

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/21/0469

Re: Property at 45 Avonbridge Drive, Hamilton, ML3 7EG (“the Property”)

Parties:

Mr James Travers, 87 The Paddock, Hamilton, ML3 0RF (“the Applicant”)

Mrs Maria Gaeta, 4 Castelhill Crescent, Hamilton, ML3 7DG (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a wrongful-termination order should be granted against the Respondent in terms of Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and has decided to make an order for payment in the sum of THREE THOUSAND NINE HUNDRED POUNDS (£3900) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

1. This is an application for a wrongful termination order under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The Tribunal had originally assigned a Case Management Discussion (“CMD”) under Rule 17 of the Regulations which did not proceed as Sheriff Officers were unable to serve the application on the Respondent at the Property as she was not resident at the Property which neighbours reported

had been recently sold. The CMD was accordingly discharged. The Application was then served by advertisement in terms of Rule 6A of the Regulations and a new CMD assigned for 21 July 2021.

3. The Tribunal proceeded with the CMD on 21 July 2021 by way of teleconference. The Respondent did not attend that CMD. After hearing the Applicant's submissions the Tribunal granted a wrongful termination Order under Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act").
4. On 19 October 2021 the Respondent's solicitor lodged an application in terms of Rule 30(2) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017("the Regulations") to recall the Tribunal's decision of 21 July 2021. The application also moved the Tribunal to extend the period of 14 days from the date of the decision under Rule 30(5) of the Regulations for the recall application to be made. The Applicant opposed the recall application in both respects.
5. Due to the nature of the original decision and due to the length of submissions made by both parties in relation to the recall application, the Tribunal assigned a Case Management Discussion ("CMD") to consider the recall application.
6. The CMD proceeded on 21 December 2021 by way of a telephone conference call to consider the recall application. The Applicant appeared and represented himself. Mrs Turner from Leonards, Solicitors appeared on behalf of the Respondent who was also present. The Tribunal granted an extension of time for the recall beyond 14 days and then determined that it was in the interests of justice to recall the decision of 21 July 2021 to put both parties back into the position where they both had an opportunity to present their cases both factually and legally to the Tribunal.
7. A further CMD was accordingly assigned for 31 January 2022 for them to do so.

Case Management Discussion

8. The Tribunal proceeded with the CMD on 31 January 2022. The Applicant was present and represented himself. The Respondent was also present and represented herself as her solicitor had withdrawn from acting.
9. The Tribunal had before it a Private Rented Tenancy Agreement between the parties, various email correspondence between the Applicant and the Respondent's letting agents Rent Locally ("RL"), an email dated 4 January 2021 from the Respondent to RL, a Notice to Leave dated 6 January 2021, a copy letter dated 7 January 2021 from Slater Hogg and Howison Lettings, a copy sales particulars for the Property by Residence Estate Agents and excerpts from a Home Report for the Property prepared by Graham and Sibbald dated 10 February 2021. Further the Respondent's solicitor had lodged a sworn Affidavit signed by the Respondent together with two Lists of

Documents comprising emails between the Respondent and Rent Locally dated 4-8 January 2021, a letter from Kevin McAllister, Residence Estate Agents dated 13 October 2021, letters from NHS Lanarkshire to the Respondent's husband dated 7 February 2020 and 21 October 2021, 2 further undated letters from NHS Lanarkshire to the Respondent's husband and a letter from Dr Nicandro Pacitti dated 31 October 2021.

10. Before hearing the parties' positions the Tribunal explored whether certain facts could be agreed. Parties agreed the following facts-

- i. The Applicant lived in the Property from November 2018 – 1 February 2021 with his two children.
- ii. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement on 29 June 2020 in relation to the Property. In terms of Clause 7 the monthly rent was £650.
- iii. On 6 January 2021, RL, the Respondent's letting agent served a Notice to Leave on the Applicant on the instruction of the Respondent. The Notice to Leave stated the Respondent intended to move into the Property and was accompanied by the Respondent's email to RL dated 4 January 2021 which stated she understood she had to give 3 month's notice as she intended to move into the Property and that the Applicant could leave sooner if that suited him. The Notice to Leave required the Applicant to leave the Property by 5 April 2021.
- iv. On or about 7-8 January 2021 it was agreed between parties that the Applicant would move out of the Property on 1 February 2021. The tenancy of the Property terminated on 1 February 2021.
- v. The Respondent did not move into the Property.
- vi. On 1 February 2021 the Applicant moved to 87 The Paddock, Hamilton, ML3 0RF at a monthly rent of £895.
- vii. A Home Report dated 10 February 2021 for the Property was prepared by Graham and Sibbald.
- viii. The Property was put up for sale and marketed on the Residence website by 17 February 2021.

11. The Applicant set out his case to the Tribunal. After the Notice to Leave was served on him on 6 January 2021 he went into a panic. He had been told by RL in June 2020 when the Respondent became the Landlord he could stay in the Property long term. He immediately started to look for a new home. He was conscious that there were very few 3 bedroomed flats in Hamilton. He needed a 3 bedroomed flat due to the ages of his children who were 16 and 14 at the time. He explained he found the flat where he now lives at about

11pm on 6 January 2021 and was on the phone to the letting agent first thing the next morning and paid a £200 deposit to secure the flat. He referred to the letter of 7 January 2021 from Slater Hogg and Howison Lettings lodged with his application which showed he had paid that £200. The rent for the flat was also shown as £895 per month. Mr Travers submitted this was £245 more expensive than the rent for the Property of £650. He also had to find extra money for the initial £200 deposit, the tenancy deposit and for a new sofa at a time immediately after Christmas when money was tight. He explained he had to go into overdraft. After moving he and his children had to sit on bean bags for a few months until he could get a sofa.

12. He explained he contacted RL on 7 January 2021 to let them know that he had found a new flat. It was agreed with RL he would move out of the Property on 1 February 2021. It all happened very quickly.
13. On being questioned by Mr Forrest as to what difference it would have made to him had he been given 6 months' notice, being the notice period required if a Landlord wishes to sell a property, the Applicant explained that he would not have started to look for a new flat in January, just when he was going back to work, particularly as he did not have the cash for the extra expenses incurred in moving. However he was left with no choice as 3 months' notice did not give him much time with his children to get organised. This had placed him under a financial burden when he was already going through a 5 year divorce, the matrimonial home was being fought over and he was still living hand to mouth as a single parent.
14. Mr Travers also referred to paragraph SEVEN of the Respondent's affidavit which stated- "*I recall that Rent Locally did speak to me and tell me that I should remove the property from sale*". The Respondent had gone ahead and sold the Property having been advised she should not do so by RL. His submission was that she had not been honest or upfront and that she had not shown any just cause or engaged in the system.
15. Mr Travers submitted that the Respondent had misled him in terms of Section 58 of the 2016 Act. The Notice to Leave was clear, it gave 3 months' notice with the reason stated that the Respondent was intending to move into the Property. The way the Respondent had acted suggested she had an urgent need to move into the Property. He however referred to paragraph SIX of the Respondent's affidavit which stated- "*Due to the ongoing issues with Michel's heart and delays caused by COVID we knew the chance of Michel getting a knee operation were slim and that it was going to be delayed so we decided it would be best to sell the property and buy another property with a downstairs bedroom and bathroom.*" In his submission this showed an entirely different position that the Respondent had no intention of moving into the Property. She knew because of her husband's medical condition they would not be able to move to Property when she gave the Notice to Leave. He also submitted the Respondent had not bought a property with a downstairs bathroom, but that the Respondent was applying for planning permission to adapt the property they had bought. If the Respondent had not put the Property up for

sale within that 3 months he would not have brought the action. However her actions had made him act urgently as he had an urgent need to find a new property which led to him leaving.

16. Mrs Gaeta questioned Mr Travers as to why if he needed further time he had not asked for that as she would have been quite happy to give him more time if he needed it. Mr Travers referred to the email from RL which accompanied the Notice to Leave and pointed out that that email did not give any indication that the Respondent was willing to give him any more time and that in fact what it said was that RL would be willing to help him find another property.
17. Mrs Gaeta stated to Mr Travers that he had moved very quickly, well before the 3 months' notice had expired. Mr Travers accepted that and explained that he had no choice but to do so to secure the property where he still lives and that was why he had asked to move out on 1 February 2021. Mrs Gaeta stated to Mr Travers she had agreed to that as she did not want to hold him to the 3 months' notice.
18. Mrs Gaeta requested that rather than question Mr Travers she state her case to the Tribunal as she was not sure what other questions she wanted to put to him. She felt she could explain her position better by doing so.
19. Accordingly the Respondent set out her case to the Tribunal. She explained she was gifted the Property from her parents in 2019. The Property was always intended for her. She explained she had been on an interest only mortgage for the property they lived in at Union Street, Hamilton which had come to an end in January 2020. Due to her age she could not get another mortgage or a loan. She was struggling financially. She had no intention of being a Landlord long term and could not understand why LR had told the Applicant he could stay there long term when she became the Landlord in June 2020. The bank extended the period of time for her to sell the property at Union Street, Hamilton. It went on the market in the summer of 2020. Due to the purchasers being in a chain, that sale did not conclude until December 2020. The Respondent and her husband then moved into an annex at her parents' hotel.
20. She explained she had deliberately waited until after the festive period to contact RL to serve notice on the Applicant. She had been surprised the Applicant had moved so quickly and explained if he had asked for a longer period of time to move out she would have given him that. When they got the Property back she realised it needed work to the floors and replacement of the bathroom and the kitchen. She decided to get the flat valued with a view to getting a loan for these renovations. Kevin McAllister of Residence Estate Agents then suggested they may not want to spend too much on the Property. They discussed with him that they could buy another house which is what they ended up doing. They bought a house in Carluke which she and her husband are converting so he could have a downstairs bedroom and bathroom.

21. She explained that as well as coping with the bank and the sale of Union Street, she was looking after her elderly and infirm parents as she could not get carers for them. She had also noticed her husband was struggling to get up stairs. She explained with passing reference to the letters lodged from NHS Lanarkshire that her husband had had a stent fitted and needed a knee and hip replacement.
22. Mr Travers was given an opportunity to question the Respondent. She agreed with him she never moved into the Property after the Applicant had moved out. When asked whether she had visited the Property and tried the stairs she explained she had visited several times, but she had a lot going on and could not really remember. Mr Travers challenged how the valuation which appeared from the Home Report to have been carried out on 10 February 2021 was instructed so quickly after he moved on 1 February 2021. He put it to her she must have instructed that very quickly after he moved out. She stated she did not know whether she had instructed a Home Report or a valuation for renovations.
23. Mr Travers questioned whether the Respondent knew that she should not put the Property up for sale when she had served him Notice that she intended to live there and that it was her legal duty to give 6 months' notice if she wanted to sell the flat. Mrs Gaeta explained she did not know that, that no-one explained that to her. Mr Travers referred her to the email dated 17 February 2021 to him from RL which stated that after he had contacted them on 17 February 2021 to complain the Property was for sale which he had noticed on the internet as his own house he had shared with his ex-wife was also up for sale with the same estate agents, Residence. This email stated RL had explained to the Respondent the Property should not be marketed and that she had told them she would withdraw it from the market. He put it to her she had no intention of moving into the Property. She disputed that.
24. The Tribunal then questioned Mrs Gaeta. Mrs Evans referred her to Dr Pacitti's letter dated 31 October 2021 which indicated that the Respondent's husband had had a knee replacement previously on his other knee. Mrs Gaeta confirmed that he had had a full knee replacement and an ankle graft and that the operation had been a success. She was unsure how long ago this was, but thought perhaps about 7 years previously. She explained that he had been in a great deal of pain, had difficulty in walking over uneven surfaces and that on occasions his knee gave way.
25. Mrs Evans also referred her to the letter lodged from NHS Scotland dated 7 February 2020 regarding a pre-operative appointment and enquired as to the background. Mrs Gaeta explained that after the first knee replacement as time went on, her husband had started to develop problems with the other knee, was in a great deal of pain and had difficulty in walking. He needed the other knee replaced. He also needed a hip replacement. However, the operation had been delayed due to the pandemic. He was still on a waiting list for the replacements. The Tribunal noted the letter dated 21 October 2021 from NHS Lanarkshire regarding an outpatient's orthopaedic appointment for 4 November 2021. The Respondent explained matters were further complicated

by the fact her husband then needed a stent fitted and had been put on medication after that to help. The Tribunal noted the undated letters lodged from the NHS Lanarkshire regarding cardiology appointments for her husband in August 2020 and 22 November 2021.

26. Mr Forrest referred the Respondent to paragraph SEVEN of the Respondent's affidavit which stated- "*I recall that Rent Locally did speak to me and tell me that I should remove the property from sale*". He pointed out that this was a sworn affidavit and asked whether that was still her position. She confirmed it was. Given that, Mr Forrest asked the Respondent to explain why the Property was not removed from the market. The Respondent explained she thought that as long as the Property was not actually sold within the 3 months that she could market it for sale. No-one had explained to her she could not market it. Mr Forrest put it to her position as she was now stating to the Tribunal did not tie up with her affidavit. Mrs Gaeta stated that she had assumed that as Mr Travers had moved out he would not want to move back in and she could put it up for sale. He asked whether she had ever given Mr Travers an opportunity to challenge her assumption. She stated she did not think so.
27. Mr Forrest asked whether she had previously lived in the Property. The Respondent explained they had lived in the Property for about 3 years a number of years previously.
28. On further questioning regarding her husband's health, Mr Forrest put it to her that it was within her knowledge when she served the Notice that her husband had issues with his joints and his heart. She explained the Property had been given to her as they had to move out of their home at Union Street. That summer her husband had had a stent fitted and was under the care of a cardiologist who had put him on medication. They were hoping to see some improvement and benefit after a few months. Mr Forrest put it to her that by January 2021 her husband's conditions were worse and not better. The Respondent explained they were trying to sort his health out. Again Mr Forrest put it to her that by January 2021 when the Notice to Leave was served, she was aware that he had serious mobility issues. Mrs Gaeta's response was that he was on new medication. Mr Forrest questioned, why, when she had lived in the Property previously and knew that there were stairs, she had not visited the Property before the service of the Notice to see whether it was actually a feasible option for them to move there. Mrs Gaeta responded that had not occurred to her. On further questioning she could not remember when she instructed the Home Report.
29. The Tribunal then asked both parties to state what the amount of any Order should be made if it found that a wrongful termination order be made. The Applicant stated the Tribunal should grant the maximum penalty of 6 months' rent of £650. The Respondent stated that if the Applicant had stayed in the Property until the expiry of the Notice he could have saved himself nearly £250 per month being the difference in the rent for the Property and the rent for the property he moved to. He would have had to buy a new sofa

regardless. The Respondent stated the Tribunal should award 3 months' rent of £650 if it found that an Order should be granted.

Findings in Fact

30. In addition to the facts agreed between the parties as set out in paragraph 10 above, the Tribunal make the following findings in facts -

- i. The Applicant is a single parent. The Property was the family home.
- ii. The Property is an upper floor flatted property accessed by stairs.
- iii. The Respondent and her husband lived in the Property for approximately 3 years a number of years previously. The Respondent was familiar with the Property and that it had to be accessed by stairs.
- iv. The Respondent and her husband lived at a property in Union Street, Hamilton until December 2020 at which stage they moved into an annex at her parents' hotel. The Respondent had an interest only mortgage which had come to an end in January 2020. She was unable to secure a new mortgage or loan because of her age. She was in a difficult financial position. Due to the pandemic, the bank extended the period of time for the Respondent to sell the property at Union Street.
- v. In June 2020 the Applicant was advised by RL that the Property had a new owner, the Respondent. The Respondent never intended to become a Landlord long term.
- vi. In summer 2020 the Respondent put the property at Union Street, Hamilton up for sale. The sale concluded in December 2020. Throughout 2020 the Respondent was caring for her elderly and infirm parents.
- vii. The Respondent's husband had had a full knee replacement approximately 7 years previously and had had an ankle graft. He had been on painkillers and had had difficulty walking on uneven surfaces. On occasions his knee gave way. That knee replacement had been a success.
- viii. The Respondent's husband developed issues with his other knee. He had difficulties walking and was in pain. He needed a knee and a hip replacement. On 7 February 2020 the Respondent's husband received a letter from NHS Lanarkshire for a pre-operative appointment on 3 March 2020. This was delayed due to the pandemic. He is still on a waiting list for the knee and hip replacements.
- ix. The Respondent knew of her husband's pain and mobility issues in walking. The Respondent had noticed her husband was struggling to get up stairs.

- x. By summer 2020 the Respondent's husband also needed a heart stent. He was put under the care of a cardiologist and was prescribed medication.
- xi. Due to the ongoing issues with her husband's heart and the delays caused by the pandemic, the Respondent knew the chance of her husband getting a knee operation was slim and was going to be delayed. She and her husband decided it would be better to sell the Property and buy another property with a downstairs bedroom and bathroom.
- xii. On 4 January 2021 despite her husband's health conditions which she was aware of, the Respondent emailed RL to advise she intended to move into the Property and that she understood she had to give the Applicant three months' notice to leave.
- xiii. The Respondent had no intention of moving into the Property. It was within her knowledge prior to the serving of the Notice to Leave that her husband was in pain, had mobility issues, needed a knee and a hip replacement and had issues with his heart.
- xiv. The Respondent misled the Applicant by stating on the Notice to Leave she intended to move into the Property in the knowledge that her husband suffered serious mobility issues and that she would not be able to do so. The Notice caused him to give up the tenancy of the Property.
- xv. As a consequence of the Notice to Leave the Applicant immediately started to look for alternative accommodation. By 7 January 2021, he managed to secure a 3 bedroomed flat at 87 The Paddock, Hamilton, ML3 0RF advertised for rent with Slater Hogg and Howison. The Applicant advised RL he had found somewhere else to live.
- xvi. The removal was extremely stressful as the Applicant felt under pressure to find suitable alternative accommodation for his family in a short period of time.
- xvii. On 17 February 2021 the Applicant noticed the Property was for sale and contacted RL to ask why the Property was advertised for sale when the Notice to Leave had stated the Respondent intended to live in the Property. RL emailed the Applicant on 17 February 2021 to advise they had contacted the Respondent after he had contacted them and explained to her the flat should not be put up for sale and that the Respondent had advised RL on 17 February 2021 she would withdraw the Property from the market.
- xviii. The Respondent was contacted by RL and told her she should remove the Property from sale. The Respondent thought that as the Applicant had already moved into a new property he would be unwilling to move

back in and then move back out a few months later so she proceeded with the sale rather than leave the Property empty for five months.

- xix. The Respondent did not withdraw the Property from the market. She did not approach the Applicant to see whether he wanted to move back to the Property.
- xx. The Applicant incurred and continues to increased ongoing rental costs of £245 per month compared to the rental previously paid for the Property. He incurred the cost of a new sofa.

Findings in Law

- 31. The tenancy of the Property came to an end in terms of Section 50 of the 2016 Act.
- 32. The Applicant was misled by the Respondent into ceasing to occupy the Property in terms of Section 58(3) of the 2016 Act.
- 33. The Respondent wrongfully terminated the tenancy in terms of Section 58 of the 2016 Act.

Reasons for Decision

- 34. In terms of Section 50(1) of the 2016 Act a private residential tenancy comes to an end if the tenant has received a notice to leave from the landlord and the tenant has ceased to occupy the let property. It was a matter of agreement between the parties that the Applicant received a Notice to Leave on 6 January 2021 giving him 3 month's notice to leave and which stated the Respondent intended to live in the Property. It was also a matter of agreement that on or about 7-8 January 2021 parties agreed the Applicant would move out of the Property on 1 February 2021.
- 35. The Notice to Leave relied on Ground 4 of Schedule 3 of the 2016 Act, namely that it was the Landlord's intention to live in the Property as the Landlord's only or principal home for at least 3 months. This was served on the instructions of the Respondent who emailed her letting agents RL on 4 January 2021 to advise she was intending to live in the Property and that she understood she had to give 3 months' notice to the Applicant. None of this was in contention.
- 36. In terms of Section 58 of the 2016 Act where a private residential tenancy has been brought to an end in accordance with section 50 the Tribunal may make a wrongful-termination order if it finds that the former tenant, i.e. the Applicant 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, namely the Respondent.

37. There was very little in contention between the parties factually. The case turned on whether the Respondent had misled the Applicant into ceasing to occupy the Property as a matter of law when considering these facts. The Respondent's position was that she had intended to live in the Property at the time she gave Notice to Leave. The Applicant's position was that the Respondent had misled him into giving up the tenancy and had no intention of living in the Property.
38. Whilst the Tribunal has no doubt the Property was, as the Respondent put it, always intended for her, as being a gift from her parents, that is an entirely different consideration as to whether at the time she served the Notice to Leave she intended to live there as her only or principal home for at least 3 months, being the requirement of Ground 4 of Schedule 3 of the 2016 Act, as the Respondent relied upon in her Notice to Leave. The Respondent made very clear and unchallenged submissions backed up by the letters from NHS Lanarkshire dating from 7 February 2020 and from Dr Pacitti dated 31 October 2021 that her husband had had a previous knee replacement and was due to have the other knee replaced just as the pandemic hit in early 2020. She spoke of the pain her husband endured and that he had difficulty walking. She had observed that stairs were problematic for him. She spoke of him also needing a hip replacement and of him having a stent fitted. The Tribunal accepted that her husband had a long and painful history of knee problems, having had one knee replaced a number of years previously and since at least February 2020 his condition again had deteriorated to such an extent that he required his other knee replaced and was due to be operated on in March 2020. The Tribunal also accepted that he needed a hip replacement and had a stent fitted in the summer of 2020. Against that background the Tribunal did not find the Respondent credible when she stated she still intended to move into the Property when she instructed her agents to serve Notice to Leave in January 2021. She avoided answering a straight forward question that her husband's mobility issues would have deteriorated further and not got better. Her answer was that he was on new medication for his heart and that they hoped he would get better. That answer did not address the matter of his mobility. The Tribunal formed the opinion that she did not want to state that at the time she instructed the service of the Notice she was fully aware that his medical condition would prevent them from living in the Property. The Respondent had lived in the Property for 3 years. She would have been familiar with the Property. The Tribunal did not accept that she was not well aware that the Property would have presented her husband with grave difficulties in negotiating the stairs.
39. Further, the Tribunal noted paragraph SIX of her affidavit which stated "*Due to the ongoing issues with Michel's heart and the delays caused by COVID we knew the chance of Michel getting a knee operation soon was slim and that it was going to be delayed so we decided it would be best to sell the property and buy another property with a downstairs bedroom and bathroom*". The Respondent had knowledge of all that well before service of the Notice to Leave. Paragraph SIX of her affidavit also stated "*I knew we had to sell it but only at the time I realised it would need to be sold, not when the notices were served on Mr Travers.*" The Tribunal did not find her position that their plans

had suddenly changed after the Notice had been served was credible. The Tribunal did not find it credible that she could sustain that statement which taken alongside her other submissions of his long history of knee problems which affected his mobility, was contradictory. The Tribunal accordingly found that at the time of serving the Notice to Leave in January 2021 she knew that she would not be able to move into the Property and that she had no intention of doing so.

40. Further, the Respondent was very clear her financial position was precarious. She was evasive when asked when she had instructed the Home Report which was dated 10 February 2021. She stated she was unclear whether she had instructed a valuation for renovations or a Home Report. The Tribunal formed the impression the Respondent did not want to reasonably concede the slightest of thing that she felt may weaken her position that she had intended to live in the Property even though a straight forward answer would have made her appear more open and honest in her answers. Her position when taken as a whole indicated that it had been in her contemplation for some time before service of the Notice that she would in fact need to sell the Property. This is again borne out by paragraph SIX of her affidavit.
41. The Respondent's position in relation to whether she had been told to withdraw the Property from the market changed as the CMD progressed. In paragraph SEVEN of her affidavit she swore "*I recall that Rent Locally did speak to me and tell me that I should remove the property from sale*", but during the CMD she stated no-one told her she could not market the Property. When this contradiction was pointed out to her by the Tribunal her response was unsatisfactory and evasive; she thought it was okay to continue to sell the Property as she had assumed that as Mr Travers had moved out he would not want to move back in and she could put it up for sale. At times the Tribunal formed the impression the Respondent was critical of the Applicant for being pro-active and taking immediate steps to find another property for him and his children to live and then moving out. The Respondent's position in that regard did not sit well with the Tribunal.
42. The Tribunal accordingly found the facts as presented to the Tribunal by the Respondent indicated that she could not have had any intention of living in the Property for a period of three months as her only or principal home as required by Ground 4 of Schedule 3 of the 2016 Act. Nothing in what the Respondent presented to the Tribunal gave any indication that she had any such intention. Her husband had mobility issues and was in desperate need of a second knee replacement and a hip replacement. She had financial difficulties. The Respondent knew she would have to sell the Property. This was not something that only came to her after the Applicant moved out. She had accordingly misled the Applicant into moving out of the Property and giving up his family home. Her email of instruction to RL of 4 January 2020 indicated she was well enough informed that she knew she had to give three months' notice if she stated she intended to live in the Property. She could have opted to give him 6 months' notice that she wanted to sell the Property by reliance on Ground 1 of Schedule 3 of the 2016 Act. It appeared to the Tribunal that she wanted to sell the Property sooner rather than later and had

decided that she could do that by her reliance on Ground 4. Her actions resulted in the period of notice being reduced by three months.

43. Section 58(1) of the 2016 Act applies where a private residential tenancy has been brought to an end in accordance with section 50 of the 2016 Act. The tenancy had been brought to an end under Section 50. The facts leading to the termination were not in dispute. Under section 58 (3) of the 2016 Act the Tribunal may make a wrongful-termination order if it finds that the former tenant, the Applicant in this case, 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, namely the Respondent. The Respondent had misled the Applicant into giving up the tenancy at the Property when the facts as presented by her indicated she could not have intended to live in the Property as her only or principal home for 3 months.
44. Under Section 59 (1) of the 2016 Act “a wrongful-termination order” means an order requiring the person who was the landlord under the tenancy immediately before it ended to pay the person who made the application for the wrongful-termination order an amount not exceeding six months' rent. The Tribunal considered the submissions of both parties as to the amount the Tribunal would award if it determined the Respondent had misled the Applicant into giving up the tenancy.
45. The monthly rent for the Property was £650. In assessing the amount to be awarded the Tribunal considered the nature and extent of the Respondent's actions and the impact of those actions. It appeared to the Tribunal that the Respondent had never had any intention of living in the Property for 3 months as her only or principal home. She was unapologetic. She was critical of the Applicant in moving quickly. The Respondent did not appear to give any indication that she was willing to take any responsibility for her actions in the hope that the Tribunal would view her position in relation to her husband's health issues sympathetically. The Tribunal may have looked upon her position more sympathetically, if it had found her position had changed when she took possession of the Property. However the letters lodged and her own unchallenged position about his health only led the Tribunal to consider that her actions were well thought out. The Applicant on the other hand gave a clear account of both the financial and emotional impact that ceasing to give up the tenancy had on him, including the fact his rent immediately increased by £245, from £650 to £895.
46. The Tribunal considered an order for six times the monthly rental reflected the gravity of the Respondent's actions when considered with the continuing financial impact of the Applicant. The appropriate level of the wrongful termination order is accordingly £3900.

Decision

47. The Tribunal granted an order against the Respondent for payment to the Applicant of three thousand nine hundred pounds (£3900).

48. The decision of the Tribunal 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.

7 February 2022

Legal Chair

Date