



**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**

**Chamber Ref: FTS/HPC/PR/23/4114**

**Re: Property at 55/5 Firrhill Drive, Edinburgh, EH13 9EU (“the Property”)**

**Parties:**

**Miss Tillie Stevenson, Mr Vytutas Vasiliauskas, 8/5 Loganlea Gardens, Edinburgh, EH7 6LH (“the Applicants”)**

**Wei Wang (SBA), UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Rory Cowan (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Wrongful Termination Order in the sum of £2,175.00 should be granted against the Respondent.**

- Background

By application dated 24 December 2023, the Applicants seek a Wrongful Termination Order against the Respondent in terms of section 58(2) of the Private Housing (Tenancies)(Scotland) Act 2016 (the Application). Various supporting documents were lodged with the Application including the following:

- 1) Notice to Leave dated 7 March 2023;
- 2) Private Residential Tenancy Agreement dated 1 and 2 March 2021;
- 3) Rent Increase Notice 25 February 2022; and
- 4) Various other supporting documents including bank statements, wage slips and invoice for the costs of removal from the Property.

A Case Management Discussion (CMD) was fixed for 24 April 2024 to be heard by way of conference call. Service of the Application and the date of the CMD was by advertisement on the tribunal’s website (sheriff officer service having failed). At the

CMD, the Applicants appeared personally and represented themselves. The Respondent did not appear. Notwithstanding the Respondent's failure to appear, the tribunal was of the view that, standing certification of service by way of advertisement, they could proceed to deal with the Application in the Respondent's absence.

- The Case Management Discussion

The Tribunal heard from both Applicants on the Application and their reasons for seeking a Wrongful Termination Order (WTO) as well as the impact leaving the Property had on them.

- Findings in Fact and Law

The Tribunal makes the following findings in fact and law.

- 1) That the Applicants were tenants of the Respondent under a Private Residential Tenancy that commenced on 22 March 2021.
- 2) That the Respondent served a Notice to Leave dated 7 March 2023 on the Respondents citing Ground 3 of Schedule 3 to the Private Housing (Tenancies)(Scotland) Act 2016 with an expiry date of 2 June 2023.
- 3) That in response to that Notice Leave the Applicants vacated the Property on 10 July 2023.
- 4) That the rent payable by the Applicants for the Property on 10 July 2023 £725 per calendar month.
- 5) That as at 7 March 2023 the Applicants had no arrears of rent.
- 6) That the Applicants received the security deposit they paid for the Property in full after they vacated the Property.
- 7) Had the Applicants not received the Notice to Leave dated 7 March 2023, they would not have vacated the Property when they did.
- 8) That no vouching of the applicability of the ground of possession relied upon by the Respondent was attached to the Notice to Leave and what was stated as the particulars of Ground 3 of Schedule 3 to the Private Housing (Tenancies)(Scotland) Act 2016 was that "Landlord is needing to refurbish the whole property which means no one will be able to live there".
- 9) That on or around June 2023 the Respondent's husband a Fuyi Wang visited the Property and stated to the Applicants that the Respondent did not intend to refurbish the whole of the Property only the kitchen.
- 10) That the second named Applicant visited the Property on 15 September 2023 to collect a parcel left there for him.
- 11) That the Property was tenanted by unknown persons on 15 September 2023.
- 12) That the Property had not been subject to refurbishment by the Respondent.
- 13) That on 7 March 2023, when the Notice to Leave was issued, the Respondent did not intend to carry out significantly disruptive works to or in relation to the Property so as to render it impracticable for the Applicants to continue to occupy the Property.
- 14) That the Applicants were misled by the Respondent into ceasing to occupy the Property as a result of the service upon them of the Notice to Leave dated 7 March 2023.
- 15) That the Applicants suffered stress and inconvenience as a result.

- 16) They were unable to initially find alternative rental accommodation and thereafter decided to purchase a property that they had not planned to do at that time or incur the associated costs in doing so at that stage.
- 17) That, as a result of moving they had to change services and register with new doctors.
- 18) They incurred removal costs.
- 19) That an appropriate penalty is a sum of £2,175.00.

- Reasons for Decision

The Application sets out the basis of the Applicants' claim in that they did not believe that the Respondent had a genuine intention, when serving the Notice to Leave dated 7 March 2023 on them, to carry out significantly disruptive works to the Property. They set out their reasons in the Application and stated them verbally again to the Tribunal at the CMD. It is always difficult for a tribunal to deal with claims of this kind in the absence of a landlord in that the Tribunal requires to determine whether or not the Respondent had a genuine intention to carry out significantly disruptive works to or in relation to the Property so as to render it impracticable for the Applicants to continue to occupy the Property. However, as with all undefended claims the Tribunal cannot look into the merits of the Application and to matters of relevancy or specification and in the absence of opposition all the Tribunal must look at are questions of jurisdiction and competency (Woro v Brown UTS/AP/21/0031 at paragraph 11 citing the decision of Cabot Financial UK Limited McGregor 2018 SC (SAC) 47). Whilst the basis for the Applicants' belief regarding the true intentions of the Respondent when the Notice to Leave may be limited, in the absence of any alternative explanation and on the balance of probabilities, there is sufficient to allow the Tribunal to draw an inference as to the intentions of the Respondent when the Notice to Leave was served. The lack of a clear outline of the proposed refurbishment (although vouching would not be required for the purpose of serving a Notice to leave), the statements made to the Applicants by the Respondent's husband of limited refurbishment when he visited the Property in June 2023 as well as what the second named Applicant saw when he visited the Property 2 months after the Applicants vacated same on 15 September 2023 (new tenants occupying same with no evidence of any refurbishment) all allow an inference to be drawn that the Respondent did not have a genuine intention to carry out works to the Property when the Notice to Leave was served and that the Applicants were therefore misled into ceasing to occupy the Property by the Respondent.

In terms of the level of penalty, in all the circumstances (as narrated in the findings in fact) the Tribunal determined that an appropriate penalty was £2,175. The Tribunal took into account the impact on the tenants' lives and the stress and inconvenience that would come with vacating the Property at a time when they had not planned to that and the fact that they had lived happily at the Property for over 2 years and had intended to stay there for longer. They appeared to be good tenants with no rent arrears and, standing the lack of a claim on their security deposit, appeared to have looked after the Property during their occupation of same. The Tribunal also took into account the fact that they had initially found it difficult to find accommodation and then decided to bring forward the purchase of their own property at a time and in circumstances that were not ideal for them and the consequential financial impact of that decision. That said, they were in a position (however difficult) to buy their own

home which had been a longer-term plan. As the Respondent did not appear, there were no circumstances put before the Tribunal on her behalf that were material. The level of such a penalty is a matter of discretion for the Tribunal taking into account the particular circumstances of the case when considering the approach to the level of the appropriate sanction. A WTO is a penalty for misuse of the grounds for possession in the Private Housing (Tenancies)(Scotland) Act 2016 and not compensation for damage suffered.

- Decision

The Tribunal orders that the Respondent pay to the Applicant the sum of £2,175.00.

### **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.**

# R Cowan

24 April 2024

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Legal Member/Chair

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Date