



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/21/3163

Re: Property at 10 Rowan Walk, Strathaven, ML10 6HH ("the Property")

Parties:

Mr David Hewitt and Mrs Lesley Hewitt, 71 School Road, Sandford, Strathaven, ML10 6BF ("the Applicants")

Ms Donna Dickson, 1 Kirkland Park, Strathaven, ML10 6AR ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

In this application a Hearing ("the Hearing") took place by telephone conference on 19 May 2022.

The Applicants attended and gave evidence.

The Respondent also attended and was supported by her partner, Mr Craig Nicolson. The Respondent gave evidence along with her witness, Mr Leslie Richard Hogan.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that:-

The Applicants are entitled to a wrongful termination order under Section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016 in that the Applicants were misled into ceasing to occupy the Property by the Respondent, and the Tribunal therefore makes a wrongful termination order requiring the Respondent to pay to the Applicants a sum of £3,200.00.

Background

The application proceeds on the basis of Rule 110 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") as set out in the

Schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Prior to the Hearing a Case Management Discussion ("CMD") had previously taken place on 28 March 2022 which recorded the following facts as agreed between the parties and not therefore being in dispute:-

- i. That the Respondent is the heritable proprietor of the Property.
- ii. That the Respondent leased the Property to the Applicants in terms of a Private Residential Tenancy agreement that commenced on 27 May 2018 and that the rent payable in terms thereof was £800 per calendar month.
- iii. That by Notice to Leave dated 7 September 2021 the Respondent gave notice to the Applicants to leave the Property on or before 10 December 2021 on the basis that the Respondent intended to live in the Property.
- iv. That the Applicants vacated the Property on 30 November 2021 having purchased alternative accommodation.
- v. That the Applicants paid rent to the Respondent to the date of their removal from the Property, namely 30 November 2021.
- vi. That the Respondent subsequently sold the Property.

At the CMD the Hearing was assigned and a Direction was issued by the Tribunal.

After the CMD and prior to the Hearing the Tribunal received the following additional documentation:-

- An email from the Applicants dated 5 May 2022 with an Inventory of Productions attached; and
- A letter from the Respondent received and date stamped on 6 May 2022.

The Hearing

At the Hearing evidence was heard as follows:-

Evidence of First Applicant

The First Applicant stated that:-

- i. His full name is David Gordon Hewitt, date of birth 19th May 1984.
- ii. He is employed as an IT director.
- iii. The Notice to Leave issued by the Respondent was false in its terms.
- iv. By text message dated 5th August 2021 the Respondent stated that she intended to sell the Property and move to a house in Italy to be near her family.
- v. Various text messages were subsequently exchanged between the Second Applicant and the Respondent all of which are contained within the Applicants' Inventory of Productions. The Tribunal reviewed the text messages in detail during the course of the First Applicant's evidence.
- vi. The Applicants asked the Respondent whether she might sell the Property to them.
- vii. The Respondent agreed this was a possibility and a home report was arranged to be undertaken.
- viii. The Applicants made an offer to purchase the Property at a figure of £182,000.
- ix. The Home Report valuation subsequently obtained was £180,000.
- x. The Applicants had made their best offer which the Respondent declined.
- xi. The Applicants therefore had to find somewhere else to live.

- xii. The Respondent asked if the Applicants could vacate the Property within 8 weeks which the Applicants complained was unreasonable and reminded the Respondent of the minimum statutory notice period of six months required to be given where a leased property was intended to be sold.
- xiii. Available property to buy or rent was difficult to find. The market was competitive and whilst the Applicants stated they would vacate as soon as they could they needed the full 6 months notice period.
- xiv. That the Respondent suddenly changed her position. Over a period of around seven weeks the text messages exchanged between the parties concerned the Property being sold. Once the Applicants reminded the Respondent that 6 months notice was needed there was a turn around with the Respondent stating that she had lost the opportunity to purchase a property in Italy and needed to move into the Property as her circumstances had changed meaning she only required to give 3 months notice.
- xv. This change of position had taken place within a period of 24 hours. Reference was made to the Respondent's text messages dated 2nd and 3rd September 2021.
- xvi. That it was extremely stressful trying to find alternative accommodation. The Respondent's change of position added to the Applicants' stress.
- xvii. The Applicants took legal advice. They were unsure of what to do or where to live.
- xviii. The Applicants made a decision that all communications with the Respondent required to be in writing. The First Applicant referred to his text message to the Respondent dated 3rd September 2021 at 15:55.
- xix. Following the exchange of text messages on 3rd September 2021, the next correspondence received by the Applicants was the Respondent's Notice to Leave dated 7th September 2021. That Notice to Leave was issued on the basis that the Respondent intended to live in the property. There was no supporting evidence attached to the Notice to Leave.
- xx. The Applicants proceeded on the basis that they had 3 months to vacate the Property.
- xxi. The Applicants looked for as many properties to rent or buy as were within their budget within the locality having regard to the needs of their children aged 14 and 15 years.
- xxii. There were not many properties available for rent at that time.
- xxiii. The Applicants made offers on several properties.
- xxiv. Properties were selling at much higher prices than the home report valuations.
- xxv. The Applicants were concerned that they could not afford anywhere to stay and had a compressed timescale to meet.
- xxvi. The Applicants mortgage would be based on the home report value of a property and they had no money to go above that.
- xxvii. The Applicants found a property in a nearby area. The Applicants had to stretch their finances to make an offer on that property including using their overdraft, and loans from family which put them into debt to secure that accommodation at a price just above the home report valuation. That property was within the school catchment area for the Applicants' children. Around 2nd November 2021 the Applicant's offer was accepted.
- xxviii. On 2nd November 2021 the Respondent sent a text message to the First Applicant regarding another available house in the area. The First Applicant replied saying that they had to been successful in offering on a property and were due to obtain the keys on 26th November. The First Applicant suggested that they could vacate on 30th November and the Respondent agreed.

- xxix. On 23rd November 2021 the Applicants received a text message from the Respondent indicating that the contractors had pulled out of the building works contract and that she would not now be moving into the Property as had been anticipated. At that point the Applicants knew nothing about any building works.
- xxx. The Applicants handed the keys back to the Respondent on 30th November 2021 and vacated the Property.
- xxxi. When the Property was advertised for sale on Facebook on 30th November 2021 the Applicants were surprised.
- xxxii. The Respondent had spent a number of weeks indicating that she was planning to sell the Property then, within 24 hours, changed it her position to needing to move into the Property and then she put it on the market shortly after the Applicants removed.
- xxxiii. The Respondent was incredibly unfair. The Applicants did their best to comply with the 3 month timescale intimated to them causing them to incur debt and stress. Six months' notice ought to have been given.

Under cross-examination by the Respondent the First Applicant stated: –

- i. That the Respondent had an obligation to be clear and observe the legal requirements. The Respondent asked the Applicants to move out in 8 weeks in the first instance. Her obligation was to give notice in writing. She ought to have given 6 months' notice but her position changed so that she could give 3 months' notice.
- ii. The Respondent asked why the Applicants did not communicate and the First Applicant stated that there was no obligation to give the Respondent updates. The Notice to Leave had been received and they were complying with it.

Evidence of the Second Applicant

The Second Applicant stated that:-

- i. That her name is Mrs Lesley Anne Hewitt, born 24th May 1978.
- ii. She is employed as a customer support manager.
- iii. That the evidence of the First Applicant is an accurate account of what happened.
- iv. That the last text communication received from the Respondent on 23rd November 2021 stated that the Respondent now needed to find a new contractor and that occupation of the Property was not required as urgently as anticipated. However, seven days later the Respondent advertised the Property as "coming to market".
- v. The Respondent had no understanding of the stress and anxiety caused due to her text messages which is why the First Applicant took over communications. The Second Applicant had reached the stage where she did not even want to open text messages received from the Respondent.

The Respondent had no questions in cross examination.

Evidence of Respondent:-

The Respondent stated that: –

- i. Her full name is Donna Summers Dixon, born 6 April 1962.
- ii. The Respondent works as a hairdresser.
- iii. The Respondent currently resides at 1 Kirkland Park, Strathaven, ML10 6AR.
- iv. With regard to the renovations of her property at Green Street, Strathaven, the project started in 2018.

- v. A scheme was being co-ordinated by South Lanarkshire Council and Historic Scotland.
- vi. The Respondent's building at Green Street is B listed and was eligible for 80% grant funding for upgrading. The scheme required that the Respondent pay 100% of the remedial costs but 80% thereof would be refunded.
- vii. The Respondent required to pay all professional fees upfront and had to appoint the architect and quantity surveyor approved by Historic Scotland. 80% of professional fees incurred by the Respondent would also be refunded if the project proceeded.
- viii. The process was a long one but the Respondent wanted to proceed and invested heavily
- ix. Her application was approved in July 2021.
- x. There were issues finding contractors during lockdown.
- xi. After much to-ing and fro-ing, a contractor was identified.
- xii. The Respondent had spent over £16,000 on professional fees and was hopeful that the works would be carried out.
- xiii. The works consisted of the whole roof of the building being stripped off and replaced with gutters and downpipes and the stairs at the front of the property along with the railings also being replaced. Scaffolding would be required at the back and at the front of the property.
- xiv. The Respondent initially understood the costs to be around £120,000 but they escalated during lockdown to £148,000.
- xv. The Respondent would require to move out Green Street for the works to be undertaken.
- xvi. The Respondent decided it would be a good idea to purchase a property in Italy and to stay there whilst the renovation works were carried out.
- xvii. When the Applicants asked if they could purchase the property that would have been ideal.
- xviii. The property in Italy in which the Respondent had noted interest sold on 3rd September 2021. Having heard that property to have sold the opportunity to move to Italy had disappeared.
- xix. The Applicants were served with the Notice to Leave on 7 September 2021. The Respondent instructed her solicitors, Strefford Tulips, to issue the Notice to Leave the day before or thereabouts. The Respondent had to find somewhere else to stay as the purchase of the property in Italy had fallen through.
- xx. At that time the building work at Green Street was on track and the Respondent hoped the contractor would start imminently.
- xxi. The contractor said in October 2021 that he did not want scaffolding up over Christmas and the Council also wanted to reduce the scope of the works as prices had escalated. The Council was then only prepared to deal with the front roof, stairs and railings.
- xxii. The contractor pulled out as the reduced scale of works made the contract not worth his time and he could not in any event meet the deadline of 22nd February 2022 due to difficulties sourcing materials. Materials required to be on a like-for-like basis as the property is B listed so there were difficulties sourcing materials.
- xxiii. The Respondent met with Mr Les Hogan who is part of the CARS scheme which the Respondent understood referred to the Community Association Regeneration Scheme. His role was to help with the community side of the project. He was optimistic that the scheme should go ahead in order to improve the town centre.
- xxiv. The Respondent met with Les Hogan around 17th October 2021. The Respondent was under severe stress as the building work was beginning to falter. She wanted

to keep the project on track as she had invested so much. Trying to find other contractors was very difficult. She required to find another 3 contractors to provide quotations. She contacted various firms. They were not interested and could not meet the deadline. She could not see how the work would go ahead.

- xxv. The quantity surveyor suggested that the Respondent pull out as trying to find another contractor would be impossible.
- xxvi. The Respondent directed the Tribunal to the various emails attached to her previous written submission to the Tribunal dated 1st March and received on 7th March 2022. Mr Gordon Jameson was the architect and Mr Andrew Brown the quantity surveyor. David Strefford, Solicitor was acting on her behalf as she was concerned that funding might be pulled.
- xxvii. It is clear from an email of 6th October 2021 from the David Horsburgh of South Lanarkshire Council to David Strefford that the dates are not flexible.
- xxviii. The email from the Respondent to Gordon Jameson dated 21st October 2021 recorded her position. However, David Horsburgh said she should still try to find another contractor which she tried to do.
- xxix. She became so stressed that she subsequently passed the project to her brother to deal with and he wrote the email of 2nd November 2021.
- xxx. At the end of October 2021 the Respondent was still hoping to keep the project on track. After the Applicants vacated the Respondent decided it would be best to sell the Property to try and recoup some of her losses. She made that decision after the Applicants said they had purchased and would move out early. There was no reason to retain an empty house. If she did not proceed with the sale of the Property she could never buy a property in Italy. Her plan had not changed, she still wanted to purchase there.
- xxxi. She offered the Applicants the opportunity to stay longer at the Property but they declined on 23rd November 2021.
- xxxii. On 23rd November 2021 the Respondent was still hopeful that she could turn the project around. Within a few days after that when she couldn't find an alternative contractor there was no way it was going ahead. She tried to negotiate an extension with South Lanarkshire Council but it was obvious that there was no wiggle room on the completion date of 22nd February 2022.
- xxxiii. Eventually the work fell through completely and the project was "dead in the water". It was clear that the project was not proceeding.
- xxxiv. After the Property went on the market on Facebook, a verbal offer was received on 8th December 2021 and a legal offer on 17th December 2021. The sale went through on around 17th January 2022.
- xxxv. The Respondent still owns the property at Green Street and one of the members of staff who work for her lives there. The Respondent has moved in with her partner.
- xxxvi. The property at Green Street is a townhouse comprising two flats with a salon all of which the Respondent owns.
- xxxvii. The Respondent was not told to vacate the property whilst the proposed renovations were carried out but it was obvious that with the roof coming off she would need to move out. She lived in the top flat. A friend occupied the flat beneath and would have required to move out too. The staircase would make the property inaccessible as it was the main staircase to the front door. There would be scaffolding up.
- xxxviii. The Respondent owns no other properties.

Under cross examination from the First Applicant, the Respondent stated: –

- i. That no evidence was attached to the Notice to Leave but she did not feel any was required. She did not consider her involvement in the CARS scheme to be of any concern of the Applicants.
- ii. The Respondent's solicitor who issued the Notice to Leave did not ask for any evidence to attach either.
- iii. That the sale of the Property was required for the Respondent purchase a property in Italy. The Respondent still intends to move there.
- iv. The Respondent had not produced any evidence of the sale of the property in Italy falling through. The Respondent could not find the email referred to in her text message to the Applicants dated 3rd September 2021.
- v. As at 21st October 2021 the Respondent knew that the building works may not be going ahead but she had not totally given up. The position was fluid and she was trying to keep the project on track. As soon as the Respondent knew the position she sent a text message to the Applicants about them being able to remain in the Property.
- vi. As at 23rd November the Respondent was still hoping to get the work back on track. It fell through within the next seven days as it was obvious that it was going nowhere.
- vii. At the time of the Notice to Leave being issued it was the Respondent's genuine intention to move into the property.

Evidence of Mr Leslie Richard Hogan

Mr Hogan stated that:-

- i. His full name is Mr Leslie Richard Hogan, born 30th September 1957.
- ii. He is a newspaper editor
- iii. The CARS scheme was a Conservation Area and Regeneration Scheme the purpose of which was to spend funding on the making of improvements to properties within the conservation area of Strathaven.
- iv. He made contact with the Respondent during late 2017 or early 2018 as he was keen to identify if the Respondent was interested in the project.
- v. The focus was on buildings with heritage and there were 3 such properties within Green Street, Strathaven. These were original buildings whereas other properties in the street are new. The renovation of these buildings would bring maximum benefit to the conservation area.
- vi. The project was financed from four sources including Historic Environment Scotland and South Lanarkshire Council. The project would be managed by South Lanarkshire Council with 4 community partners to form the Board.
- vii. He was the Secretary of Strathaven & Glassford Community Council and was nominated as its representative on the Board.
- viii. In late 2020 the Respondent had agreed and was keen to proceed.
- ix. The project was complicated. The rear of the building had to be a focus too. Historic Environment Scotland initially said they would consider the front only but was persuaded to include the rear.
- x. The Respondent was authorised to proceed with a full application. She required to work with the architect and other professionals to define the scale and scope of works which included work that the Respondent also wanted done.
- xi. The application was submitted in around June 2021.
- xii. The application was assessed against the project criteria and was approved.
- xiii. The works also had to go before the full planning committee of the Council and approval was given at the beginning of July 2021.

- xiv. On 2 July 2021 he received a text message from the Respondent that her application had been approved and she was delighted the project was going ahead.
- xv. He keeps closely involved in projects and the contract was awarded to a local company for the work to be undertaken.
- xvi. He met the Respondent at an event on 3 September 2021. She was keen to proceed and excited.
- xvii. However the situation had changed by the end of September or early October 2021 when the contractor unexpectedly pulled out. The Respondent was devastated.
- xviii. He and Nigel Thomson met the Respondent on 31st October. The Respondent was under significant stress. She had invested financially in the project and was keen to proceed as he was too. He asked her to look for other quotations. The scheme was due to finish at the end of March 2022. Work required to be started and completed to enable a claim to be made on time. The architect and the surveyor were not keen to start again. The Respondent was still keen to proceed.
- xix. The scope of works was by then smaller too. The work needed to be done by the end of February 2022.
- xx. He asked Historic Environment Scotland to allow the project to continue beyond the date given. A further six weeks were allowed.
- xxi. The architect and other advisers said not to proceed. The Respondent was under significant stress and it was agreed that they would liaise with her brother. This was around November or December 2021.
- xxii. He met the Respondent around mid-November 2021 at Strathaven Hotel. She took him aside and said she couldn't handle the situation and needed to know what to do.
- xxiii. In late January 2022 was clear that the project could not proceed.
- xxiv. Cost had been incurred at this point for professional fees, 80% of the fees would be refunded on completion of the works. However, as the works did not go ahead no refund could be made and the Respondent required to fund these costs herself. Given the amount involved, the Respondent wanted the project to happen. It was extremely disappointing that it could not proceed. The Respondent had incurred a significant spend.
- xxv. The money for the project went back to Historic Environment Scotland and was not spent on Strathaven at all.
- xxvi. There were 2 projects about which he was seriously concerned being this project and another.
- xxvii. He worked actively with the Respondent and her brother.
- xxviii. The value of the project was around £160,000. Professional fees would have been payable over and above taking the total to around £180,000.
- xxix. The application took months to be made. One of the roles of the community partners was to get the application in. He had been talking to the Respondent about the application for months. He was keen for the Respondent to meet the required timescale.
- xxx. The works were estimated to take three months. They would have been very destructive to both the rear and the front of the building.
- xxxi. Vacant possession of the property was not sought but there would have been spells when the roof and windows were being worked upon when the property could not be lived in.
- xxxii. The scope of works included replacing the roof, the steps leading to the entrance and the windows. The front of the property was to be re-rendered and to the rear two dormer windows were to be replaced and other works to the walls undertaken.

Under cross-examination from the First Applicant, Mr Hogan stated: –

The project was confirmed dead around the end of January 2022. Even with the extension provided by Historic Environment Scotland it was still not possible to re-tender the project and get quotations etc. Those involved were still trying to proceed right up to the end of January 2022.

Submissions by the Applicants

Following the conclusion of evidence, the First Applicant made the following submissions:–

- i. The Applicants did not dispute that the CARS project was ongoing.
- ii. The Applicants' main concern is the change of position of the Respondent between 2nd and 3rd September 2021.
- iii. No evidence of the sale of the property in Italy falling through had been produced.
- iv. It appeared the Respondent knew the project at Green Street was not proceeding on 21 October 2021 but in the text message on 23rd November 2021 it appeared the Respondent was still intending to move to the Property. However, the Property was on the market for sale one week later.
- v. Mr Hogan said the project at Green Street was not officially dead until January 2022. However, the property was sold in December 2021.
- vi. The Applicants had done their part as tenants - they had been honest and put themselves in significant debt and stress to meet the deadline of the Notice to Leave.
- vii. The Respondent's circumstances were not as noted in the Notice to Leave.
- viii. A wrongful termination order should be made.
- ix. The Applicants have been significantly disadvantaged by the invalid Notice to Leave and the maximum penalty should be imposed.
- x. The Respondent should have acted responsibly as the landlord.

The Second Applicant submitted: –

- i. That the Respondent had had the opportunity to present evidence.
- ii. At the Case Management Discussion the Respondent stated that her daughter lived at Green Street but now she said it was a friend.
- iii. The Respondent's evidence has inconsistencies and is disappointing.

Submissions by the Respondent

Following the conclusion of evidence, the Respondent made the following submissions:–

- i. That it is irrelevant who was living at Green Street.
- ii. The whole building was involved in the renovations including her salon.
- iii. The situation was very disappointing for her.
- iv. When the Notice to Leave was served on 7 September 2021 she was under the impression that the renovation works were imminent and needed somewhere to live. It was her honest intention to move into the Property and it is simply unfortunate how that turned out.
- v. As of 7 September 2021 she had no intention to sell the Property. She had nowhere to go.

- vi. The Applicants were not misled. If more information had been sought she could have provided it.
- vii. The Respondent refuted any wrongful termination.
- viii. The Respondent referred to the circumstances of being beyond her control.

Findings in Fact

The Tribunal makes the following findings in fact:-

- i. That the Respondent is the heritable proprietor of the Property.
- ii. That the Respondent leased the Property to the Applicants in terms of a Private Residential Tenancy Agreement that commenced on 27 May 2018 and that the rent payable in terms thereof was £800 per calendar month.
- iii. By text message dated 5th August 2021 the Respondent stated that she intended to sell the Property and move to a house in Italy to be near her family.
- iv. Various text messages were exchanged between the parties to 1 September 2021 with regard to a potential sale of the Property by the Respondent to the Applicants. Agreement on a sale could not be reached.
- v. By text message dated 1 September 2021 the Respondent asked if the Applicants could vacate the Property within 8 weeks which, by text message of the same date the Applicants complained was unreasonable and reminded the Respondent of the minimum statutory notice period of six months required to be given where a leased property was intended to be sold.
- vi. By text message dated 3 September 2021 the Respondent stated that she had lost the opportunity to purchase a property in Italy and needed to move into the Property as her "building here" was getting refurbished including the roof stripped off.
- vii. That by Notice to Leave dated 7 September 2021 the Respondent gave notice to the Applicants to leave the Property on or before 10 December 2021 on the basis that the Respondent intended to live in the Property. There was no supporting evidence attached to the Notice to Leave.
- viii. The Applicants proceeded on the basis that they had 3 months to vacate the Property.
- ix. It was extremely stressful for the Applicants trying to find alternative accommodation.
- x. The Applicants looked for as many properties to rent or buy as were within their budget within the locality having regard to the needs of their children aged 14 and 15 years.
- xi. On 23rd November 2021 the Applicants received a text message from the Respondent indicating that the contractors had pulled out of the building works contract and that she would not now be moving into the Property "as urgently as anticipated".
- xii. The Respondent is the heritable proprietor of a property at Green Street, Strathaven, being a townhouse comprising two flats with a salon.
- xiii. The property at Green Street is B listed and was eligible for 80% grant funding for upgrading through the "CARS" scheme - Conservation Area and Regeneration Scheme funded by, amongst others, South Lanarkshire Council and Historic Environment Scotland - the purpose of which was to fund improvements of properties within the conservation area of Strathaven.
- xiv. The project to renovate the Green Street property using the CARS scheme began in 2018.

- xv. The scheme awarded a grant of 80% towards the agreed renovation costs including professional fees, which the Respondent would have to incur up front.
- xvi. The Respondent's application to the CARS scheme was approved in July 2021.
- xvii. The Respondent spent over £16,000 on professional fees.
- xviii. Vacant possession of the Green Street property was not required for the renovations to be undertaken but there would have been spells when the roof and windows were being worked upon when the property could not be lived in.
- xix. The contractor identified by the Respondent to undertake the renovations to the Green Street property pulled out around late September/early October 2021 as the scale of works reduced and he could not in any event meet the completion deadline of 22nd February 2022 required by the CARS scheme due to difficulties sourcing materials.
- xx. Mr Hogan obtained an extension of the project timescale by 6 weeks.
- xxi. On 2 November 2021, the Respondent's brother emailed South Lanarkshire Council in an attempt to obtain the Council's assistance in completion of the renovations of the Green Street property.
- xxii. Those involved in the project to renovate the property at Green Street were still trying to proceed up to the end of January 2022 when the project was confirmed dead. No alternative contractor could be found.
- xxiii. The project to renovate the property at Green Street did not go ahead.
- xxiv. The Applicants were successful offering on a property and obtained the keys thereto on 26th November 2021.
- xxv. The parties agreed that the Applicants could vacate the Property on 30 November 2021.
- xxvi. The Applicants vacated the Property on 30 November 2021.
- xxvii. The Applicants paid rent to the Respondent to the date of their removal from the Property, namely 30 November 2021.
- xxviii. The Respondent never moved into the Property following the Applicants moving out.
- xxix. The Property was advertised for sale by the Respondent on Facebook on 30th November 2021 stating that it was "coming to the market soon".
- xxx. The Respondent advertised the Property for sale on Facebook on 3 December 2021.
- xxxi. After the Property went on the market on Facebook, a verbal offer was received by the Respondent on 8th December 2021 and a legal offer on 17th December 2021.
- xxxii. The Respondent subsequently sold the Property on 17 January 2022.
- xxxiii. The Notice to Leave was issued by the Respondent wrongfully to take advantage of a 3 month notice period when she truly intended to sell the Property and ought to have given the Applicants 6 months' notice.
- xxxiv. The Applicants were misled into ceasing to occupy the Property within 3 months.

Findings in Law

The Tribunal makes the following findings in law:-

- i. That the Applicants were misled into ceasing to occupy the Property by the Respondent and the Tribunal therefore makes a wrongful termination order in terms of Section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016.
- ii. The Applicants are entitled to a payment from the Respondent in terms of Section 59(1) of the 2016 Act.
- iii. A payment by the Respondent to the Applicants of £3,200 is reasonable.

Reasons for Decision

The Applicants were credible and reliable in their evidence.

The evidence of Mr Hogan was credible and reliable.

The evidence of the Respondent was, where critical, unsupported by documentation and was contradictory and therefore not credible.

In particular, the exchange of text messages between the parties that began on 5 August 2021 was predicated on the Respondent selling the Property and moving to Italy to be closer to her family. There was no reference to renovation works at the Respondent's property at Green Street.

Following a dialogue between the parties relative to the possibility of the Applicants purchasing the Property from the Respondent which did not come to fruition, by text message dated 1 September 2021 the Respondent again refers to the selling the Property to buy in Italy and to instructing her agents the following day "to market the house". In that email she asks the Applicants to agree an 8 week notice period to remove which the Applicants correctly refuse referring to the required 6 month notice period where a landlord seeks vacant possession of a property in order to sell it.

Later the same day the Respondent texts the Applicants expressing disappointment that the parties could not agree an 8 week notice period and acknowledging that she was "obliged to conform to the law" which in fact she had sought to avoid by negotiating a shorter period for the Applicants to remove. She also states "I'm afraid family pull is a priority" clearly referring once again to her desire to move to Italy to be close to her family and her need to sell the Property for that purpose.

On 2 September 2021 the Respondent texts the Applicants stating "I can also appreciate 2 months is unrealistic" which is contrary to her position the previous day that sought the Applicants' removal in 8 weeks.

The on 3 September 2021 the Respondent texts the Applicants stating "I had an email from the estate agent in Italy to let me know that the flat beside my son that I'd noted interest in is under offer. My building here is getting refurbished, including the roof stripped off and I'll need to move out. My intention was to move to Italy and live there until the flat here was habitable again, but that's no longer an option. With that in mind I'm no longer selling Rowan Walk, but moving back in myself."

The email from the estate agent in Italy was not produced in these proceedings and was never seen by the Applicants. This email contains the first reference to building works at another property now known to be the Respondent's property at Green Street, Strathaven.

The Respondent's solicitor subsequently served on the Applicants a Notice to Leave dated 7 September 2021 requiring the Applicants to leave the Property on or before 10 December 2021 on the basis that the Respondent intended to live in the Property. There was no supporting evidence attached to the Notice to Leave.

Had the Respondent issued a Notice to Leave based on her intention to sell the Property 6 months' notice would have required to be given to the Applicants. As it was, by serving a Notice to Leave based on her apparent need to move into the Property, the Respondent required to give the Applicants only 3 months' notice as happened.

As a matter of fact the Respondent never moved into the Property following the Applicants' removal on 30 November 2021. Instead she immediately advertised the Property for sale on Facebook that same day and by 8 December 2021 had received a verbal offer from a purchaser.

Notwithstanding the Respondent's evidence to the contrary the Tribunal did not believe that the Respondent ever intended to move into the Property and was of the view that the Respondent always intended to sell the Property when the Applicants removed as happened.

Mr Hogan stated in his evidence that those involved in the proposed renovation of the Respondent's property at Green Street were still trying to proceed right up to the end of January 2022 when it became clear that the project was at an end. If efforts were being made to get the project back on track from October onwards it is entirely contradictory that the Respondent would sell the Property given her stated position that, if the renovations proceeded, she would require to move out and would need somewhere else to stay. This is supported by her brother's efforts to get the project back on track by virtue of his email to South Lanarkshire Council dated 2 November 2021 and the Respondent's text message to the Applicants on 23 November 2021 that she needed to find another contractor for the building works and doesn't "need to move back to Rowan Walk as urgently as anticipated" which clearly suggested she still anticipated moving in at some later stage. Instead she put the property on the market for sale 7 days later.

The Respondent stated that as at 23rd November 2021 she was still hoping to get the building work back on track. She said it fell through within the next seven days as it was obvious that it was going nowhere. That evidence does not sit comfortably with the evidence of Mr Hogan which the Tribunal preferred. The Respondent's evidence was contradictory and not credible.

The Tribunal is satisfied, on the balance of probabilities that the Notice to Leave was issued by the Respondent wrongfully to take advantage of a 3 month notice period when she truly intended to sell the Property and ought to have given the Applicants 6 months' notice. The Applicants were misled into ceasing to occupy the Property within 3 months.

The Applicants have therefore established a breach of Section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016 and are entitled to an order for payment in favour of the Applicants in terms of Section 59(1).

The Tribunal considered any mitigating factors to take into account in assessing the value of the payment to be made to the Applicants. The Tribunal acknowledged that by text message dated 23 November 2021 the Respondent intimated to the Applicants that they could remain in the Property longer if they needed to do so due to the contractor having pulled out of the building works at Green Street. Whilst that offer came very late nevertheless it was made albeit not needed. Additionally, notwithstanding service of the Notice to Leave the Applicants could have remained in the Property beyond the date of removal narrated in the Notice to Leave as no steps to have them removed from the Property could have taken place until an eviction order had been granted by the FTT.

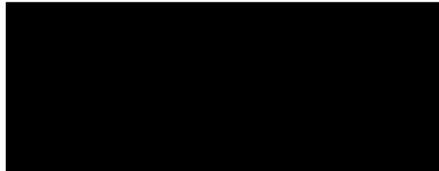
In the circumstances a payment of four times the rent is reasonable, being £3,200.00 and a wrongful termination order is made to that effect.

Decision

The Applicants are entitled to a wrongful termination order under Section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016 in that the Applicants were misled into ceasing to occupy the Property by the Respondent, and the Tribunal therefore makes a wrongful termination order requiring the Respondent to pay to the Applicants a sum of £3,200.00.

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.



15 June 2022

Legal Member/Chair

Date