

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PR/22/1002

Re: Property at 11 Wellside Road, Kingswell, Aberdeen, AB15 8EE (“the Property”)

Parties:

Ms Linzi Catto, 26A Netherhills Avenue, Bucksburn, Aberdeen, AB21 9DE (“the Applicant”)

Mrs Oroma Olivia Joe, 42 Cobbetts Walk, Surrey, Bidley, Woking, GU24 9DU (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) alone in respect of the CMDs and Karen Moore (Legal Member) and Frances Wood (Housing and Ordinary Member) in respect of the Hearing.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application be refused and so dismissed the Application without Order.

Background

1. By application received between 6 and 13 April 2022 (“the Application”), the Applicant applied to the Tribunal for a wrongful termination order requiring the Respondent to pay six times the amount of rent of £800.00. The Application comprised a copy of a private residential tenancy agreement between the Parties showing a monthly rent of £800.00, copy Notice to Leave dated 25 August 2022 citing Ground 1 of Schedule 3 to the Act with an effective date of 28 February 2022 and copy advertisements dated April 2022 showing the Property to be available for rent at £1,200.00 per calendar month. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 29 January 2022 at 14.00 by telephone conference. The CMD was adjourned at the request of the Respondent due to her illness. A fresh CMD was fixed for 1 September

2022 at 10.00 by telephone conference. The adjourned CMD (“adjourned CMD”) was intimated to the Parties.

2. Prior to the CMD, the Respondent submitted written representations setting out that she had relocated from Aberdeen in 2018 for reasons of employment, that she rented out the Property which had been the family home at that time, that there is mortgage of £918.00 per month secured against the Property, that she had expected a rent of £1,000.00 per month for the Property but accepted £800.00 per month from the Applicant, that during August 2021 she visited three property agents in Aberdeen with a view to selling the Property and served the Notice to Leave in respect of her intention to sell. She explained that ill-health of her son and her deteriorating health caused her to pause her intention to sell and she advertised the Property for rent as a “stop gap” solution. Along with the written submission, the Respondent lodged a medical report in respect of her son, a bank statement showing a payment of £918.58 to Natwest bank, an advertisement for rent of the Property, an EPC for the property dated May 2015, a market research document in respect of rental rates for Aberdeen, letter from Alex Hutcheon & Company, solicitors and estate agents providing a quote for fees for the sale of the Property dated 22 June 2022, email from Gavin Bain & co. providing a quote for fees for the sale of the Property dated 17 August 2021, emails between the Parties dated January 2022 indicating that the rent did not cover the running costs incurred by the Respondent and that the Applicant could remain in the Property as “we go through the process of marketing the house”, copy correspondence between the Parties in respect of the condition of the Property at the end of the tenancy and screen shots of messages between the Parties in respect of the Applicant vacating the Property.

Adjourned CMD

3. The adjourned CMD took place on 1 September 2022 at 10.00 by telephone. The Applicant took part. The Respondent did not take part and was not represented. The Tribunal had regard to the Applicant’s submissions at the adjourned CMD that the Respondent had never had a real intention to sell the Property and that it was her belief that the Property would be sold at a loss due the drop in house prices in Aberdeen. The Applicant stated that the Respondent had accepted her tenancy at a rent of £800.00 and was not able to increase the rent lawfully to the amount required by the Respondent. She stated that there had been no contact from selling agents to value the Property or to prepare a Home Report during the Notice to Leave period and that the Property had been advertised for rent shortly after she vacated the Property. Her firm view was that the Respondent had always intended to re-let the Property at a higher rent and had now done so. The Tribunal had regard to the Respondent’s written representations as outlined in paragraph 2. The outcome of the adjourned CMD was that the Tribunal found in favour of the Applicant and made an award of the full amount of six months’ rent as sought by the Applicant in the Application.

Recall of Decision at CMD

4. By application (“the Rule 30 Application”) dated 29 September 2022 the Respondent applied for a recall of a decision by the Tribunal, which decision was made on 1 September 2022. The Applicant opposed the Rule 30 Application. Accordingly, the Tribunal ordered the Parties to appear at a case management discussion for the Tribunal to consider whether to recall its decision of 1 September 2022. The case management

discussion ("Recall CMD") was fixed for 23 November 2022 at 14.00 by telephone conference call.

Recall CMD

5. Prior to the Recall CMD and by emails dated 17 and 23 November 2022, the Respondent submitted medical records and a letter from a medical practitioner but stated that these should not be copied to the Applicant.
6. The Recall CMD took place on 23 November 2022 at 14.00 by telephone. Both Parties took part and both were unrepresented. The Tribunal explained that if the medical evidence submitted was to be admitted as evidence, it must be copied to the Applicant. The Tribunal adjourned the Recall CMD to a later date to allow the Applicant to submit medical evidence redacted in respect of personal and sensitive information.

Adjourned Recall CMD

7. Prior to the adjourned Recall CMD redacted medical records were submitted.
8. The adjourned Recall CMD took place on 9 January 2023 at 10.00 by telephone. Both Parties took part and both were unrepresented.
9. The Tribunal had regard to all of the information before it and the respective positions of both Parties. The Tribunal took the view that it was in the interests of justice that the Rule 30 Application be granted and that its Decision of 1 September 2022 be recalled. Therefore, the Tribunal recalled the Decision of 1 September 2022 and fixed a Hearing of the Application.
10. Prior to the Hearing, the Applicant submitted screenshots regarding the Respondent's professional social media and submitted a further letter to the Tribunal expressing her views on the process.

Hearing

11. The Hearing took place on 13 March 2023 at 10.00 by telephone. Both Parties took part and both were unrepresented. The Tribunal's note on the evidence which follows is not a verbatim record but is taken from the Tribunal's own notes.
12. The Applicant gave evidence and stated that her view is that the Respondent had no intention to sell the Property as the sale costs and sale price would minimise the value of the Property to less than the Respondent had originally paid for it. She stated that the Respondent had made no attempt at marketing the Property during the Notice to Leave period or in the three month period after the Applicant had vacated and stated that no valuation or home report surveys were carried out. The Applicant stated that her position had remained unchanged from the position as stated in the Application and as set out at the Adjourned CMD on 1 September 2022. Her view is that the Respondent had, on several occasions, raised the issue of increasing the rent and the Respondent's purpose in serving the Notice to Leave was to re-let the Property for a higher rent. The Applicant would have remained in the Property if she had not received the Notice to Leave. She has a daughter on whom the move to another property impacted.

13. The Respondent had no cross-examination questions and preferred to set out her position in her own evidence.
14. In response to questions from the Tribunal, the Applicant stated that during the six months' Notice to Leave period, there had been no communication with the Respondent and no reason to think that her intention to sell as set out in the Notice to Leave was not genuine at that time. She explained that she became suspicious of the Respondent's intentions when, after she had vacated the property in February 2022, a family member forwarded her an advert showing the Property available for rent at £1,200.00, some £400.00 per month more than the Applicant had been paying.
15. The Respondent gave evidence and stated that the background to the tenancy was important to the Application. The Respondent stated that the Applicant had resided in the Property for three years and that she had encouraged the Applicant to treat it as her home. The Respondent explained that she had bought the Property as a family home and lived in it as such from 2010 to 2018. She explained that, as the main provider in her family and having lost her job, she had to relocate to England and needed a tenant as she could not afford to run two houses. The Respondent stated that she had hoped to rent out the Property for £1,100.00 per month but accepted a reduced rent from the Applicant. She stated that every year she asked the Applicant to please pay an increased rent, but that the Applicant always said that she could not afford to do so.
16. The Respondent explained that she bought a home in England in 2021 and it had become a strain and untenable to have two houses and two mortgages. In August 2021, she formed an intention to sell the Property and offered it for sale to the Applicant but the Applicant could not afford it. The Respondent stated that she had not been in Aberdeen since 2018, but, on 11 August 2021, she returned to Aberdeen. On 14 and 16 August 2021, she visited selling agents, all of whom talked her through the sale process and advised that she do nothing until the Applicant had vacated the Property. The reason they gave was that the Respondent would need to prepare the Property for sale. She stated at that time, she visited the Property and told the Applicant of her decision and that it was hard for her to do this. She stated that she explained to the Applicant that she had been subsidising the Applicant because the Applicant could not afford to pay more rent. The Respondent explained that she served the Notice to Leave as the Applicant had asked her to do so. The Respondent stated that there had been no discussion with the Applicant until 11 January 2022 when the Applicant advised that she had not found other accommodation. The Respondent stated that she had offered the Applicant to stay on in the Property for as long as she needed and while the Property was being marketed. The Respondent stated that she assured the Applicant her reasons for selling were financial as the Applicant could not afford to pay an increased rent. The Respondent stated that her next contact with the Applicant was 19 January 2022 when the Applicant needed a reference for a flat in Bucksburn, which the Respondent provided. The Respondent stated that she again offered that the Applicant could stay on in the Property as long as she needed, but the Applicant said she could no longer afford the Property as she was no longer a student and would have to pay Council Tax. The Respondent understood that the Applicant was happy with the Bucksburn flat as it was closer to school for daughter.

17. The Respondent stated that relations with the Applicant changed after the Applicant gave notice that she was leaving the Property and the letting agent carried out a check-out inspection. The Respondent stated that work required to be done on the Property and that this evolved into a tenancy deposit dispute which had to be adjudicated upon. The Respondent stated that she and her son were suffering ill health at the time and the adjudication process added to the pressure on her and her family and underpinned the intention to sell the Property. The Respondent stated that her own and her son's health has continued to deteriorate and has been exacerbated by bouts of Covid with a detrimental effect on her son's heart condition. She explained that continuing stress and anxiety meant that she was unable to focus on the house sale, and, the enormity of the pressure on her meant that she could not travel to Aberdeen for meetings with agents. Therefore, she decided to hand the Property over to a letting agent for rent in April 2022. She explained that her reality is living day to day and switching off from some things to cope with the pressures of work. The Respondent stated that she was shocked that the Applicant had lodged with the Tribunal personal data showing that the Respondent is actively working as she can only cope with the help of therapy. The Respondent stated that she considered that the Applicant would have had to vacate the Property in any event as her situation changed and she could not afford rent and Council Tax.
18. In cross-examination by the Applicant, the Respondent agreed that the Applicant had made offers of rent below the asking rate and that she accepted the Applicant's final offer of £800.00. She maintained that she had made a special case for the Applicant. The Applicant stated that she did not challenge that the Parties had a civil relationship and that the Respondent told her she intended selling. The Applicant disputed that the Respondent's health issues were so severe that she could not proceed with her intention to sell the Property.
19. In response to questions from the Applicant as to why no Home Reports were carried out and why no estate agents had called out to the Property but had recommended works, the Respondent maintained that this had been the advice given to her. In response to questions from the Applicant as to why the Respondent had not carried out a formal rent increase process, the Respondent stated that she had dealt with matters not on a commercial basis but on a more personal one, and, accepted that she should have put things formally in writing.
20. In response to questions from the Applicant, the Respondent maintained that she was not mentally able to sell and accepted that the Property was relet for £1,200.00 per month in May 2022. The Respondent maintained that her decision not to sell and to re-let came after the Notice to Leave period expired as her health made re-letting an easier decision and as the tenancy deposit adjudication process had been stressful. The Respondent disputed that she could have instructed the sale from a distance as it was her ability to follow through and focus which impacted on her. The stress of her son's and her own health means that she has short periods of function in which she needs to attend to her work. She stated that she cannot stop working as she is the main breadwinner and has nearly had a full breakdown. She maintained that she still fully intends to sell the Property. She accepted that she had bought her home in England in 2021 while still having the cost of the Property but stated that her health had not been so

impacted at that time, but that the two ownerships were untenable long term. She said she intended to use the sale proceeds to reduce the equity in her current home.

21. In answer to questions from the Tribunal, the Respondent accepted that she changed her mind on selling within a short time of the Applicant leaving the Property. She stated that she made the decision to re-let at the end of the tenancy as the strain of the tenancy deposit adjudication and her son's health deterioration caused her to shut down mentally. The Respondent referred the Tribunal to medical records lodged by her for the period January to March 2022. The Respondent confirmed that she instructed letting agents to market the Property in April 2022 for a rent of around £1,100.00 per month. She stated that she gave this instruction in late March/April 2022 as everything had got on top of her and she could not cope, and so she asked the agents to find a tenant until she had sorted everything out, particularly after the adjudication process. The Respondent accepted that she instructed contractors to carry out work on the Property spending around £1,000.00 but explained that she could not continue with the sale process.
22. The Applicant continued her cross-examination and asked if the valuation estimation dated 17 August 2021 from Gavin Bain and Company which put the value of the Property at £280,000.00 - £290,000.00 and not £320,000.00 as estimated by the Respondent influenced the Respondent's decision not to sell. The Respondent stated that it was only her health which made her change her mind as she had sent the Notice to Leave after receiving that valuation. She did not accept that facing a loss on the Property swayed her.

Summing Up - Applicant

23. The Applicant summed up her case succinctly and stated that if she had not received the Notice to Leave she would not have vacated the Property. She stated that her family would have helped with her Council Tax costs and that she would have remained in the Property. The Applicant stressed that the Respondent had not taken any steps to market the Property and, although the Respondent said she was unable to see a house sale through to completion, the Respondent had been able to deal with the re-letting of the Property at an increased rent. The Applicant stated that the Respondent stood to lose around 20% of the value of the Property from when it had been purchased and that the medical issues appeared to have begun after the Respondent decided not to sell. The Applicant stressed that the real reason for the Respondent's decision not to sell is loss on the price as the Respondent would not be able to clear the current mortgage. She submitted that, as the Respondent was well enough to re-let the Property, she ought to have been well enough to instruct its sale, and, the fact remains that no marketing was carried out and the Property was simply re-let. The Respondent did not do what she said she intended to do in the Notice to Leave.
24. With reference to the sum sought if successful, the Applicant stated that the legislation allows up to a maximum of six times the rent and that she based her claim on this.

Summing Up - Respondent

25. The Respondent summed up by saying that she felt hounded by the Applicant in respect of her use of LinkedIn, which she re-iterated was work-related, and that she had had to keep working throughout 2022. She stated that she served the Notice to Leave having taken advice from agents such as Gavin Bain and Alex Hutcheon and this had included not to market the property while tenanted. She stated that she expected a loss on the price as she was aware that the Aberdeen market had had a down turn since 2015 and this was common knowledge. She stressed that she bought her house in England in April 2021 and the value of the Property did not affect that as she had saved and sold items to meet the deposit on the English property. She did not have to realise equity in Aberdeen from the Property but her intention is still to sell to reduce her overall debt profile. The Respondent stated that she did not mislead the Applicant to leave the Property but supported her to remain in it. She offered advice and offered to let her stay on in the Property or to buy it, but the Applicant could not afford to do so. The Respondent stated that she did not act in mischief and that it is a vital point that she allowed the Applicant to remain in the Property while it was being marketed. The Respondent stated that sale of a house is more complex than rental and she did not have the health to deal with the more complex sale. The Respondent reinforced the debilitating nature of her health issues.
26. With regard to any payment award, the Respondent stated that the Applicant is in a house which is more affordable for her and near to her daughter's school and is not worse off. She asked that the Tribunal take a holistic view and be fair to both Parties. The Respondent stated that a high award would mean that her family would suffer and asked that if any award was made, it be as low as possible.

Findings in Fact

27. From the Application, the written submissions and information lodged by the Parties and the evidence given at the Hearing, the Tribunal made the following findings in fact, and that on the balance of probabilities: -
- i) There had been a tenancy of the Property between the Parties at an agreed monthly rent of £800.00;
 - ii) The Respondent asked the Applicant to increase the monthly rent several times during the tenancy;
 - iii) The Applicant could not afford to pay an increased rent;
 - iv) The rent remained at £800.00 per month;
 - v) The Respondent took advice from estate agents on or around 16 and 17 August 2021 in respect of selling the Property;
 - vi) A competent Notice to Leave citing Ground 1 of Schedule 3 to the Act, landlord intends to sell, was sent to the Applicant on 25 August 2021;
 - vii) The effect of the Notice to Leave was that the Applicant sought and obtained alternative accommodation;
 - viii) The Applicant ended the tenancy and vacated the Property at the end of February 2022;
 - ix) The Applicant would not have vacated the Property had it not been for the Notice to Leave;
 - x) The relationship between the Parties was relatively amicable until around the time that the Applicant vacated the Property;
 - xi) There was a dispute between the Parties regarding the tenancy deposit;

- xii) The Respondent did not take steps to market the Property for sale during the period of the Notice to Leave;
- xiii) The Respondent did not market the Property for sale following the Applicant vacating the Property;
- xiv) The Respondent carried out works to the Property in March 2022;
- xv) The Respondent marketed the Property for rent in April 2022, two months after the Applicant vacated the Property;
- xvi) The Respondent re-let the Property in May 2022 at a monthly rent of £1,200.00;
- xvii) The Respondent has suffered anxiety and physical ill health since the beginning of 2022;
- xviii) The Respondent's son suffers a heart condition which worsened around the beginning of 2022;
- xix) The Respondent has a mortgage on the Property at monthly cost of around £900.00 per month;
- xx) The value of the Property has decreased since the Respondent purchased it;
- xxi) The Respondent has a family home in England which is mortgaged;
- xxii) The Respondent is in employment;
- xxiii) The Applicant is a single parent to a twelve year old daughter;
- xxiv) The Applicant resides in rented accommodation;
- xxv) The removal from the Property to the current accommodation was stressful for the Applicant and her daughter.

Relevant legislation

28. The relevant legislation is :

- a) Section 58 of the Act which states: *"58 (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."*
- b) Section 50 of the Act which states: *"(1) A tenancy which is a private residential tenancy comes to an end if (a) the tenant has received a notice to leave from the landlord, and (b) the tenant has ceased to occupy the let property. (2) A tenancy comes to an end under subsection (1) on the later of (a) the day specified in the notice to leave in accordance with section 62(1)(b), or (b) the day on which the tenant ceases to occupy the let property. (3) For the avoidance of doubt, a tenancy which is to come to an end under subsection (1) may be brought to an end earlier in accordance with section 48."*

c) *Section 48 of the Act which states “(1)A tenant may bring to an end a tenancy which is a private residential tenancy by giving the landlord a notice which fulfils the requirements described in section 49.(2)A tenancy comes to an end in accordance with subsection (1) on the day on which the notice states (in whatever terms) that it is to come to an end.(3)But a tenancy does not come to an end in accordance with subsection (1) if (a)before the day mentioned in subsection (2), the tenant makes a request to the landlord to continue the tenancy after that day, and (b)the landlord agrees to the request. (4)In subsections (1) and (3), in a case where two or more persons jointly are the landlord under the tenancy, references to the landlord are to any of those persons”*

and

d) *Ground 1 of Schedule 3 to the Act which states: “1(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 sub-paragraph (1) applies if the landlord (a)is entitled to sell the let property, (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.”*

29. In this Application, the tenancy between the Parties was brought to an end by the Applicant giving notice in terms of Section 48(1) of the Act having received a Notice to Leave in terms of Section 50(1) of the Act. The Notice to Leave cited Ground 1 of Schedule 3 to the Act.

30. The relevant wording of Ground 1 of Schedule 3 to the Act is that the landlord is entitled to issue a Notice to Leave if the landlord intends to sell or put the Property up for sale within 3 months of the tenant ceasing to occupy it. Ground 1 goes on to provide guidance that evidence of an instruction to sell or preparation of a home report may show the intention to sell.

31. Section 58(3) applies if a tenant was misled into ceasing to occupy a property by the landlord. In this case, Section 58(3) applies if the Applicant was misled into giving notice in terms of Section 48(1) of the Act and, thereafter ceasing to occupy the Property, if the Respondent did not have proper grounds to issue the Notice to Leave, that is, if the Respondent did not intend to sell or put the Property up for sale within 3 months of the Applicant vacating.

Issues for the Tribunal

32. Therefore, the issues for the Tribunal are (i) the application of Section 58(3) of the Act in respect of the facts of the case and (ii) the award, if any, which the Tribunal should make in the event that the Application is successful.

33. The onus of proof is on the Applicant and the test of proof is the balance of probabilities.

Tribunal's assessment of the evidence.

34. Although a significant number of productions were lodged by the Parties and the Parties spoke at length at the Hearing, the core issue is relatively narrow being did the Respondent mislead the Applicant into vacating the Property? The key question to this issue is did the Respondent intend to sell or put the Property up for sale within 3 months of the tenant ceasing to occupy it?

The Parties both presented their cases in an articulate manner. The Applicant was reserved, measured and sympathetic towards the Respondent's health issues. The Respondent was open and frank about her personal circumstances and the health of her son, and the Tribunal accepts that there are health concerns.

35. The Applicant's evidence was straightforward: she complied with the Notice to Leave believing that the Respondent would sell the Property to alleviate the Respondent's financial circumstances, the Respondent having told the Applicant that the rent did not cover the cost of the mortgage payments and that the Applicant was being "subsidised". It was only after the Applicant left the Property that she became aware that the Respondent had re-let the Property and that she became suspicious of the Respondent's motives, particularly as the Respondent had made requests that the Applicant increase her rent payment. The Tribunal accepts that, had the Applicant not received the Notice to Leave, the Applicant would not have looked for other accommodation and would not have served notice in terms of Section 48(1) of the Act. The Respondent's evidence was that the Applicant vacated the Property because the Applicant could not afford to continue to reside in it. However, the Respondent provided no substantive evidence to support this and had no evidence to counter the Applicant's position that she could afford to continue to reside in the Property. Therefore, the Tribunal's firm view is that the Applicant ceased to occupy the Property on the basis of the Notice to Leave and for no other reason.

36. The Respondent's evidence was that she fully intended to sell the Property at the time when the Notice to Leave was issued and still intends to sell the Property. It was her evidence that the re-let of the Property is a temporary measure to address her current financial and health issues and that she changed her decision to sell after the Applicant vacated, citing her health and the strain of the adjudication as the reasons for not proceeding with a sale. She was frank that the rent paid by the Applicant was insufficient to cover the mortgage payments and that she has hefty mortgage payments on her family home. She was clear that she had originally sought a rent from the Applicant in the region of £1,00.00 but accepted a rent of £800.00 and that she has now secured a rent of £1,200.00 from a new tenant. She was also frank that, on several occasions during the tenancy, she had asked the Applicant to pay an increased rent, albeit that she did not serve notice to increase the rent formally. The Tribunal accepted that the monthly rent paid by the Applicant did not cover the monthly running costs and so the tenancy was running at a loss for the Respondent. The Tribunal did not accept, however, that the Respondent was subsidising the Applicant: the Respondent chose to accept a rent from

the Applicant which did not cover her full costs and that choice had nothing to do with the Applicant. Before entering into the tenancy agreement with the Applicant, it was open to the Respondent to sell the Property or to hold out for a higher rent, but she chose not to do so.

37. The Tribunal had regard to the guidance set out in Ground 1 of Schedule 3 to the Act that evidence of an instruction to sell or preparation of a home report may show the intention to sell. This is the guidance applied when determining applications for eviction and so it is reasonable that the Tribunal apply the guidance in this matter. The Respondent was frank that she did not formally instruct estate agents or solicitors to market and sell the Property at any time and had not had any valuations carried out or a home report prepared. Therefore, the only documentary evidence to support the Respondent's intention to sell was the correspondence from Estate Agents following the Respondent's visits in August 2021. The other evidence before the Tribunal was both Parties' oral statements that the Respondent intended to sell the Property on it becoming vacant.
38. The Tribunal had regard to the Respondent's evidence, as requested by her, and which was not challenged by the Applicant, that she had invited the Applicant to remain in the Property while it was being marketed. Although this contradicts the Respondent's position that she intended to market the Property when she had vacant possession, which she had said was the advice given to her by Estate Agents, it supports her position that she intended to sell at the time when the Applicant was looking for alternative accommodation.
39. The Tribunal considered the Applicant's position that, if the Respondent was well enough to deal with contractors immediately after the Applicant vacated the Property and enter into a fresh tenancy shortly after that, the Respondent ought to have been well enough to follow through with her intention to sell. The Tribunal accepted that the Respondent changed course and opted to re-let within a short time and that she did so against a background of difficult circumstances being the strain of the end of the Applicant's tenancy and the robustness of her and her son's health. The Tribunal took the view that there is a difference in the input required by an owner in selling a property and letting it and accepted that selling requires more participation and decision-making. In this case, it is conceivable that the Respondent, because of health and immediate financial pressure, chose to re-let as a temporary measure as she had become unfit to deal with a sale of the Property.
40. The Tribunal took into account the Respondent's candour that she had sought a higher rent before and during the Applicant's tenancy and accepted that the running costs of the Property during the tenancy were a financial burden on the Respondent. The Tribunal accepted that the Respondent might not have intended to sell the Property had the Applicant been able to pay a higher rent. However, the issue for the Tribunal is not "did the Respondent intend to sell the Property when it became vacant?" but "did the Respondent mislead the Applicant to vacate or "cease to occupy" the Property?" In that regard, the Tribunal came to the view, that although the Respondent changed her mind in respect of selling the Property shortly after the Applicant ceased to occupy the Property, on the balance of probabilities, she had intended to sell the Property for personal financial reasons at the time of issuing the Notice to Leave and, as the

Applicant could not pay a higher rent, still intended to sell at the time when the Applicant vacated the Property.

41. It is without doubt that the Respondent did not market the Property for sale and that she re-let it for a higher rent, but this does not alter the fact that she intended to sell when the Notice to Leave was issued and during the period of the Notice to Leave. The Tribunal takes the view that, as the wording of the legislation is an intention to sell and does not go so far as to bind and oblige a landlord to complete a sale, a landlord, such as the Respondent, is entitled to change their mind. In this case, the Tribunal accepts that the Respondent changed her mind and re-let the Property based on her health issues as it was the preferable option to alleviate her financial pressures.
42. Accordingly, the Tribunal reached the view that the Applicant was not misled into ceasing to occupy the Property.
43. The Tribunal gave no weight to the Respondent's evidence that she still intends to sell the Property. Ground 1 of Schedule 3 to the Act on which she issued the Notice to Leave is timebound to three months after the tenant ceases to occupy and that period has long since passed.

Decision

44. The Tribunal had regard to Section 58 (3) of the Act which states: "*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.*" The Tribunal accepted that the only reason the Applicant sought and obtained alternative accommodation was because the Respondent issued the Notice to Leave. However, the Tribunal took the view that, on the balance of probabilities and on the evidence before it, the Respondent had intended to sell the Property when the Applicant ceased to occupy it, albeit the Respondent later changed her mind. Accordingly, the Tribunal determined that the Respondent had not misled the Applicant and so determined not to make 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.

Karen Moore

Legal Member/Chair

3 April 2023
Date