

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/19/1867**

**Re: Property at 12 William Street, Flat 2/2, Helensburgh, G84 8BD (“the Property”)**

**Parties:**

**Mr Robert Gowling, 1 Braid Avenue, Flat 9, Cardross, Dumbarton, G82 5QF (“the Applicant”)**

**Mrs Claire Wright, 20 Albert Drive, Helensburgh, G84 7HF (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member) and Gerard Darroch (Ordinary Member)**

**Outcome**

**The tribunal refused the application in terms of rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and section 57 of the Private Housing (Tenancies)(Scotland) Act 2016.**

This was a hearing in connection with an application in terms of rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ and section 58 of the Private Housing (Tenancies)(Scotland) Act 2016 ‘the Act’ for a wrongful termination order from flat 2/2 12 William Street Helensburgh, ‘the property’, in terms of s59 of the Act. The application was made by Mr Robert Gowling on 9 June 2019.

The tribunal had before it the following copy documents:

1. Application dated 9 June 2019 and received by the tribunal on 17 June 2019.
2. Notice to leave dated 12 December 2018.

3. Email from Julie Ross Letting Manager of Rayburn Hope Solicitors to the applicant dated 12 December 2018.
4. Email from respondent to applicant dated 26 March 2019.
5. Email from applicant to Julie Ross dated 3 June 2019.
6. Email from Julie Ross to applicant dated 3 June 2019.
7. Undated Email from applicant to the tribunal.
8. Private Residential Tenancy Agreement between the parties (unsigned but for a start date of 11 December 2017).
9. Email from respondent to the tribunal dated 1 November 2019 with letter from Mental Health Practitioner dated 23 October 2019 and home report for the property from 2012.
10. Email from applicant to the tribunal dated 4 August, 9 September and 4 November 2019.
11. Email from applicant to the tribunal dated 18 November 2019 enclosing timeline.
12. Email from applicant to the tribunal dated November 2019 with enclosures including copy emails between applicant and respondent and applicant and Ms Julie Ross.
13. Email from applicant to the tribunal dated 26 November 2019.
14. Email from applicant to the tribunal dated 23 December 2019 with enclosures enclosing written representations in response to the respondent's representations, 5 photographs of the property.
15. Email from respondent to the tribunal dated 22 November 2019 with enclosures including exchange of text messages with Stephen Reid carpet fitter, Tommy Girvan Glazier and FMK Flooring.
16. Email from respondent to the tribunal dated 20 December 2019 including copy emails with Architects between 7 February 2019 and December 2019; Emails to Nationwide Building Society and emails between applicant and respondent.

A case management discussion on 8 November 2019 was adjourned to today's date and the tribunal made the following directions:

The applicant is required to produce:

Copies of any emails received by the applicant from the respondent's agent Ms Julie Ross Property Manager of Raeburn Hope Solicitors from around December 2018 until April 2019.

The respondent is required to produce:

Copies of any documentation showing or tending to show the work the respondent was planning to carry out to the property at flat 2/2 12 William Street Helensburgh around April 2019.

The tribunal also directed that the parties lodge any other documents they wish to rely on, and a list of witnesses, no later than 20 December 2019.

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Both parties had complied with the directions by lodging the various documents referred to at 11-16 above.

The applicant and Ms Sallie Mallon attended. The respondent attended with her husband and her former letting agent Mrs Julie Ross. The tribunal held a preliminary hearing with the parties and Ms Mallon and Mr Wright. Ms Ross waited in the waiting area.

### **Preliminary matters**

1. The tribunal had a disclosure to bring to the parties attention. The legal member of the tribunal also conducted the case management discussion 'CMD'. Over the festive period the convenor attended a drinks party in Helensburgh. Both Mr and Mrs Wright were also invited. The convenor was introduced to them when she arrived but did not recognise them. When she was leaving Mrs Wright spoke for a second time and drew attention to the fact that Mrs Ward had met them before, at the CMD. That was the extent of the interaction. The tribunal explained the strict rules of fairness that the tribunal operated under and that the legal member is bound by. It was explained that there must be no bias or the appearance of bias. Both parties were given the full disclosure and the opportunity of seeking a new legal member or indeed a whole new panel. They were also given the chance for an adjournment to think about how they wish to proceed. Both parties indicated that they were happy to proceed. Mr Gowling stated that he was happy the disclosure had been made, and wished to proceed with the panel consisting of Mrs Ward and Mr Darroch.
2. The tribunal noted that both parties had made reference in their written representations to who should be present throughout the hearing. It was agreed that Mr Wright and Ms Mallon would remain present and Ms Ross would wait in the waiting area and would be called if needed.
3. The legal member explained at the outset that the ground used in the notice to leave was ground 4 and that this ground applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months. The tribunal also set out that in terms of s58 of the Act 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 landlord. As a focus of the questions it was explained that the evidence would centre around the applicant and whether the tribunal was satisfied he was misled into leaving

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the property and the respondent and whether the tribunal was satisfied that at the point the notice to leave was sent, she intended to live in the property.

### **Matters agreed at the CMD.**

The parties agreed that they entered into a private residential tenancy agreement 'PRT' for let of the property at flat 2/2 12 William Street Helensburgh and a monthly rent of £550 on 11 December 2017.

It was a matter of agreement that the applicant was served with a notice to leave by email on 12 December 2018 and he voluntarily moved out of the property on 5 April 2019 and handed the keys back on 8 April 2019.

The parties agreed that in March 2019 the applicant received an email from the respondent's letting agent stating that an application for eviction had been lodged with the tribunal.

It was also agreed that the respondent has to date not moved into the property and it is currently empty.

### **The applicant's position**

The tribunal hear oral evidence from Mr Gowling. Mr Gowling made a few initial points in relation to the written lodged by the respondent. He disputed that the property had been left in a bad state and he made reference to the 5 photographs he lodged with his email of 23 December 2019 which in his view showed that the property was left in a good condition. He also took issue with two other matters which are beyond the scope of today's hearing: the money in overpaid rent which was mentioned at the CMD and the reference to the police report the respondent made in her letter to the tribunal of 1 November 2019.

Mr Gowling's evidence was that the emails he lodged with his email of 18 November 2019 show that all of the correspondence between the parties and between the applicant and Ms Ross related to negotiations regarding the windows. At no time was it mentioned that the respondent was planning to move back into the property. The notice to leave came as a shock and Mr Gowling felt aggrieved that no attempt to discuss and agree a departure date of say, the summer of 2019, was made. This would have enabled him to obtain a new property and move out in a planned way rather than getting a notice to leave just before Christmas.

It was Mr Gowling's evidence that the nature of house renovation is such that, for the respondent to be 'ready' to move into her flat on his departure, she would have to have started the planning process for renovation in late 2017, the time in which he took on the let of the property. He stated that he told the respondent in 2017 that he hoped to rent the property for 3 to 5 years. He stated that had he known that the

notice to leave was to be issued he would not have bought such large furniture for the large living room in the flat.

Mr Gowling was a little contradictory in relation to his evidence around the intentions and plans of the respondent. On the one hand he seemed to be implying that she knew as far back as December 2017 that she had a plan to move back into the property and on the other he stated that in December 2018 when the notice to leave was issued she had no intention of moving back. He also stated that it is common knowledge that building works and renovations take a long time to execute and on the other he did not accept that in December 2018 the respondent had any intention of renovating and moving into the flat he was renting meantime given that in terms of time scale in his view this was not workable. When asked about how he could account of the documents lodged by the respondent which indicated that she had sought advice from several architects from February 2019 the applicant's evidence was that the respondent and her husband decided once they had the property back that they would renovate their own home and move back into the property. The applicant was further asked whether he would have made the application in June 2019 had he known that the respondent had been instructing architects in February 2019 the applicant's evidence was that he waited until June 2019 to raise the application as he thought he had to wait 3 months to see if they moved in. His view was that in June 2019 when the respondent had not moved in he realised he had been misled. He was adamant that he had been tricked into leaving by Ms Ross becoming involved and a lack of communication regarding the respondent's intentions.

When asked about the financial sense in the respondent obtaining possession of the property and not further renting it out or moving in to it the applicant's evidence was that in his view the respondent got 'fed up' with the dispute regarding the windows and wanted him out. He also thought it was entirely possible that the respondent served the notice to leave with no intention of living in the property and then changed her mind.

### **The respondent's position**

The respondent gave detailed evidence regarding her intention to carry out significant work to her own home and to move into the property while that was being done. She explained in some detail that in November and December 2018 she and her husband discussed their plans to extend their home with a neighbour who is a builder and another builder that she knows. They were advised to remodel internally rather than extend. This new plan meant that it was no longer practical to live at home whilst the work was being done as the respondent would be on her own during the week with her two young children as her husband worked away at that time. She decided to start the ball rolling by issuing a notice to leave to the applicant and seeking advice from architects. They were working to a time line of around 10 weeks for plans and 3 months for the building work. The evidence of the respondent was that she had rented the property out to several tenants before the applicant. When asked why she did not leave the applicant in place and rent another property for

herself, the evidence of the respondent was that she previously resided in the property and had an attachment to it. She felt it was a good time to get the property back and make some improvements such as renew carpets and possibly replace the kitchen. Her evidence was that this improvement work would be done before she moved her young family in to the property. She also gave evidence that her father is going through a divorce and he may well move into the property once she leaves.

When asked about the timing of events and that it was somewhat optimistic to start to plan a major renovation in November 2018 and expect to be able to move into the property in the spring of 2019, the respondent's evidence was that the notice to leave was issued but she was concerned that a further notice to leave may be needed and eviction proceedings if needed, could take several months.

The respondent also gave evidence regarding her medical issue and the letter she lodged before the CMD (item 9 above) which states that she was advised by her health care adviser to put her move and renovations on hold. She gave evidence that in August 2018 she had made some progress both with the property and the plans for her own home but that she was not mentally well enough to proceed with either and that a delay in moving had occurred.

It was the respondent's evidence that she still intends to move into the property and things are moving slower than expected with the architects and builders.

The evidence of the respondent's husband largely echoed her evidence. Mr Wright made the point that no communication with the tenant in advance was required and that the applicant has signed a lease which provided for it to be brought to an end if the landlord required to reside in the property and he had agreed to that.

## **Reasons**

The tribunal was not satisfied on the evidence heard that the applicant had been misled into ceasing to occupy the property. The tribunal accepted on the balance of probability that the respondent intended to occupy the property for at least 3 months while her own home is being renovated. The tribunal accepted the credible oral evidence of the respondent that she intended to reside in the property while her own home was being renovated. It was not disputed that the respondent had sought advice from 3 different architects before the notice to leave had expired. The respondent also sought advice from two flooring companies before this application was made. The respondent appears to have been either naïve or optimistic about the timescale for her move but her health problems also emerged after the applicant vacated the property causing a delay in her moving.

The applicant stated more than once in his evidence that he did not know what was in the mind of the respondent when the notice to leave was issued. It can be

reasonably inferred from what happened afterwards that financially the respondent had nothing to gain by having the applicant leave as the property has been empty since. The respondent has however lodged documents to show that she has been actively been pursuing her house renovation and the tribunal was satisfied that she did intend to move into the property once it was vacated by the applicant. Some factors had come into play which were not known to the respondent at the time of the notice to leave being issued, such as her period of poor health and a delay in having plans drawn up. There had led to a delay in the respondent moving in to the property. The tribunal therefore refused the application. The decision was 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.**

Lesley Ward

**9 January 2020**

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**Lesley A Ward Legal Member**

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**Date**