

**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/22/1534**

**Re: Property at 10 Glendevon Drive, Stirling, FK8 1FG (“the Property”)**

**Parties:**

**Ms Paulina Porubska, 2 South Hirn, Crathes, Banchory, AB31 5QT (“the Applicant”)**

**Mr Siya Yadav, 54 Canmore Street, Glasgow, G31 4PU (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Wrongful Termination Order is granted against the Respondent in favour of the Applicant in the sum of NINE HUNDRED POUNDS (£900) STERLING.**

- Background
  1. An application was submitted to the Tribunal under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) seeking a Wrongful Termination Order under section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) on the basis that the Applicant was misled into ceasing to occupy the Property by the Respondent.
  2. A Case Management Discussion (“CMD”) took place on 16 August 2022 by way of conference call. The Applicant was personally present and represented by Mr Stewart, a lay representative. The Respondent did not appear, but was represented by Mr Malhotra, a lay representative.

3. The Applicant's representative moved for a Wrongful Termination Order to be granted in a sum of up to £1800, being the maximum award which could be made under s59 of the 2016 Act. The Applicant rented one bedroom in the Property, which had a total of 3 bedrooms. The Applicant was served with a Notice to Leave which relied on Ground 4 of Schedule 3 to the 2016 Act, in that the Landlord intends to move into the Property as their only or principal home for a period of at least three months. This Notice to Leave was hand-delivered by the Landlord. The Applicant found alternative accommodation which was scarce in Stirling at that time, and moved out of the Property approximately one month prior to the expiry date on the Notice to Leave. The other two tenants in the Property remained and as far as she was aware, had not been served with a Notice to Leave. The Applicant submitted that the landlord never intended to move into the Property, nor did he do so. Prior to moving out, the Landlord contacted the Applicant and asked her to agree for a viewing to take place by a new tenant. It was also submitted that the Applicant had raised a previous application against the Respondent under Rule 103 of the Rules, for his failure to lodge her deposit securely within a relevant tenancy deposit scheme and at that CMD the Landlord had appeared and his address had not been the Property, but instead was 54 Canmore Street, Glasgow.
4. The Applicant submitted that the landlord, Saya Yadav, was male. The Respondent's written submissions referred to the Respondent as being a female, and talked about her husband having moved into the Property. It was submitted by the Applicant that this was not the case. The Applicant had only ever dealt with Mr Saya Yadav and never with a female. Further, it was Mr Saya Yadav (male) who appeared at the CMD for the Rule 103 application and at no point was there a suggestion that the Respondent was in fact female or that he was acting as the landlord's representative.
5. The Respondent's representative submitted that Saya Yadav was female and that her husband, Sonu Yadav, acted as her representative for tenancy matters. It was submitted by Mr Malhotra initially that the Notice to Leave had not been served on any specific ground, and that it simply listed all of the grounds available under Schedule 3 to the 2016 Act. This position then appeared to change to the Notice to Leave being reliant on Ground 5, where a member of the Landlord's family (in this case, her husband) intended to live in the Property. Mr Malhotra did not appear to have a clear idea as to what the Notice to Leave served by the Respondent said, or which ground was being relied upon. It was submitted that the Notice to Leave had been sent by email and that a copy could be obtained to clarify matters. It was submitted that the Respondent's husband had moved into the Property for a three month period to lessen his travelling time between his previous home and restaurant, in poor weather. It was submitted that he spent most of his time there during that period and that the Property was his "only or principal home" during that 3 month period. It was also submitted that the Applicant was not subjected to undue distress or hardship by having to move, that she didn't have to move many belongings as she was only occupying one room, and that at the time she moved her exams would have been finished and her holidays about to start. It was submitted that a Wrongful Termination Order should not be granted.

6. The CMD was adjourned and a Hearing fixed for evidence to be heard.

7. The tribunal, issued a Direction to parties in the following terms:

The Respondent is required to provide:

- (i) A scanned copy of either their passport or driving licence, to be sent by email, which must be lodged with the Chamber no later than 14 days prior to the Hearing. Thereafter, the Respondent must attend the Hearing personally with the original piece of photographic identification in order that this can be verified by the Tribunal in person;
- (ii) A copy of the Notice to Leave and the email within which it was sent to the Applicant, which must be lodged with the Chamber no later than 14 days prior to the Hearing.

The Applicant is required to provide:

- (iii) A colour copy of the Notice to Leave served on them by the Respondent, which must be lodged with the Chamber no later than 14 days prior to the Hearing.

The Applicant and Respondent are each required to provide:

- (iv) An inventory of all documents being relied upon at the Hearing and which must include a paginated and indexed inventory, together with a copy of all such documents and which must be numbered accordingly. The said documentation must be lodged with the Chamber no later than 14 days prior to the Hearing.
- (v) A Witness List which must be lodged with the Chamber no later than 14 days prior to the Hearing.

- The Hearing

8. An in-person Hearing took place on 17 October 2022, in Glasgow. The Applicant was personally present and again represented by Mr Stewart, a lay representative. The Respondent was personally present and represented by Mr Malhotra, a lay representative.

9. Prior to the Hearing commencing, the Respondent produced her passport which confirmed that she was Siya Yadav.

### **The Applicant's case**

10. The Applicant submitted that she had been served with a notice to leave on 3 November 2021. The notice to leave was served on the basis of Ground 4 of Schedule 3 to the 2016 Act, in that the landlord intended to live in the Property as their only or principal home. The Applicant submitted that, as far as she had

been led to believe, the landlord was male. The Applicant submitted that at no point had Mr Yadav indicated that he was acting as agent on behalf of his wife, the landlord.

11. The Applicant submitted that there had been a previous tribunal hearing in respect of a claim by the Applicant for the landlord's failure to lodge a deposit in a tenancy deposit scheme. The case reference was FTS/HPC/PR/22/0836. Said application was raised against Siya Yadav and it was Mr Yadav who appeared at the case management discussion. At no point during that case management discussion did Mr Yadav indicate that he was not the landlord and was instead acting as an agent. The Applicant submitted that Mr Yadav held himself out to be the landlord of the Property, and as being Siya Yadav, during the course of that application. At no point during the case management discussion in that application was Mr Yadav's wife mentioned. The case was dealt with by way of telephone conference. The case management discussion took place on the 1st of June 2022. The tribunal awarded the Applicant the sum of £400, which was paid by the landlord to the Applicant.
12. The Applicant submitted that she saw the Property advertised online. She called the telephone number listed and it was Mr Yadav who answered. The Applicant submitted that when she made enquiries about the Property, she was told that it was a student flat but that there was one chef living there who was working in the landlord's restaurant. All communications were had with Mr Yadav and at no point was Mrs Yadav ever in communication with them nor was she mentioned. At no point did Mr Yadav indicate that he did not own the Property. At no point did Mr Yadav indicate that he was not the landlord of the Property. At no point did Mr Yadav indicate that he was acting as agent on behalf of the true landlord. It was submitted that Mr Yadav presented himself as Siya Yadav. The first time that the Applicant learned that the landlord of the Property was in fact female was at the CMD when the Respondent's representative advised that Siya Yadav was female.
13. The Applicant submitted that following receipt of the notice to leave, she required to obtain alternative accommodation. She suffered substantial financial and psychological stress. It was very difficult to obtain suitable alternative accommodation. Accommodation in Stirling for students is very competitive. This caused significant disruption to her studies, and it happened during an exam period. She was in her third year of university and 50% of her final degree qualification was based on that year's exam results. She managed to obtain alternative accommodation to which she moved, but at a higher rent.
14. The Applicant submitted that at the CMD, the Respondent's representative stated that the landlord had not served the notice to leave on any specific ground. However, the notice to leave served on the Applicant stated that ground 4 under schedule 3 to the 2016 Act was being relied on, in that the landlord intended to live in the Property as their only or principal home. This ground was the only ground which was printed in red. The remaining grounds were printed in black.

15. The Applicant submitted that she moved into the Property in August 2021 and then received a notice to leave at the start of November 2021. Mr Yadav handed the notice to leave to the Applicant personally. Mr Yadav indicated to the Applicant at that time that he wanted to live in the Property and that she should move out. It took a lot of effort to find new accommodation at that point in time and she faced financial constraints and university pressures. A short time after, Mr Yadav called the Applicant and said that another tenant was coming to see the Property. The Applicant submitted that this was not what she had been told before, as Mr Yadav had indicated that he wanted to live there. There were two other tenants living in the Property, neither of whom were served with a notice to leave. When the Applicant moved out, the other two tenants were still living there.
16. The Applicant submitted that Mr Yadav did not move into the Property to occupy as his only or principal home. Neighbours had told the Applicant that two postgraduate students had moved in after she left.
17. The Applicant submitted that she required a reference for her new property. She contacted Mr Yadav who indicated that she should meet him in his restaurant so that he could sign a statement that she was a good tenant. Mr Yadav signed that statement as "Siya Yadav". Both the Applicant and her representative witnessed Mr Yadav signing in this name. The Applicant moved out of the Property on the 22 December 2021. Shortly thereafter, she flew home to Slovakia to spend Christmas with her family. She needed to obtain alternative accommodation prior to going home to Slovakia. She returned to Scotland after Christmas and resumed her studies.
18. The Applicant submitted that at the CMD, the Respondent's representative had said that the notice to leave was issued by Mrs Yadav. At that point, he had stated that the notice to leave had been emailed to the Applicant. This was not the case. It had been served by Mr Yadav and done so in person.
19. The Applicant submitted that it did not make sense that the Respondent's position was that Mr Yadav required to move into the Property in order to avoid travelling to and from his restaurant in harsh weather conditions. Notice to leave was served in November 2021. Her three months' notice took her to February 2022. The worst of the weather would be over by then. There had been another tenant who moved out and went home to India prior to that. Mr Yadav found a new tenant who moved in approximately a month before the notice to leave was served on the Applicant. The Applicant submitted that it made no sense for Mr Yadav to move a new tenant in October 2021 if there was indeed an intention for him or his wife to move into the Property. The Applicant submitted that it would have made more sense for Mr Yadav to have moved into the room which became vacant in October 2021.
20. The Applicant submitted that the Respondent's written submissions which stated that she was too young to have been caused any distress were bizarre. The Applicant submitted that distress can be caused to anybody at any age.

21. The Applicant submitted that following receipt of the notice to leave, Mr Yadav indicated that he was looking for a new tenant for her particular room and he asked her if she had anyone who would be looking to lease the room. The Applicant submitted that this did not tie in with the Respondent's position that he would be moving into the Property to occupy as his only or principal home.
22. The Applicant confirmed that she was paying £300 per month rent to Mr Yadav. The new accommodation that she secured had a monthly rent of £775. In order to secure the new accommodation, she required to move into it prior to the notice to leave expiring and accordingly incurred double rent for a period of one month.

### **The Respondent's case**

23. The Respondent did not give any evidence to the tribunal at the Hearing. The Respondent was personally present during the course of the hearing but did not speak nor answer any questions directly. The Respondent's representative advised that the Respondent would not be giving any evidence and that he would object to any questions being put to her directly.
24. The Respondent's representative submitted that "Mr Siya Yadav" as narrated on the application as Respondent, does not exist. His client was "Mrs Siya Yadav" and on that basis, it was submitted that there is no case against Mrs Yadav as she was not named on the application. The Respondent's representative submitted that there is no case to answer and that the application should be dismissed on that basis. The Respondent's representative submitted that there was another decision from Glasgow Sheriff Court on this particular point and which should be followed, but no details of same, nor case reference nor citation could be provided.
25. The Respondent's representative referred to the notice to leave which had been lodged by the Applicant, and the particular ground (ground 4) which was referred to as being in red. It was submitted that Mr Yadav is a restaurant owner and does not own a red pen. On that basis, he did not underline that particular ground as he did not have the tools to do so. When the tribunal highlighted to the Respondent's representative that this was not a handwritten notice with a ground underlined in red, but instead a notice printed from a computer with the font of that ground in red, the Respondent's representative submitted that the Applicant had fabricated that particular part of the notice to leave and highlighted it in red on their own computer. The Respondent's representative was unable to produce any alternative notice to leave which he considered had been served by the Respondent.
26. The Respondent's representative submitted that the landlord had not highlighted any particular ground being relied upon. It was submitted that the emergency covid legislation allowed the Respondent to serve a notice to leave on that basis. No specific legislative references were referred to, to establish this position. It was submitted that the landlord intended to rely on both grounds 4 and 5 under schedule 3 to the 2016 Act, being that both the landlord and the landlord's spouse intended to move into the Property as their principal home.

27. The Respondent's representative submitted that Mr Yadav moved into the Property after the Applicant had moved out and he stayed there himself. No other tenants moved in after the Applicant left. It was submitted that Mrs Yadav also intended to move into the Property to live there with her husband, but was unable to do so due to the ill health of their young child.
28. The Respondent's representative submitted that no evidence had been led by the Applicant to demonstrate how any distress had been caused to her. It was submitted that the Applicant's boyfriend should have helped her pack her boxes and move her things and that this would have alleviated any stress. It was submitted that no medical evidence had been lodged as regards having to consult her GP for advice or seek medical assistance.
29. The Respondent's representative submitted that he has dealt with many cases before the Financial Ombudsman Service and where they have defined circumstances within which compensation can be granted. It was submitted that none of those circumstances applied here. No specific cases were referred to, nor any defined circumstances referred not, nor any argument given us to how those cases specifically aligned with the application being dealt with by the Tribunal.
30. The Respondent's representative submitted that Mr Yadav owns a restaurant in Stirling. Mr and Mrs Yadav wanted to buy a property nearby so that their employees could stay in the property if they were working late nights. The main purpose of purchasing the Property was to rent out to the restaurant's employees. The Respondent's representative advised that he had no knowledge of how it came about that the Property was advertised for let to the Applicant as a student.
31. It was submitted that Mr Yadav carries out the day-to-day management of the Property for his wife and often will ask an employee of the restaurant to check on the Property where required. No formal letting agent has been appointed to the Property and any management is carried out by the family.
32. The Respondent's representative submitted that following the Applicant's departure from the Property, Mr Yadav moved into the Property to sleep at night. After two months, the entire family travelled to India. It was submitted that Mr Yadav stayed in the Property "whenever he needed to be safe", for example late at night or in bad weather. It was submitted that otherwise he would "go home" and stay with his wife and children. It was submitted that Mr Yadav's principal home was the Property. The Respondent's representative submitted that the definition of "principal home" is where a person spends most of their time. No specific legislation nor case law was referred to on this point. It was submitted that Mr Yadav would sleep in the Property from 12am until 12 noon and therefore most of his time for that two-month period was spent in the Property. It was submitted that it was Mrs Yadav's intention to move into the Property with her husband, but that intentions can change according to

circumstances. Her circumstances changed in that her six-month-old child required medical attention in Glasgow.

33. It was submitted that the Applicant had no case to make for any compensation to be awarded in her favour. It was submitted that the Applicant moved out of the Property prior to the expiry of the three months notice period given under the notice to leave and accordingly had chosen to leave of her own accord. It was submitted that the Applicant did not remove herself from the Property as a result of service of the notice to leave. It was submitted that it was her intention to vacate the Property in order to go back to Slovakia.

34. The Respondent's representative submitted that the Applicant and her partner, were living together in the Property. On that basis, there was no urgency for the Applicant to go and look for alternative accommodation as she had decided to take a joint tenancy with her partner. It was submitted that it was as much her partner's responsibility to look for accommodation as was the Applicant's. It was submitted that her partner "was there to look after her" and therefore could have taken on the burden of seeking alternative accommodation.

- Findings in Fact

35. The tribunal made the following findings in fact:

- (i) Mrs Siya Yadav is the heritable proprietor and landlord of the Property;
- (ii) Mrs Siya Yadav's husband, Sonu Yadav, acted as agent for his wife without disclosing same to the Applicant;
- (iii) Mr Sonu Yadav held himself out as being Siya Yadav and as being landlord of the Property;
- (iv) The parties entered into a private residential tenancy agreement which commenced 1 August 2021 and terminated 22 December 2021;
- (v) A notice to leave was served on the Applicant which sought to rely on Ground 4 under Schedule 3 to the 2016 Act, being the ground whereby the landlord intends to occupy same as their only or principal home for a period of at least three months;
- (vi) The landlord did not move into the Property nor occupy it as their only principal home;
- (vii) The landlord did not intend to move into the Property nor occupy it as their only or principal home for a period of at least three months;
- (viii) The Applicant was misled into ceasing to occupy the Property as a result of service of the notice to leave.

- Reasons for Decision

36. The tribunal found the Applicant's evidence to be both credible and reliable. The tribunal heard no evidence from the Respondent.

37. The tribunal found the Respondent's representative's submissions to be often vague, confusing and illogical. At the CMD, the Respondent's representative submitted that the notice to leave had been served on the Applicant by e-mail. It was also submitted at the CMD that the notice had not been served on any



particular ground, and instead that the notice was served on all of the grounds contained within schedule three to the 2016 Act and that it was at the Respondent's discretion to decide which particular ground she wanted to rely upon at a later date. At the hearing, this position changed. The Respondent's representative submitted at one point that four grounds were being relied upon in the notice to leave. These were the grounds that required three months' notice and specified as such in the notice: Ground 4, being that the landlord intends to live in the let property; Ground 5, being that a member of the landlord's family intends to live in the let property; Ground 16, being that the landlord has had their registration refused or revoked; and Ground 17 being that the landlord's HMO licence had been revoked or renewal refused. When asked for clarification by the tribunal as to why the landlord would be seeking to rely on Grounds 16 or 17, the Respondent's representative again changed position and stated that they were only seeking to rely on grounds 4 and 5. No explanation could be given as to how those grounds could be identified as both being relied upon if both were not highlighted to the Applicant in some way. The Respondent's representative submitted that the red highlighting of Ground 4 in the notice to leave was fabricated by the Applicant. This was after the Respondent's representative had submitted that the Respondent could not have highlighted the ground in red because the Respondent did not own a red pen. The Respondent's representative was unable to produce any alternative notice to leave which he considered had been served by the Respondent. The Respondent's representative's submissions in this regard changed multiple times. He was muddled and unclear, and the tribunal was not persuaded by these submissions at all.

38. The tribunal was also not persuaded by the submissions of the Respondent's representative in that both the Respondent and her husband intended to move into the Property together. This was a 3-bedroom property with two of the bedrooms already rented out to other tenants. Mr and Mrs Yadav have two young children. The position put to the tribunal that Mr and Mrs Yadav intended to move into one bedroom of a property, shared common areas with the other two tenants, alongside their two young children, was not credible. No evidence was presented by the Respondent as to any preparations that had been made for schooling, health, education or otherwise in respect of the children's move to the Property. The tribunal was not satisfied that there was any intention on the part of Mrs Yadav to move into the Property.
39. The tribunal was also not persuaded that Mr Yadav himself had moved into the Property, and that even if he did move in that he did so as his only or principal home. In his own words, the Respondent's representative referred to Mr Yadav occupying the Property but "going home" to stay with his family from time to time. "Home" was clarified by the Respondent's representative to mean 54 Canmore Street, Glasgow. It was also submitted by the Respondent's representative that Mr Yadav occupied the Property for a period of two months prior to the family travelling to India. Accordingly, even if Mr Yadav did occupy the Property, he did not intend to do so for a period of three months given the planned trip to India, which is a requirement in terms of Ground 5.

40. The tribunal was satisfied that being served with a notice to leave on or around a period of university exams would cause distress and anxiety to a tenant. It was submitted by the Respondent's representative that the Applicant, by serving her own notice to leave upon obtaining alternative accommodation, had given away any right to claim that she moved out the Property as a result of service of the notice to leave. The tribunal was not persuaded by this submission. The tribunal was satisfied that the Applicant required to remove from the Property as a direct result of service of the notice to leave. The Applicant obtaining alternative accommodation and removing herself from the Property prior to the expiry of the three month notice period given under that notice to leave did not negate that. It would be entirely impracticable to suggest that where a tenant is served with a notice, that the tenant cannot remove themselves from the Property prior to the date given on the notice, without losing any right to claim wrongful termination under section 58 of the 2016 Act.
41. The tribunal was satisfied that a notice to leave had been served on the Applicant and which relied upon ground 4 under Schedule 3 to 2016 Act. That ground was highlighted in red on the notice to leave served on the tenant by the landlord's husband. The tribunal was satisfied that the notice was hand delivered to the Applicant. The tribunal was satisfied that as a result of delivery of that notice to leave, the Applicant sourced alternative accommodation and ceased to occupy the Property.
42. Ground 4 states:
- “(1) It is an eviction ground that the landlord intends to live in the let property.*
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months.”*
43. There was no evidence put before the tribunal which satisfied it that the landlord had the intention to occupy the Property as her only or principal home for a period of at least three months. The tribunal was not persuaded by the Respondent's submission that the notice to leave was also served on the basis of Ground 5 of Schedule 3 to the 2016 Act, whereby a member of the landlord's family intends to occupy the Property as their only or principal home for a period of at least three months. The notice did not specify same. Accordingly, the Tribunal is satisfied that the Applicant was misled into ceasing to occupy the Property.
44. The Respondent's representative had submitted that as the application had been raised against the Respondent narrated as “Mr Siya Yadav” that the application should be dismissed in its entirety. The Applicant submitted that she would wish to make a motion to amend the application in this regard. The tribunal was satisfied that the Applicant had been misled into believing that Siya Yadav was indeed male, given that the Applicant had no contact whatsoever with the true landlord, Mrs Siya Yadav. The tribunal was satisfied that it was reasonable for the Applicant to consider that Siya Yadav was male, as all contact had taken place with Mr Yadav and at no point had Mr Yadav indicated that he was the landlord's husband or that he was in fact Sonu Yadav. Whilst it

is entirely at the Respondent's choosing to have her husband act as her agent, and manage the Property owned by her on her behalf, any such arrangement should be disclosed to a tenant, so there's no dubiety as to the identity of the parties. The tribunal accordingly will allow the removal of the word "Mr" from the start of the Respondent's name in the application and allow the application to be made against "Siya Yadav". The tribunal was satisfied that this was a reasonable error to make, taking into account the circumstances of the application, the communications had between the parties and the actions of Mr Yadav.

45. The Tribunal was satisfied that a wrongful termination order should be granted in terms of section 58 of the 2016 act.

46. The tribunal was not satisfied, on the basis of the evidence provided, that there was any clear malice intended by either Mr or Mrs Yadav. It seemed clear to the tribunal that the Respondent has no real understanding of her legal obligations as a landlord, and that Mrs Yadav would do well to consider carefully how she enters into, and manages, any future tenancy agreements. Any agency by her husband Mr Yadav, should be fully disclosed to any future tenants to avoid any future misunderstandings. On that basis, the Tribunal was not persuaded that the wrongful termination order should be granted at the highest end of the scale.

- Decision

47. The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondent for payment of the undernoted sum to the Applicant:

Sum of NINE HUNDRED POUNDS (£900) STERLING

## 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.**

F Watson

Legal Member/Chair

Date: 31 October 2022