back into the Property on new financial terms.
- 10) The Applicants declined that offer. The Respondent then re-let the Property to another tenant for a period of nine months before, having resolved her legal difficulties, she was in a position to effect the sale of the Property which was then sold in September 2025.
- 11) At the time of serving the notice to leave and at all times after, the Respondent has intended to sell the Property.

## **Decision**

[18] Having made the above findings in fact, the Tribunal considered that there was no basis for any finding that that Respondent misled the Applicants into leaving the Property. The Application therefore must be refused.

## **Expenses**

[19] Mr McDonnell invited the Tribunal to consider making an award of expenses against the Applicants in the event that the Tribunal refused their application.

[20] Expenses are governed by Rule 40 which is in the following terms.

## ***Expenses***

*40.—(1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.*

*(2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.*

[21] The Tribunal agrees that the Application has not been successful. The Tribunal notes the Applicants had almost no evidence to support their allegation that they were misled. The Tribunal acknowledges that being accused of misleading the Applicants would be a source of stress and anxiety to the Respondent. She has also no doubt incurred expense in instructing her defence to the Application. The Respondent has been entirely vindicated in these proceedings. The Tribunal also notes that it is unsatisfactory that the Applicants would raise these proceedings in the absence of having reasonable evidence and not also having first asked the Respondent for an explanation in advance.

[22] The Tribunal therefore considered this matter very carefully. The Tribunal does note that the test in Rule 40 is linked to the “conduct of a case” rather than raising a case that has no merit. There is no suggestion that the Applicants have lied or been disingenuous in their conduct of the case. The Application was resolved in a procedurally straightforward manner without what might be considered unnecessary delays or unreasonable documentation being submitted.

[23] The Tribunal does also note that the Respondent’s agents submitted a very useful inventory of productions in the days leading up to the Hearing. If that had been produced earlier, perhaps before the initial CMD, then the Applicants wish to fully litigate the matter to a conclusion might have been harder to justify.

[24] On balance, whilst the Tribunal agrees that the Application had little to no merit, the Applicants’ conduct has not crossed the threshold into territory that might justify an award of expenses under Rule 40. The Tribunal therefore refuses the Application and makes no award of Expenses in terms of Rule 40.

## **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

1 December 2025

Date