

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

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 57 of the Private Housing (Tenancies) (Scotland) Act 2016 “The Act”.**

**Chamber Ref: FTS/HPC/PR/22/3991**

**Re: Property at 8/1 Muirhouse Grove, Edinburgh, EH4 4SS (“the Property”)**

**Parties:**

**Miss Louise Muir, 141 Muirhouse Green, Edinburgh, Scotland, EH4 4RA (“the Applicant”)**

**Miss Diane Watt, 74 Crewe Terrace, Edinburgh, Scotland, EH5 2LJ (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refuses the Application.**

**Background**

The Applicant seeks an order under s 57 of the Act on the basis that the Respondent is alleged to have misled the Tribunal into granting an eviction order against the Respondent on 4 May 2022. On that date, the Tribunal granted an Application lodged by the Respondent making an eviction order under ground 5 of Schedule 3 of the Act. It was found that the Respondent’s daughter Holly, intended to live in the Property.

This Application for an order under s 57 of the Act is premised on the fact that the Respondent’s daughter never did move into the Property which was then sold relatively shortly thereafter.

## **The Hearing**

The Tribunal heard evidence in respect of these matters over two days at George House, Edinburgh on 12 April and 20 June 2023. Having done so, the Tribunal finds the following facts established.

## **Findings in Fact**

- I. *The parties entered into a tenancy agreement whereby the Respondent let the Property to the Applicant, originally on a Short -Assured Tenancy that commenced on 1 August 2009;*
- II. *In around 2019, the Applicant had a second child and informed the Respondent that the Property was no longer suitable for her needs and that she required a larger property with three bedrooms. The Property has two bedrooms;*
- III. *The Applicant requested that the Respondent serve her with an eviction notice in order to assist the Applicant's efforts with the council to source a larger property. The Respondent accordingly served a notice under s33 of the Housing (Scotland) Act 1988 along with a notice to quit;*
- IV. *The Applicant however appeared to delay exiting the Property and the Respondent chose not to raise eviction proceedings;*
- V. *In order to avoid any confusion following on from the issuing of the s33 notice and the notice to quit, the parties entered into a fresh tenancy dated 1 August 2019. This was a Private Residential Tenancy under the Act;*
- VI. *Around a year later, The Respondent's daughter, Holly Callaghan, moved out of her property in Drumbrae, Edinburgh after breaking up with her partner. Holly and her son were intending to move into another rented property in a high rise flat close to the Property;*
- VII. *The Respondent and her daughter agreed that If the Applicant moved out of the Property, then Holly would be happy to move into the Property;*
- VIII. *On or around 25 or 26 September 2022, the Respondent delivered a rent increase notice to the Applicant in person and also informed her that her daughter would be moving into the Property and that the Applicant would be provided with six month's notice;*

- IX. *On or around 14 October 2020, the Applicant messaged the Respondent asking to be provided with the relevant notice to leave, again so that she could liaise with the council about finding alternate housing;*
- X. *The Respondent hand delivered the notice to leave to the Applicant on 1 November 2020;*
- XI. *The ground set out in the notice to leave was ground 5- that a member of the landlord's family intended to live in the Property;*
- XII. *The Respondent provided the Applicant with six month's notice instead of the necessary three months;*
- XIII. *At this point the Applicant and her daughter intended that the Applicant's daughter would move into the Property once the Respondent moved out;*
- XIV. *After receiving the notice to leave, the Applicant paid November's rent but failed then to pay the rent due in December. On 6 December 2022, the Respondent messaged the Applicant asking where the rent was for December. The Applicant said she was having issues with her phone and mobile banking and the payment would be there by the end of the week. Before the end of the week, the Applicant then called the Respondent and said that she wouldn't be paying any rent because of other bills that had accrued. The Applicant then blocked the Respondent on the messaging service that they had hitherto used to communicate;*
- XV. *At this point the relationship between the parties deteriorated and it was clear that the Applicant had become hostile to the Respondent. By the expiry of the notice to leave, the Applicant failed to remove herself from the Property;*
- XVI. *At the end of October 2022, the Respondent submitted an application for an eviction order under ground 5 on the basis that the Respondent's daughter intended to move into the Property. The relevant Tribunal took place on 27 May 2022;*
- XVII. *The Applicant failed to attend the Tribunal or submit any representations. The Tribunal at that time found the ground relied on established and made an eviction order. The Applicant did not apply to have that decision recalled or apply for permission to appeal;*
- XVIII. *After the decision was made, and before the Respondent's daughter moved into the Property, the Applicant accosted the Respondent's daughter on the street and threatened to "batter" both the Respondent and her daughter. The Applicant also sent a text to the Respondent which made a thinly veiled threat of attending at the*

*Respondent's daughter's place of work. It was apparent that this would involve the Applicant confronting the Respondent's daughter;*

- XIX. *Around the same time the Respondent received a phone call on her own telephone from an unknown person who asked to speak to the Respondent's partner. This third party made reference to the tenancy issues and then threatened to stab the Respondent's partner;*
- XX. *The Applicant also sent the Respondent abusive, vile and unpleasant messages which made it apparent that she intended to get her own back on the Respondent. These were defiant messages about her deliberate non-payment of rent and made reference to taking the Respondent to "court" about some grievance that was not yet readily identifiable. This Application is likely the realisation of that threat.*
- XXI. *The Respondent and her daughter were perfectly entitled to be alarmed at the Applicant's behaviour;*
- XXII. *Following on from these events, the Respondent and her daughter decided that the Respondent's daughter would not move into the Property. They changed their plans as a natural consequence of the Applicant's behaviour;*
- XXIII. *The Applicant's mother lives directly above the Property and the Respondent and her daughter considered it likely that they might encounter the Applicant if the Respondent's daughter moved into the Property;*
- XXIV. *The Respondent instead resolved to sell the Property and did so with the sale being completed on 19 December 2022;*
- XXV. *The Respondent genuinely intended for her daughter to move into the Property and there is no basis whatsoever for suggesting that she intended to, or ever actually did mislead the Tribunal. Had the Applicant acted reasonably, then it is likely that the Respondent's daughter would have moved in, but the Respondent and her daughter were entitled to alter their plans as a result of the Applicant's threatening behaviour.*

**Note.**

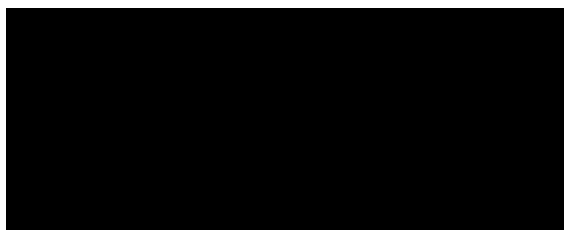
- [1] The Tribunal heard evidence from the Applicant, the Respondent and the Respondent's daughter, Holly Callaghan in respect of these matters. All parties had the opportunity to cross-examine each witness and confirmed that they had been able to present all and any evidence that they wished the Tribunal to take account of. The Applicant lodged very little documentation other than some marketing material that showed that the Property was placed on the market after the original eviction order was made.

- [2] The Respondent produced messages exchanged between the parties, a copy of the tenancy agreement, the notice to leave and the original tribunal documentation. The Tribunal was in no doubt that it had sufficient information on which to base its decision.
- [3] It was apparent that there really was no evidence whatsoever to suggest that the Respondent misled the Tribunal into granting an Eviction Order. The only matter the Applicant could point to was that, as a matter of fact, the Respondent's daughter did not move into the Property which was in fact sold. The entire remainder of the case was premised on innuendo and "fishing" for anything that might come out along the way. The Applicant was represented throughout the proceedings by Granton Information Centre.
- [4] The law the Tribunal considered in assessing the Application was as set out in s57 of the Act. Accordingly, the Tribunal focused its findings on whether or not the Tribunal had been misled into making the previous Eviction Order.
- [5] Both parties raised numerous irrelevant issues in evidence which were of little assistance in resolving this matter. The Applicant was not credible on several key points. She glossed over threats apparently made by her in text messages and appeared to directly instruct her agent to accuse the Respondent of fabricating evidence in these Tribunal proceedings. There was no basis whatsoever for this accusation which left the Tribunal with the impression that the Applicant was prepared to say anything to try and "win".
- [6] Her account of her non-participation in the original Tribunal proceedings was not corroborated by the contemporaneous messages exchanged between the parties at the time. The Applicant's evidence was completely at odds with the messages exchanged between the parties.
- [7] Conversely, there was no reason whatsoever to doubt the Respondent and her daughter as credible and reliable. The Respondent's daughter may have got herself mixed up with various dates at times during her evidence but the Tribunal was not primarily concerned with her ability to recall dates but rather establishing whether there was any basis whatsoever to suggest that the Respondent misled a judicial body.
- [8] The Tribunal considered the allegations contained in the Application to be significant. If established, such a judgement could have had a significant bearing on the reputation of the Respondent in her professional and wider life.

[9] The Tribunal finds that the Applicant would have known fine well why the Respondent's daughter did not move into the Property. The Application has no merit and is refused.

### **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**

**21 June 2023.**

**Date**