



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/22/0380

Re: Property at 45 Oldmill Road, Aberdeen, AB11 6EG (“the Property”)

Parties:

Mrs Linda Leung, Kenny Leung, David Grierson, 11/1 98 Lancefield Quay, Glasgow, G3 8JN; 11/1 98 Lancefield Quay, Glasgow, G3 8JN; 11/1 98 Lancefield Quay, Glasgow, G38JN (“the Applicants”)

Brighter Morn Enterprises Ltd, 431 Flat B Great Northern Road, Aberdeen, AB24 2EU (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application for a wrongful termination order.

Background

1. By application received on 8 February 2022, the applicants submitted an application in terms of rule 110 of the Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”). In their application they sought a wrongful termination order without an eviction order under section 58(2) of the Private Housing (Tenancies) Scotland Act 2016 (“the 2016 Act”).
2. The applicants stated in their application that they were seeking an order for payment of £2250, representing three months’ rent, and a further £2000 for the non-return of personal belongings and stress caused to Mr Grierson causing him to be hospitalised.

3. There were no attachments included with the application form, and the tribunal administration wrote to the applicants on 28 February 2022, seeking further information from them. In the same letter, the applicants were advised that a separate application would need to be made under rule 111 in respect of compensation for non-return of belongings and stress.
4. On 28 February 2022, two emails were received from Mrs Leung on behalf of the applicants in response. Attached to these emails were:
 - i. copy (unsigned) tenancy agreement between the parties in relation to the property which commenced on 4 June 2021
 - ii. copy Notice to Leave dated 4 November 2021 sent to the applicants by the respondent
 - iii. copy rental advertisement from the Open Rent website relating to the property
5. The application was accepted on 5 April 2022. The application papers, together with notice of the case management discussion (CMD) scheduled for 16 June 2022, were served on the respondent by sheriff officer on behalf of the tribunal on 11 May 2022. Written representations were invited by 1 June 2022.
6. Written representations were received from the respondent by email on 24 May and 9 June 2022. Numerous written representations were received from the applicants on 24, 25, 26, 27 and 31 May and 9,10,12 and 14 June 2022.
7. The applicants also made a separate application (reference no: FTS/HPC/CV/22/0622) under rule 111 of the 2017 rules (application for civil proceedings in relation to a private residential tenancy) for a payment order in respect of loss of items belonging to them which were left in the property and for compensation for stress caused by the alleged wrongful termination.
8. The two applications against the respondent were conjoined and were considered together by the tribunal. A separate decision in the civil proceedings application is issued alongside this decision.

The case management discussion

9. A case management discussion (CMD) was held by remote teleconference call on 16 June 2022. All three applicants were present on the teleconference call and represented themselves. Mrs Leung was the primary spokesperson for the applicants. The respondent was represented by Mr David Dadon, a director of the company, and his secretary, Miss Susan Ritchie.
10. The tribunal heard evidence from both parties and the parties agreed a number of facts. The respondent disputed that the applicants' tenancy had

been wrongfully terminated and said that they had given up their tenancy voluntarily.

11. Having considered all of the evidence before it, the tribunal did not consider that it was able to make sufficient findings to determine the application at the CMD. It took the view that it may be contrary to the interests of the parties to make a decision without a hearing.
12. The tribunal therefore considered that a hearing should be fixed to hear further evidence from both parties in relation to the two applications. The tribunal also issued a direction to the parties on 22 June 2022, seeking further information from them by 26 July 2022. The respondent was required to provide clear written evidence to support the ground stated in the Notice to Leave (NTL) dated 4 November 2021, namely that Mr Dadon had split with his partner and that he therefore needed the property to live in himself.
13. The direction also required the applicants to provide written representations setting out why they considered they were misled into ceasing to occupy the property by the respondent, given that they appeared to have sent several emails to the respondent prior to the date when the NTL was sent, apparently offering to give up their tenancy in return for repayment of their deposit. Both parties were also invited to submit any further written representations or documents which they wished the tribunal to consider and to provide details of any witnesses they wished to call to give evidence at the hearing.
14. Further written representations were received from the respondent on 22 and 25 July 2022. Further written representations were received from the applicants on 10, 13, 15, 24, 25, 26, 28 and 29 July 2022.
15. A request was received from the applicants on or around 12 July 2022 for the tribunal to consider audio evidence consisting of a WhatsApp voice clip from Mr Dadon. A further email was received from Mrs Leung on 26 July 2022 requesting permission to submit video evidence demonstrating that the WhatsApp voice clip was received from Mr Dadon on her phone on 28 October 2021. The tribunal agreed to both requests and permitted the applicants to upload both the audio and video evidence to the Objective Connect platform. The tribunal members and the respondent were provided with access details to view and listen to the audio and video evidence.

The hearing

16. A hearing was held by teleconference in relation to both applications on 9 August 2022. The applicants were all present on the teleconference call and represented themselves. Mrs Leung was again the primary spokesperson for the applicants. The respondent was represented by Miss Susan Ritchie.

Preliminary issues

17. The tribunal noted that numerous written representations had been received from the parties since the CMD. Both parties confirmed that they had received all of the representations received from the other party. Further written representations had been received from the applicants on 8 August 2022, the day before the hearing. These would not be considered by the tribunal as they had not been received at least seven days before the hearing, as required in terms of rule 22 of the 2017 rules.
18. The chairperson noted that Mr Dadon was not present at the hearing. He had advised the tribunal at the CMD that he would be abroad on the date of the hearing and that Miss Ritchie would represent the respondent.
19. Both parties confirmed that they were content with the facts agreed between the parties as set out in the tribunal's note of the CMD on 16 June 2022.

The evidence

20. The following evidence was considered by the tribunal:
 - The application form submitted by the applicants.
 - The two emails received from Mrs Leung on behalf of the applicants on 28 February 2022.
 - Copy (unsigned) tenancy agreement between the parties in relation to the property which commenced on 4 June 2021.
 - Copy Notice to Leave (NTL) dated 4 November 2021 sent to the applicants by the respondent.
 - Copy rental advertisement from the Open Rent website relating to the property.
 - Registers Direct copy of Land Register title ABN112839.
 - Copy Scottish Landlord Register registration details for the property.
 - Written representations received from the applicants on 24, 25, 26, 27 and 31 May and 9, 10, 12 and 14 June 2022.
 - Written representations received from the respondent by email on 24 May and 9 June 2022.
 - Further written representations received from the respondent on 22 and 25 July 2022.
 - Further written representations received from the applicants on 10, 13, 15, 24, 25, 26, 28 and 29 July 2022.
 - The audio and video evidence uploaded by the applicants to the Objective Connect platform relating to a WhatsApp voice clip from Mr Dadon received by Mrs Leung on 28 October 2021.
 - The oral representations of the parties at the CMD and at the hearing.

Summary of the issues

21. The issues to be determined were:

1. Whether the applicants were misled into ceasing to occupy the property by the respondent before the tenancy was brought to an end.
2. Should the tribunal determine that the applicants were so misled, whether it should make a wrongful termination order against the respondent.
3. If the tribunal decided to make a wrongful termination order, what sum should be awarded in terms of section 59(1) of the 2016 Act.

Findings in fact

22. The tribunal made the following findings in fact:

- i. There was a private residential tenancy between the parties in relation to the property, which commenced on 4 June 2021.
- ii. The respondent is the owner and registered landlord of the property.
- iii. The rent under the tenancy agreement was £750 per calendar month paid in advance on the 4th of each month.
- iv. In around October 2021, a previous landlord of the applicants contacted Mr Dadon to tell him that the applicants owed him rent arrears.
- v. In October 2021, the applicants decided to travel to the USA for three months. Two of Mr Grierson's brothers had recently died within a short period of time, and he therefore needed to return home. Mr and Mrs Leung decided to accompany Mr Grierson to provide support to him.
- vi. The applicants informed Mr Dadon of their travel plans and said that they intended to come back after around three months, in February / March 2022.
- vii. The parties reached a written agreement as set out in an email from Mrs Leung and a reply from Mr Dadon, both dated 25 October 2021, regarding the property. This provided that the applicants would be overseas from 31 October 2021 until February/March 2022; that during this period of absence it was understood that the tenancy had not been abandoned; that Mr Dadon was fully aware of the situation; and that the rent payable during that period would be £325 per month.
- viii. In late October 2021, Mr Dadon contacted the applicants to say that they owed rent arrears in relation to the property.
- ix. On 28 October 2021, Mr Dadon sent Mrs Leung a Whats App voice clip stating that the applicants had lost his trust and that he had discovered that the applicants owed rent to two previous landlords. He stated: *"And I'm going to be the third one so....I will be probably the tough one"* and *"If I don't see my money in two days' time I will join them to whatever they would ask me to do"*.
- x. The applicants sent a number of emails to the respondent between 26 October and 1 November 2021, offering to give up the tenancy if Mr

Dadon agreed to waive the notice period, cancel any debts owed by them and return their deposit. Several of the emails also referred to making an application to the First-tier Tribunal if Mr Dadon did not agree to this proposal.

- xi. The applicants left the property to travel to the USA on 4 November 2021.
- xii. The applicants left some of their belongings in the property.
- xiii. The respondent served a NTL on the applicants by email on 4 November 2021.
- xiv. The NTL cited ground 4 (landlord intends to live in the let property). It stated in part 3: *"I am separating from my partner and have to leave her house. I will be homeless therefore I need this flat to live in."*
- xv. The NTL was signed by Mr Dadon and stated that an application would not be submitted to the tribunal for an eviction order before 7 February 2022.
- xvi. Following receipt of the NTL, the applicants sent a number of emails to the respondent expressing their views that the ground stated was weak and that any eviction application would be refused. They again referred to their previous offer to give up the tenancy in return for the refund of their deposit and stated that if this was not agreed to, they would make an application to the First-tier Tribunal.
- xvii. Mr and Mrs Leung later travelled from the USA to Italy, while Mr Grierson remained in the USA.
- xviii. Atholl Chartered Surveyors made a payment of £375 to the applicants on behalf of the respondent on 26 November 2021.
- xix. Mr and Mrs Leung couriered their keys to the property from Italy to the respondent on or around 26 November 2021.
- xx. Mr and Mrs Leung each sent an email to the respondent on 26 November 2021 and 1 December 2021 respectively stating that they were terminating their tenancy of the property and owed no further money to the respondent. Neither email stated the date on which the tenancy was to end.
- xxi. Mr Grierson was in further email correspondence with the respondent for some time from 28 November 2021 onwards stating that he would end his tenancy if a further £375 was paid to the applicants. He sent an email to the respondent on 9 December 2021 stating that he was terminating his tenancy of the property and owed no further money to the respondent. The email did not state the date on which his tenancy was to end.
- xxii. The property was advertised for rental on the Open Rent website and had been taken off the market by 14 December 2021.
- xxiii. The respondent entered into a new tenancy agreement for the property with new tenants commencing on 30 December 2021.
- xxiv. The applicants returned to Scotland on or around 2 February 2022.

The applicants' submissions

23. Mrs Leung told the tribunal that the applicants had a good relationship with Mr Dadon for the first few months of their tenancy. He had agreed that they could continue their tenancy at a reduced rent while they were abroad, as set out in their emails of 25 October 2021. His attitude had changed, however, after he had been contacted by their previous landlord. Shortly after they had reached agreement on the reduced rent during their time abroad, he had begun calling them and saying that they owed him rent. The applicants disputed that they were in rent arrears and submitted that Mr Dadon would not have agreed in writing to the reduced rent while they were abroad if the rent had not been up to date.
24. Mrs Leung said that she believed Mr Dadon wanted to renege on their agreement after the previous landlord had contacted him, as he had decided they were 'trouble' and wished to remove them from the property. The applicants had always intended to return in February / March 2021 and had made this clear to Mr Dadon.
25. She said that a few days after the applicants had travelled to the USA and had received the NTL, she had received a phone call from an unknown private number (which she suspected may have been from the electrician used by the landlord) to say that the locks to the property had been changed. She had taken advice from Shelter, who advised that this was a criminal offence.
26. The tribunal chairperson asked Mrs Leung why she believed the applicants had been misled by the respondent into leaving the property. Mrs Leung said that the applicants believed Mr Dadon had been single for some time, that the story about his having a partner from whom he had split was untrue and that there was no evidence to back this up. The photographs of him together with his former employee, Ms Rona Lawrie, whom he claimed to have been in a relationship with for four years, did not prove anything. The applicants asked why, if they had reconciled in December 2021, as the respondent had stated, Ms Lawrie had not provided affidavit or witness evidence to the tribunal.
27. The applicants also did not believe that Mr Dadon had ever been homeless and stated that he owned at least 25 other properties, including another property in the same street at 31 Oldmill Road, Aberdeen. Shelter had told her that the ground (ground 4) stated in the NTL used had the shortest notice period. They therefore believed that the information in the NTL was false. They also believed that the locks had been changed because Mr Dadon thought they would not bother coming back. The property had been taken off the rental market by 14 December 2021 and new tenants were in the property on 30

December 2021. Even if Mr Dadon had lived in the property, he could not have been there for very long.

28. The tribunal chairperson observed that the applicants had taken advice from Shelter, and that there were before the tribunal various emails from the applicants suggesting that they knew their rights and were familiar with the First-tier Tribunal and its process. Given this, she asked why if the applicants intended to come back, they had decided to end their tenancy, given that: 1) the NTL did not expire until 7 February 2022 (which was after they returned to Scotland) and 2) they knew that if they did not give notice themselves, the respondent would have had to raise tribunal proceedings for eviction.
29. Mrs Leung said the applicants had given notice because they were receiving unpleasant and aggressive phone calls and emails from Mr Dadon. She alleged that he had suggested in these calls that the police may become involved as a result of their non-payment of rent. Mr Grierson was initially reluctant to give up the tenancy and was receiving calls and emails from the respondent stating that as the other applicants had given up the tenancy, he would have to pay all of the rent if he stayed on. The respondent knew that Mr Grierson was vulnerable with both mental and physical health issues and had recently lost two brothers. Mr Grierson himself told the tribunal that he had felt very vulnerable at this time.
30. The applicants were concerned that they may not be able to get back into the house if the locks had been changed. Because they were overseas and given Mr Grierson's situation and the trauma this was causing him, they decided to give up the tenancy.
31. The tribunal chairperson asked Mrs Leung about the various emails produced by the respondent which showed that the applicants had offered to give up their tenancy in return for the repayment of their deposit and cancellation of any debts, both before and after the NTL was received. She replied that Mr Dadon had asked for the keys, but they would not give these up before their deposit was returned. She said that before the applicants had left for the USA, they had been thinking about giving up the tenancy due to Mr Dadon's behaviour. Mr Leung said that the applicants had received a lot of phone calls from him telling them to get out. They did not know what to do and had therefore decided not to give up the tenancy before leaving.
32. Mrs Leung then submitted that the application concerned Mr Dadon having sent the applicants a wrongful notice to leave, regardless of anything the applicants may have done. Mr Dadon had bullied them after he had spoken to their previous landlord, as demonstrated by the voice clip they had produced in

evidence. Mr Leung added that the applicants all felt under pressure at that point and were coerced into giving up their tenancy. Mr Grierson added that the applicants would not have gone to the trouble of arranging a contract with Mr Dadon which stated that they would come back if they had intended to leave the property. Mrs Leung said that they would not have left so many of their belongings in the property had they intended to leave.

33. When asked by the tribunal chairperson when the applicants believed their tenancy had ended, Mrs Leung initially said that she believed this to have been when the keys were sent back, but then pointed out that Mr Grierson had not given notice until after this. The tenancy therefore would have ended on around 10th December 2021.

34. Mrs Leung said that the applicants sought a wrongful termination order requiring the respondent to pay them £2250, representing three months' rent, which they believed to be a reasonable sum.

The respondent's submissions

35. Mr Dadon had told the tribunal at the CMD that he agreed that the applicants had already told him that they owed money to the previous landlord and expected that landlord to pursue them. He agreed that he had indicated to the applicants that any issue with the previous landlord was none of his business. He said that the applicants had later tried to blackmail him, sending him emails stating that if he wanted the keys, he would have to pay them. They wanted their deposit back, even though he said they owed him £2500 in rent (which the applicants disputed).

36. He also told the tribunal that soon after the applicants went to the USA, he had split up with his partner and had nowhere to live. He had sent the NTL because he needed to live in the property himself. He could not live in the property at 31 Oldmill Road as the applicants had suggested. While it was empty at the time, he had already taken a deposit from new tenants, which was lodged with Safe Deposits Scotland on 2 December 2021. He had reconciled with his partner shortly before Christmas, and new tenants had moved into the property on 30 December 2021.

37. Mr Dadon denied that he owned many other properties. He said that the company owned a lot of properties, but that he personally was on a salary. The property was the only place available to him at the time. When the tribunal asked him what he would have done had the applicants not vacated the property until 4 February 2022, the date stated in the NTL, he said that he would have stayed with a friend. He said that he could provide evidence of the grounds stated in the NTL if necessary. The tribunal directed the

respondent to provide further evidence of this in its direction of 22 June 2022. Various submissions including photographs and letters/emails from friends of Mr Dadon regarding the alleged relationship were submitted by the respondent prior to the hearing.

38. At the hearing, Miss Ritchie said that the respondent had nothing to add to the evidence which it had already provided. She said that the locks were never changed, and the respondent had advised the applicants of this in an email of 10 November 2021, which was before the tribunal. The applicants had not proved that they did not owe rent to the respondent. Neither had they produced any proof that the respondent owned other properties, although she also said, in contradiction to this, that the respondent's other properties were all occupied at the time the NTL was sent. All three applicants admitted that they had given up the tenancy voluntarily. She believed that this superseded the NTL. The respondent considered that the tenancy had ended on 9 December 2021, as the applicants were no longer living at the property and had sent the keys back.
39. She submitted that the applicants were not misled or coerced into giving up the tenancy, and that they were "playing the system" and trying to get as much money as they could from the respondent. She said that the evidence produced by the respondent in response to the tribunal's direction proved beyond doubt that Mr Dadon and Ms Lawrie had been in a relationship for four years, although she could not comment on whether they were now reconciled. She asked the tribunal to make a decision on the basis of all the information before it and declined to make a submission as to the amount which the respondent should be required to pay should the tribunal decide to make a wrongful termination order.

The relevant law

40. As no eviction order had been granted in this case, the question before the tribunal was whether there had been a wrongful termination of the private residential tenancy without an eviction order, in terms of section 58 of the 2016 Act. This section states:

58. (1) This section applies where a private residential tenancy had been brought to an end in accordance with section 50.

(2) An application for a wrongful termination order may be made to the First-tier tribunal by a person who was immediately before the tenancy ended either the tenant or a joint tenant under the tenancy ("the former tenant")

(3) The Tribunal may make a wrongful termination order if it finds that the former tenant was misled into ceasing to occupy the let property by the person who was the landlord under the tenancy immediately before it was brought to an end.

41. Section 50 of the 2016 Act, which is headed “consensual termination” states:

50 Termination by notice to leave and tenant leaving

- (1) A tenancy which is a private residential tenancy comes to an end if –
 - (a) The tenant has received a notice to leave from the landlord; and*
 - (b) The tenant has ceased to occupy the let property**

- (2) A tenancy comes to an end under subsection (1) on the later of –
 - (a) the day specified in the notice to leave in accordance with section 62 (1)*
 - (b), or*
 - (b) The day on which the tenant ceases to occupy the let property.**

- (3) For the avoidance of doubt, a tenancy which comes to an end under subsection (1) may be brought to an end earlier in accordance with section 48.*

42. Section 48(1) of the 2016 Act states:

48 Tenant’s ability to bring tenancy to an end

- (1) A tenant may bring to an end a tenancy which is a private residential tenancy by giving the landlord a notice which fulfils the requirements described in section 49.*

- (2) A tenancy comes to an end in accordance with subsection (1) on the day on which the notice states (in whatever terms) that it is to come to an end.*

43. Section 49 (1) states that a notice fulfils the requirements referred to in section 48 (1) if-

- a) it is given-
 - (i) freely and without coercion of any kind,*
 - (ii) after the tenant begins occupying the let property**
- (b) it is in writing, and*
- (c) it states as the day on which the tenancy is to end a day that is after the last day of the minimum notice period.*

The ‘minimum notice period’ is defined in section 49(3) as a period which-

- (a) begins on the day the notice is received by the landlord, and*
- (b) ends on the day falling –
 - (i) such number of days after it begins as the landlord and tenant have validly agreed between them, or**

(ii) if there is no such valid agreement, 28 days after it begins.

Reasons for the decision

44. Firstly, the tribunal determined that the tenancy had been brought to an end in terms of section 50 (1) of the 2016 Act. The applicants had received a NTL from the respondent on 4 November 2021. They had also ceased to occupy the let property. It was less clear, however, *when* the tenancy had come to an end in terms of section 50(2) of the 2016 Act. While the applicants had not physically occupied the property after 4 November 2021, they had a written agreement with the respondent that they would return to the property in February or March 2022 and that it was understood that the tenancy / property had not been abandoned during their absence. On that basis, it appears that the tenancy subsisted following their departure for the USA.
45. In terms of section 50 (2), the tenancy did not come to an end until the later of the date stated in the NTL (4 February 2022) or the day on which the applicants ceased to occupy the property. The latter date is not clear, given that the applicants had not physically occupied the property since 4 November 2021. Both parties appeared to think that the tenancy ended on or around 9 December 2021, the date when Mr Grierson indicated in writing that he intended to give up the tenancy, being the last of the three applicants to do so.
46. In terms of section 58(3), the tenancy could be brought to an end earlier than the date stated in the NTL (or when the applicants ceased to occupy the property, whenever that might be) in accordance with section 48 of the 2016 Act. Section 48 provides that a tenant may bring a private residential tenancy to an end by giving the landlord a notice which fulfils the requirements described in section 49. One of those requirements (section 49 (1) (a) (i)) is that the notice was given freely and without coercion of any kind, which the applicants here might dispute. Another requirement (section 49 (1) (c)) is that the notice states as the day on which the tenancy is to end a day that is after the last day of the minimum notice period. No date appears to have been stated by either party or agreed in writing between them, in terms of section 48 (2). The notices sent by the applicants did not therefore comply with the requirements of section 49.
47. It is therefore not entirely clear when the tenancy actually came to an end, particularly as the applicants were no longer living in the property. However, it appears to the tribunal that it is likely that the tenancy did not end until the date specified in the notice to leave i.e. 4 February 2022. Even had the 28-day minimum notice period applied here, it is clear that the property was advertised for rent and re-let before such a minimum notice period had expired.

48. In light of this, it appears to the tribunal that the applicants may have been unlawfully evicted by the respondent. It appeared to the tribunal at the CMD and the hearing that the applicants may have confused wrongful termination of the tenancy with unlawful eviction. The tribunal does not make a determination as to whether the applicants were unlawfully evicted by the respondent, as that was not the question before it in relation to this application. The present application is for a wrongful termination order. The question before the tribunal was whether the applicants were misled into ceasing to occupy the property by the respondent, which was the landlord under the tenancy immediately before it was brought to an end.
49. It was clear that the relationship between the parties had deteriorated following the contact from the previous landlord. On the basis of the evidence before the tribunal, communication between the parties became more difficult, strained and inflammatory.
50. It appears on the basis of the evidence before the tribunal that, after he was contacted by the applicants' previous landlord, Mr Dadon wished to find a way of ensuring that the applicants left their tenancy. The tribunal was not persuaded by the evidence produced by the respondent to support the eviction ground stated in the NTL, consisting of a number of photographs of Mr Dadon with his former employee Ms Lawrie, and letters/emails from several friends/colleagues of Mr Dadon stating that he and Ms Lawrie had been in a relationship for four years and had to move out when they split up. No evidence from Ms Lawrie herself was produced, despite the fact that they had allegedly since reconciled, and no factual evidence was provided regarding their alleged cohabitation arrangements. It appeared that the relationship had ended at almost exactly the same time as Mr Dadon had been contacted by the applicants' previous landlord.
51. As the applicants pointed out, ground 4 was at the time an eviction ground with one of the shortest notice periods, being three months as opposed to six months for rent arrears. The tribunal also notes that, while the distinction between the two did not always appear to be recognised or understood by either the applicants or the respondent's representatives, the landlord and respondent in relation to the application is Brighter Morn Enterprises Ltd, not Mr Dadon as an individual. The tribunal finds it very strange that a company would use an eviction ground which could only apply to an individual.
52. The tribunal therefore agrees with the applicants that on the balance of probabilities the ground stated in the NTL was not genuine and was used in an attempt to remove the applicants from the tenancy as soon as possible. The tribunal also observes that it appears that the respondent may not have complied with its legal obligations as landlord in relation to the termination of the tenancy.

53. The question before the tribunal, however, was not whether the NTL was genuine. Nor was the question as to whether the respondent complied with its legal obligations as a landlord in relation to ending the tenancy before the tribunal. The question before the tribunal was whether the applicants had been misled into ceasing to occupy the property by the respondent, Brighter Morn Enterprises Ltd.
54. On 26 October 2021, more than a week before the applicants left for the USA and before the NTL was sent, Mrs Leung sent the respondent an email signed by all three applicants offering to surrender their tenancy and stating that they would not take an application to the First-tier Tribunal if he gave them their £750 deposit back. She said that she would then instruct Safe Deposits Scotland to release the deposit they held to the respondent. In the same email, she stated that she had taken advice from Shelter and Aberdeen City Council and was aware that six months' notice must be given by a landlord to the tenants if they wished to evict on arrears grounds. She said that given the tenants must be in three months arrears before the landlord could give notice, the whole process would take about a year, and that: "*None of us wish to go down that route*".
55. In a further email sent to the respondent on the same date, Mrs Leung said that if they agreed to this, the applicants would give the keys back before travelling to the USA. There followed several further emails on 1 November 2021, in which Mrs Leung reiterated the applicants' "*offer*" and stated that if this was not accepted, the applicants would make a complaint to the First-tier Tribunal and would refuse the respondent access to the property until their return.
56. In its direction of 22 June 2022, the tribunal directed the applicants to provide written representations setting out why they considered that they were misled into ceasing to occupy the property by the respondent, given that they appeared to have sent several emails to the respondent prior to the date when the NTL was sent, apparently offering to give up their tenancy in return for repayment of their deposit. The applicants did not, however, appear to have addressed this issue in any of the written representations submitted by them prior to the hearing.
57. It later became apparent from further submissions by the respondent received before the hearing that the applicants had continued to send a number of similar emails to the respondent *after* receiving the NTL. When asked about these emails at the hearing, the applicants did not dispute that they had sent these to the respondent.
58. In an email of 5 November 2022, for example, Mrs Leung said:

“I’ve just noticed the notice.

Very odd, only the other week Mr Dadon sat down and told us he was single. And as to homeless and needing a flat to live in! A portfolio landlord with 25 different properties and homes in Israel. That ground is weak and will never work.

Anyway we gave him the opportunity to walk away and he never took it. The offer still stands. Our complaint to the First Tier Tribunal is not submitted yet. So if he agreed to the deposit amount back to us then when we return in Feruary we will collect our stuff and go. End of.”

59. In a further email to the respondent on 7 November 2022, Mr Grierson stated:

“Being the expert that I am with the First Tier Tribunal Mr Dadon is wasting his time and money because the application will be rejected as he is a portfolio landlord with many properties and I’m mentally and physically disabled and Mr Leung’s son is an Aberdeen journalist, It wouldn’t look good in the newspaper.

Anyway we have offered Mr Dadon a way out so hopefully he’ll take it and all parties can move on.”

60. There were a number of other emails from the applicants in a similar vein. In light of these emails, it is clear that the applicants had taken advice about their rights as tenants and were familiar, or considered themselves to be familiar, with the First-tier Tribunal’s processes.

61. Prior to receiving the NTL, the applicants effectively threatened the respondent with tribunal proceedings if it did not accede to their demands. This was not behaviour that might have been expected of tenants who did not owe rent arrears and were feeling coerced and threatened by their landlord. Once they had received the NTL, they clearly did not believe that the respondent had strong or believable grounds for eviction. They also continued to make threats of a tribunal application for compensation if the respondent did not pay them back half of their deposit and cancel any rent arrears due.

62. Mr Grierson continued to hold out for the other half of the deposit to be paid before he would agree to end his tenancy. There was email evidence to support the applicants’ claim that the respondent had told him that if he stayed, he would become liable for the whole rent and the arrears owed. There were also, however, emails from Mrs Leung to the respondent dated 2 November 2021 and from Mr Grierson dated 19 November 2021 stating that Mr Grierson had secured another property in Aberdeen (although this apparently later fell through) but intended to keep his tenancy at the property until an agreement was reached regarding the deposit. While the tribunal accepts that this was a

very difficult time for Mr Grierson personally, it is difficult to conclude that he was coerced into giving up his tenancy on the basis of this evidence.

63. The legal test in relation to section 58 of the 2016 Act is in any case not whether the tenant was *coerced* into ending their tenancy, but whether they were *misled* into doing so. For the reasons set out above, while the tribunal considers that the respondent did not behave appropriately as a landlord and may in fact have acted unlawfully, it is difficult to conclude that the applicants were misled into leaving the property as a result of receiving the NTL.

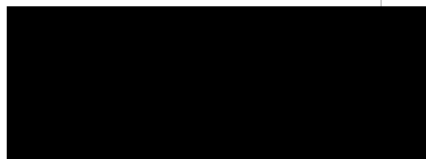
64. They applicants were clearly well aware that they did not have to leave the tenancy once they received the NTL. They were equally clearly unconvinced as to the veracity of the stated eviction ground and must have been aware that any eviction proceedings could be defended on that basis. Yet they chose to give up their tenancy in return for money and the cancellation of any outstanding rent arrears accrued by them. The tribunal is not persuaded on the basis of the evidence before it that the applicants were misled by the respondent into ceasing to occupy the property.

Decision

The tribunal determines that the applicants were not misled into ceasing to occupy the property by the respondent. The tribunal therefore refuses the application.

Right of Appeal

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



Legal Member/Chair

25 August 2022

Date