

**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/22/2816**

**Re: Property at 72 Eskhill, Penicuik, EH26 8DQ (“the Property”)**

**Parties:**

**Mr Thomas Quayle, Miss Shiona McLeod, 99 Deanburn, Penicuik, Midlothian, EH26 0HZ (“the Applicants”)**

**Mrs Uzma Janjua, 3 Woodfield Park, Bilston, Roslin, EH25 9SZ (“the Respondent”)**

**Tribunal Members:**

**Nairn Young (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

- **Background**

This is an application for a wrongful-termination order without an eviction order having been made: the Applicants having left the Property, which they leased from the Respondent in terms of a private residential tenancy, following receipt of a notice to leave.

It first called for a case management discussion (‘CMD’) at 11:30am on 18 January 2023, by teleconference. The second-named Applicant was on the call and spoke on behalf of both Applicants. The Respondent was not on the call or represented. She had contacted the Tribunal in advance of the CMD to indicate that her representative would not be able to phone in to the CMD. She had made some written

representations opposing the granting of the order; but had not disputed the Tribunal's jurisdiction.

At that CMD, the Tribunal adjourned the matter to a further CMD and made a direction requiring the Applicants to specify the sum sought by them and the legal basis for that. It further required the Respondent to provide specification of various aspects of her response: and to respond to the Applicants' submissions on the amount of any award. The Applicants responded to the direction. The Respondent sent further written submissions which did not respond to the direction, but rather appeared to seek to challenge the jurisdiction of the Tribunal on various spurious bases.

The second CMD took place on 24 March 2023 at 10am, again by teleconference. The second-named Applicant again appeared on behalf of both Applicants. The Respondent again did not phone in and was not represented. In advance of the CMD she had again submitted written representations which were in a similar vein to those she had sent following the direction.

The Tribunal was satisfied that she was aware of the CMD calling, but had chosen not to attend, and that it was therefore fair to continue in her absence.

- Findings in Fact

1. The Applicants jointly leased the Property from the Respondent in terms of a private residential tenancy agreement with a start date of 9 May 2019.
2. The rent due in terms of that agreement was £950 per calendar month.
3. On 29 April 2022, the Applicants were served with a notice to leave stating that the Respondent intended to live in the Property.
4. The Applicants ceased to occupy the Property on 12 May 2022, on the basis that they considered the Respondent was intending to move into the Property and that they would be evicted if they did not leave voluntarily.

5. The Respondent did not intend to live in the Property, but rather to sell it.
6. The Respondent did not move into the Property at any point following the Applicants leaving it.
7. The Respondent instructed the sale of the Property at some point in late June 2022.
8. A survey for the purpose of providing a home report was completed on 4 July 2022.
9. The Applicants were misled into ceasing to occupy the let property by the Respondent.

• Reasons for Decision

10. The notice to leave gave a ground for eviction that required a shorter notice period than the 6 month period that would have been required if the Respondent had chosen to rely on the fact she intended to sell the Property. The fact that she did not move into the Property following the Applicants moving out, and the fact that she instructed the sale of the Property little more than a month after that, suggests very strongly that she has no intention to move in when the notice to leave was served. In her original response to the application, she stated that the reason for this was that her plans changed due to unspecified financial difficulties and also referring to the COVID pandemic. She did not detail why these factors required her to change her plans so suddenly, when it became clear to her that that change had to take place; or provide any documentary evidence to support her position. When she was directed to do so by the Tribunal, she did not respond.
11. Instead, the Respondent's response to the direction was an ill-conceived and frankly nonsensical submission, in part concerning irrelevant law, in part cod legal history, and in part pseudo-philosophy/ theology. Taken at its very

highest, it could be taken to be disputing the Tribunal's jurisdiction on the basis that she asserts she is an 'American State National'; and on the suggestion that the Tribunal's assertion of jurisdiction in this matter amounts to some broader claim of ownership of her name, body, mind and soul, which could not be sustained.

12. The Tribunal's jurisdiction to determine this matter is based upon section 58 of the Private Housing (Tenancies) (Scotland) Act 2016, which states:

“58 Wrongful termination without eviction order

(1) This section applies where a private residential tenancy has 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.

(4) In a case where two or more persons jointly were the landlord under the tenancy immediately before it ended, the reference to the landlord in subsection (3) is to any one of those persons.”

13. The nationality of the landlord is irrelevant to the application of this section; it is applicable to all private residential tenancies that are brought to an end in accordance with s.50 of the same Act. That is what happened in this case.

14. Neither does the application of this straightforward section suggest any wider claim on the part of the Tribunal over the Respondent. Its function is quite

clear and discrete: to determine applications made in terms of s.58 and, where that results in a wrongful-termination order being made, to make that order in terms of s.59. That states (so far as relevant to this case):

“59 Wrongful-termination order

(1) In this section and in sections 57, 58 and 60, “a wrongful-termination order” means an order requiring the person who was the landlord under the tenancy immediately before it ended to pay the person who made the application for the wrongful-termination order an amount not exceeding six months' rent.

...

(4) In subsections (1) and (3)(b), “rent” means—

(a) the amount that was payable in rent under the tenancy immediately before it ended, or

(b) in a case where two or more persons jointly were the tenant under the tenancy immediately before it ended, the amount mentioned in paragraph (a) divided by the number of persons who were at that time joint tenants under the tenancy.”

15. The Tribunal did not consider that the response originally given to the application was convincing due to the lack of specification and evidence to support it. Having directed the Respondent to provide this, her continued failure to do so added weight to that conclusion. It therefore preferred the Applicants' position and accepted that they had been misled into leaving the Property and thereby terminating their tenancy by the Respondent.

16. The Applicants had submitted that they should each be awarded the maximum sum of 6 months' rent, or a total jointly of £5,700. The Respondent

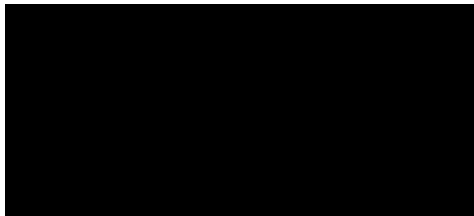
had not opposed this, again having been directed to provide any response she may have had to the Applicants' submission on the point. The Tribunal therefore granted a wrongful-termination order for the sum sought.

- Decision

**Wrongful-termination order made requiring the Respondent to pay the Applicants the sum of FIVE THOUSAND, SEVEN HUNDRED POUNDS (£5,700) 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.**



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**Legal Member/Chair**

**24 March 2023**

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**Date**