

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 58(2) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)**

**Chamber Ref: FTS/HPC/PR/22/1453**

**Re: Property at 3/2 3 Westclyffe Street, Glasgow, G41 2EF (“the Property”)**

**Parties:**

**Dr Shari Levine, Mr David Gering-Hasthorpe, 0/1 57 Boyd Street, Glasgow, G42 8AG (“the Applicant”)**

**Mr Stephen Paul Cooper, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Member:**

**Alan Strain (Legal Member) and Ms Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.**

**Background**

This was an application under Rule 110 of the Tribunal’s Rules of Procedure asserting wrongful termination without an eviction order. The Applicants asserted that they had been misled into ceasing to occupy the Property under section 58(3) of the Act.

The Tribunal had regard to the documents lodged with the application by the Applicants on 16 May 2022 and the written representations and supporting documentation lodged by the Respondent on 7 December 2022.

The case had called for a CMD on 16 December 2022. Both Parties had participated and represented themselves.

The Tribunal had identified the following issues for determination by the Tribunal at a Hearing:

1. Whether the Applicants were misled by the Respondent into ceasing to occupy the let Property; and
2. If so, what compensation (if any) are they entitled to.

The Parties had agreed to an in person Hearing.

## **Hearing**

Both Parties participated and represented themselves.

The Tribunal informed the parties that their respective written representation would be taken as read and accepted into evidence.

The Tribunal then heard evidence from both Applicants and the Respondent. The Tribunal questioned the Parties and each was given the opportunity to question the other.

At the conclusion of the evidence both Parties were given the opportunity to make submissions.

Having done so, in so far as material, the Tribunal made the following findings in fact:

1. The Parties entered into a PRTA commencing 27 September 2018;
2. The monthly rent was £825;
3. Notice to Leave was served on the basis of Ground 1 on 2 April 2021;
4. The Applicants requested additional time, which was granted, and vacated the Property on 26 October 2021;
5. On 28 October 2021 the Respondent instructed his Letting Agents to market and sell the Property;
6. On 3 November 2021 the Respondent paid his Letting Agent's fees to market the Property;
7. On 3 March 2022 Hain Roofing Company were requested to undertake minor roofing repairs;
8. On 23 March 2022 the Respondent's Letting Agents ceased their Marketing and Selling Business;
9. On 24 March 2022 the Respondent contacted Clyde Property to market and sell the Property;
10. On 7 June 2022 the roof repairs were completed;
11. On 6 July 2022 decorating works were approved by the Respondent's insurers;
12. On 15 August 2022 the Property was sold;
13. During the period 28 October 2021 to 15 August 2022 the Property was empty.

## **Decision and Reasons**

The thrust of the Applicants' case was that at the point of serving the Notice to Leave the Respondent had no intention of immediately selling the Property. The Applicants referred to an email exchange they had obtained during proceedings before the Tribunal in relation to a dispute over the tenancy deposit. They asserted that this showed the Respondent's Letting Agents encouraging him to put the Property on the

market in February 2022. They say that the Respondent refused to do so until roof works were arranged and completed.

The Applicants asserted that the real reason for serving the Notice to Leave was due to them having complained about the condition of the windows in the Property.

The Respondent's position was that he had offered to sell the Property to the Applicants as long ago as 7 April 2021. No agreement was reached.

Within days of the Applicants vacating the Property he instructed his agents to market and sell the Property. Due to problems with the roof, delays in getting the roofing work completed and his original agents going out of business there were delays in the Property going on the market. Within 3-4 weeks of the roofing and internal decorating works being completed the Property was on the market and sold.

The Property had been empty from the date the Applicants vacated until the date it was sold.

The Respondent wished to sell the Property to help fund a property purchase in Melbourne where he now lived and worked.

The Tribunal found the Respondent to be credible and reliable. His explanation as to the delay in the Property being marketed and sold was consistent and understandable. He wanted the Property to be in a good state before being marketed and sold. This all took time and the Tribunal accepted his explanation for the delays and obstacles he experienced along the way.

The Applicants had suspicions about the Respondent's motivation for serving the Notice to Leave. The Tribunal considered these suspicions to be unfounded against the facts of the matter. It was not in the Respondent's interests to have an empty flat which would be costing him money rather than making him any. The Respondent took all reasonable steps to have the Property put into a fit and proper state to be marketed and sold. It was then marketed and sold within a matter of weeks.

The Tribunal considered the terms of section 58(3):

"(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."

The Applicants founded on the wording of Ground 1 to Schedule 3 of the Act (which was relied upon in the Notice to Leave). They argued that the Respondent had no intention of marketing or selling the Property within 3 months of their ceasing to occupy the Property. In that regard they were misled.

The Tribunal did not consider that the Respondent had misled the Applicants into ceasing to occupy the Property. The Tribunal accepted that the Respondent genuinely wanted to sell the Property as soon as reasonably possible. Circumstances conspired against him to delay the marketing and sale of the Property. The Property was put on the market and sold as soon as was reasonably practicable.

The Tribunal accordingly refuse 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.**

# A Strain

**27 June 2023**

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**Legal Member**

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**Date**