



**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/23/0201**

**Re: Property at 37/4 East Crosscauseway, Edinburgh, EH8 9HE (“the Property”)**

**Parties:**

**Mr Konstantinos Gavriilidis, Miss Eleni Papachristoforou, 128/4 Dundas Street, Edinburgh, EH3 5DQ (“the Applicants”)**

**Mrs Donna Martin, 4 The Glebe, Dalmeny, South Queensferry, EH30 9TX (“the Respondent”)**

**Tribunal Members:**

**Andrew Upton (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application should be refused.**

**STATEMENT OF REASONS**

1. This Application called for a Case Management Discussion by teleconference call on 6 April 2023. The parties were all present at the CMD.
2. In this Application, the Applicants seek a Wrongful Termination without Eviction Order under section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicants assert that (i) the Respondent gave Notice to Leave on 18 November 2022, asserting that she intended to sell the Property, (ii) the Respondent asserted to the Applicants that she needed to sell the Property as soon as possible, (iii) the Applicants identified alternative accommodation and gave notice on 25 November 2022 of their intention to leave the Property on 16 December 2022, (iv) the Applicants left the Property on 16 December 2022, and (v) on 6 January 2023, the Applicants discovered that the Respondent had marketed the Property for letting again at an

increased rent of £1,200 per calendar month (the contractual rent between the parties having been £960 per calendar month). For those reasons, the Applicants considered that they had been misled into ceasing to occupy the Property.

3. At the CMD, the Respondent explained that, in November 2022, she had received a call from her financial advisor that her mortgage interest rate for the Property was going to increase from 2.42% to 6.79% with effect from February 2023. The mortgage was an interest only mortgage, and the monetary effect was that her contractual monthly instalments would be rising from £242 to approximately £700. The Respondent said that she felt that was unmanageable, and that she needed to sell the Property as soon as possible. For that reason, she served Notice to Leave on the Applicants and indicated that she required to sell the Property as soon as possible. She indicated a willingness to let the Applicants leave early if they found suitable alternative accommodation. The Applicants subsequently gave their own notice. The Respondent then instructed estate agents to begin compiling the necessary information to market the Property for sale. By email dated 16 December 2022, the Applicant received further advice from her financial adviser that the market had settled down and the mortgage interest rate was only going to increase to 4.96%, with a monthly instalment of £503 being due. The Applicant considered her options over the festive period and, in early January 2023, decided to market the Property for letting at an increased rent instead. Her position was that she did not mislead the Applicants. When the Notice to Leave was served, it was her genuine intention to sell the Property due to the prevailing financial conditions at that time. Those conditions changed in December 2022, and allowed her more options including re-letting.
4. The Applicants did not dispute that the Respondent was being honest. They were prepared to accept that, when the Notice to Leave was served, the Respondent's intention was to sell the Property. Their issue was that they had been put to considerable cost and inconvenience to find alternative accommodation only for the Respondent to change her mind. They felt that tenants should be protected from that sort of scenario. They said that, had the Respondent approached them about re-letting at an increased rent effective from the date that the mortgage payments increased, they would have been willing to agree to that to avoid moving. They were happy and settled in the Property. Miss Papachristoforou had been in the Property for five years, and Mr Gavriilidis for two years. They were good tenants. Their relationship with the Respondent had been very good.
5. Having heard from the Parties, it was clear that they were not in dispute about the facts, nor did they challenge the credibility or reliability of each other's statements. For that reason, the Tribunal determined that it did not require a hearing on evidence to determine the Application. The matters agreed by the Parties were sufficient to determine the Application.
6. The Tribunal's power to make a Wrongful Termination Without Eviction Order is contained in section 58(3) of the 2016 Act, which says: "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 key condition for the grant of an order is that the former tenant must have been misled. In effect, what the section requires is that the tenant’s are persuaded by some trickery or deception to give up their rights to the Property.

7. However, the Applicants now accept that they were not misled. They accept that the Respondent panicked upon receipt of financial advice, and legitimately intended to sell the Property at the earliest opportunity. She then gave Notice to Leave specifying her intention to sell, and instructed agents to prepare marketing materials. The Applicants spoke of an agent attending to value the Property, which was consistent with the Respondent having that genuine intention. The Applicants then identified alternative accommodation, served notice of their own, and left without force or coercion. That the Respondent’s circumstances subsequently changed shortly thereafter is perhaps unfortunate, but it does not invalidate the legitimacy of her intentions when Notice to Leave was given, or indeed when the Applicants removed from the Property.
8. It follows that this Application must be refused. Whilst the Tribunal is sympathetic to the anxiety and upheaval that the Applicants endured late last year, that anxiety and upheaval was not caused by a wrongful eviction within the meaning of section 58 of the 2016 Act. It is most unfortunate that recent financial turmoil has brought to an end, and separately soured, what had previously been a positive landlord/tenant relationship.

### **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.**

**06/04/2023**

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**Legal Member/Chair**

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**Date**