

**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) under Section 58 of the Private Housing  
(Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/PR/19/2381**

**Re: Property at Flat 2/2 78 Otago Street, Glasgow, G12 8PA ("the Property")**

**Parties:**

**Miss Amie Macindoe, Care of Flat 1/1, 40 Highburgh Road, Glasgow, G12 9EF  
("the Applicant")**

**Ms Dorothea Murrice, 8 Rosslyn Terrace, Glasgow, G12 9NB ("the  
Respondent")**

**Tribunal Members:**

**Petra Hennig-McFatrige (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that the application has to be refused.**

**BACKGROUND:**

The Applicant Ms Macindoe made an application under Rule 110 of the Rules of Procedure on 25.7.19 for payment of 3,097.32 in terms of Sections 58 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) .

The Applicant submitted to the Tribunal the following documents:

1. unsigned document headed Assured Shorthold Tenancy Agreement (Scotland)
2. Letter from Respondent to Applicant dated 30 May 2019
3. Bank statement TSB 5.3.-28.3.18
4. Bank statement Monzo 23.11.18-27.6.19
5. Email 31.3.18 from Respondent to Applicant

A Case Management Discussion (CMD) was fixed for 29.11.19.

Both parties had been advised in the notification for the Case Management Discussion that the Tribunal may make a decision at that stage. The documentation including the notification of the date, time and venue of the CMD was served on the parties. The Tribunal was thus satisfied that due notice had been given to the parties of the CMD in terms of Rule 17 (2) of the Tribunal Rules of Procedure and that the parties were aware that the Tribunal could make a decision at the CMD in terms of Rule 18 of the Rules of Procedure.

In 12 August 19 the Tribunal wrote to the Applicant asking:

1. did you receive any other paperwork giving you Notice to leave apart from the letter you have submitted dated 30th May 2019?
2. Can you confirm the basis on which you say you were misled as this letter does not give a reason for requiring you to leave.

In answer the Applicant sent an email to the Tribunal on 16 August 19 stating:

- "1. No, I did not receive any other paperwork giving me notice to leave.
2. I was led to think that the letter I received was proper notice to leave as I wasn't aware of my tenancy rights at the time. The letter gave me a fright and I moved out of the property as a result."

Representations were received from the Respondent's solicitors Levy and MacRae on 19.11.19.

All documents are referred to for their terms and held to be incorporated herein.

### **The Case Management Discussion:**

The Applicant attended with her supporter Ms Smith

The Respondent attended with her supporter Ms Fabian and her solicitor Mr Park.

The Applicant's position as set out in her application and further spoken to at the CMD is that Short Assured Tenancies ceased to have effect on 1 December 2017 and she did not sign a tenancy agreement. She considers she had a Private Residential Tenancy in terms of S 1 of the Act. On 30 May 2019 she received a letter from the Respondent which stated: "... Unfortunately I feel that the only appropriate course of action is to give you a month's notice from today to vacate the flat by 30 June 2019. I have not taken this decision lightly and have considered the standpoints of all three tenants and length. However I cannot overlook the strong views of the other two longer standing tenants in this situation.. ....". She moved out on 21 June 2019 and the tenancy came to an end. She feels she was misled into leaving the property by the Respondent and because she had no signed tenancy she felt she had no choice but having left realised that she did not receive a Notice to Leave, details of the grounds of eviction were not provided and she was not given 3 months notice. This caused her distress and she thinks the tenancy was wrongfully terminated. The Respondent is a registered landlord and should be aware of the changes in the legislation and notice periods. She stated she would have been looking to move out in October. When she received the letter of 30 May 19 she was not aware of her rights and took the letter as formal notice. She was asked by Mr Park if she took the letter as Notice to Leave and stated that she did take it as a Notice to Leave and as absolute. This induced her to leave.

Mr Park on behalf of the Respondent referred to the text message, which was contained in the bundle the Respondent submitted in evidence. The text message was dated 6 June 2019 and reads: "Dorothy, In response to your letter of 30 May 2019 , I do not consider this to be formal notice in terms of my tenancy, however, notwithstanding this I have found alternative accommodation, which is available from the 21 June 2019. I would ask that my deposit is returned on or before this date and ask that I move out on Friday 21 June. "

The Applicant was asked again in light of that text message whether she had received a Notice to Leave. She then answered that she had not received a Notice to Leave.

Both parties referred to their written submissions, which are referred to for their terms and held to be incorporated herein.

Both parties agreed that no hearing is required for this case and that the facts of the case are not in dispute.

### **The legal test:**

S 58 of the Act states:

Wrongful termination without eviction order

(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.

S 50 states:

Termination by notice to leave and tenant leaving

(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.

S 62 states

Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

### **Findings in fact:**

1. The Applicant and the Respondents entered into a Private Residential Tenancy Agreement for the property on 18 March 2018.
2. The unsigned document emailed by the Respondent to the Applicant on 31 March 2018 was not in the format of the model Private Residential Tenancy and was headed Assured Shorthold Tenancy Agreement (Scotland).
3. The Respondent was the landlord and owner of the property.
4. The tenancy started on 18 March 2018.
5. On 30 May 2019 Respondent sent a letter to the Applicant stating: "Unfortunately I feel that the only appropriate course of action is to give you a month's notice from today to vacate the flat by 30 June 2019. I have not taken this decision lightly and have considered the standpoints of all three tenants

and length. However I cannot overlook the strong views of the other two longer standing tenants in this situation"

6. On 6 June 2019 the Applicant sent a text message to the Respondent stating:" Dorothy, In response to your letter of 30 May 2019 , I do not consider this to be formal notice in terms of my tenancy, however, notwithstanding this I have found alternative accommodation, which is available from the 21 June 2019. I would ask that my deposit is returned on or before this date and ask that I move out on Friday 21 June."
7. The letter of 30 May 2019 was not in the format of a Notice to Leave and did not contain the statutory requirements of a Notice to Leave.
8. The Applicant was aware on 6 June 2019 that the letter she received on 30 May 2019 was not a Notice to Leave
9. The Applicant asked to move out on 21 June 2019
10. The Respondent agreed to that date.
11. The Applicant moved out on 21 June 2019
12. The tenancy ended on 21 June 2019.

### **Reasons for Decision:**

I have carefully considered the representations of both parties regarding the nature and interpretation of the Respondent's letter of 30 May 2019, the Applicant's text message of 6 June 2019 and the statutory test for an order under S 58 of the Act.

I consider that the case does not fall under S 58 of the Act. The test for an order in an application under Rule 110 of the Rules of Procedure requires: "(1)This section applies where a private residential tenancy has been brought to an end in accordance with section 50." S 50 states: Termination by notice to leave and tenant leaving (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. S Meaning of notice to leave and stated eviction ground:(1)References in this Part to a notice to leave are to a notice which—(a)is in writing, (b)specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal, (c)states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and (d)fulfils any other requirements prescribed by the Scottish Ministers in regulations.

The letter of 30 May 2019 is not a valid Notice to Leave in terms of S 62 of the Act. It is not in the correct format, does not provide statutory grounds and does not specify the date on which the landlord expects to become entitled to make an application for an eviction order to the First-tier Tribunal.

The Applicant had clearly identified the lack of reasons given and the inadequacy of the format and had stated so in her text message. From the text message content it is in my view absolutely clear that the Applicant was aware that the letter of 30 May 2019 was not a valid notice to leave. The Applicant set out that she did not consider the letter a formal notice in terms of her tenancy and states "however, notwithstanding this ..." she has found alternative accommodation and asks to move out on 21 June and receive her deposit back.

If the letter is not a Notice to Leave, then S 50 of the Act does not apply . S 58 however only applies to cases in which the tenancy was brought to an end in accordance with S 50 of the Act.

Furthermore, the Applicant has not evidenced that she was misled by the Respondent into ceasing to occupy the property. The Respondent described that the letter was written taking into account the views of the other longer standing tenants. The Applicant did not argue that the reason given was incorrect but that she had thought the notice left her no choice. Given the content of the text message, however, the wording indicates that she was aware she had not received a valid notice but had sought alternative accommodation "notwithstanding" that. I accept that she may have felt that on a personal level she had no choice, but this cannot be described as being "misled" into ceasing to occupy the property.

S 58 of the Act does not apply in this case and thus the application has to be refused.

**Decision:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) refuses the application**

**Right of Appeal**

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

P. Hennig-McFatridge

Legal Member/Chair

Date

8.12.19