



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 58 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/PR/23/4156**

**Re: Property at 18 Hart Street, Edinburgh, EH1 3RN (“the Property”)**

**Parties:**

**Mr Sebastian Carrasco Robertson, 51-26 Caledonian Crescent, Edinburgh, EH11 2AT (“the Applicant”)**

**Mr Alastair Murray, 235 Springfield Road, Aberdeen, AB15 6AW (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing, and made a Wrongful-termination Order requiring the Respondent to pay to the Applicant the sum of £1,500.**

**Background**

1. By application, dated 20 November 2023, the Applicant sought an Order under Sections 58 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) for a wrongful termination without eviction. He stated that he had been told that the Respondent was moving into the Property, but he later found out that he wanted to raise the rent. The Respondent had done viewings of the Property whilst the Applicant was still living there. He told the Applicant that it was only for a few weeks until he moved in, but that was not true. He wanted to have 36 months of rent returned to him as moving and trying to find a suitable property had caused him emotional and financial distress. To add insult to injury, he had now found out that the Property has been let once again to another tenant and he feared this would be done again.

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 8 June 2020 at a rent of £800 per month, a Notice to Leave, dated 15 June 2023, stating that the Respondent intended to live in the Property and that no application to the Tribunal would be made before 5 August 2023, and screenshots of a Gumtree advertisement for the Property at £1,250 per month.
3. On 21 March 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 11 April 2024.
4. On 9 April 2024, the Respondent made written submissions to the Tribunal. He accepted full responsibility for the situation and that mistakes were made leading up to 6 October 2023, when the Applicant vacated the Property. In 2020, due to COVID-19 restrictions which meant that at times he was unable to leave his home, he arranged for a Mr Lewis Ross to act as his representative in the letting of the Property. In April 2023, he received an offer for his main residence in Aboyne, which had been on the market since 2015. He and his wife decided to put their furniture in storage and move into the Property to give them time to search for and purchase another property and he instructed Mr Ross to serve a Notice to Leave on the Applicant. This was done on 15 June 2023, but three days later, having had a change of plans, he instructed Mr Ross to withdraw the Notice to Leave. The Respondent accepted that a complete withdrawal did not happen as he had expected. Regarding the re-letting of the Property, this process had only started when the Applicant had informed Mr Ross that he was leaving. Steps were then taken to let the Property over the winter period to cover ongoing costs. The Respondent had experienced a number of health issues since September 2023 and, due to that and to ongoing family responsibilities, it was now his intention to dispose of the Property. He was very disappointed that he had let down the Applicant and himself and that he had taken his eye off the ball and not ensured that all procedures were followed professionally and diligently. He hoped the matter could be settled as soon as possible.

### **Case Management Discussion**

5. A Case Management Discussion was held by means of a telephone conference call on the morning of 2 May 2024. Both Parties were present.
6. The Applicant told the Tribunal that the Notice to Leave of 15 June 2023 was emailed to him by Mr Ross. In a WhatsApp message of 18 June 2023, Mr Ross said he had good news and that the Applicant should disregard the Notice. On the following day, Mr Ross told the Applicant that the Respondent's mother-in-law had fallen ill and that he wanted to change the date of termination of the tenancy to December 2023. This later changed to January 2024. On 14 September 2023, the Applicant told Mr Ross that he was not going to wait around until January and was going to look for another property. Mr Ross told him that the Respondent did not want the Property to be vacant over the winter period and intended to re-let it from October 2023 to

January 2024. When the Applicant asked him why this was happening, Mr Ross said that he was just doing as he had been told.

7. In September 2023, Mr Ross told the Applicant that he had advertised the Property on Gumtree but had deleted it when he filled up the list of viewers. The Applicant was present when Mr Ross showed prospective tenants around the Property on 30 September. The viewers were all academics or professional couples who told the Applicant that they intended to stay much longer than four months. By then, the Applicant had formed the view that the Respondent's intention was to find new tenants at a higher rent than he would be permitted by the Scottish Government to ask the Applicant to pay. The current rent was £935 per month. Later that day, Mr Ross told the Applicant that there was a possibility that he could stay on in the Property if he was prepared to pay £1,150 per month. The initial rent had previously been increased by 6% and 10%.
8. The Respondent told the Tribunal that he had contacted Mr Ross on 18 June 2023 and asked him to withdraw the Notice to Leave and Mr Ross confirmed that he had done this by email. The Respondent had no part in any discussions that took place between then and 6 October, when the Applicant left, so had no knowledge of any suggestion made to the Applicant that the termination date could be put back to December 2023 or to January 2024 or that he could stay if he agreed an increased rent. The next he heard was that the Applicant had told Mr Ross on 18 September that he had found another property and would be moving out on 6 October. Mr Ross said that he should get on with the re-letting and placed the Gumtree advertisement as a short to medium-term let. This was to ensure the Property was occupied over the winter. A new tenant had moved in on 4 November 2023 and had moved out on 31 March 2024.
9. The Applicant stated that he had had no intention of leaving the Property. He was well settled there, had established good relationships with neighbours and it was well located for his work. He was, however, so uncertain about what was happening that he felt he had to look for alternative accommodation. He did not send a formal notice of his intention to leave but told Mr Ross on 17 September 2023 that his application for another property had been successful. Mr Ross had told him to let him know if he found another place, so that he could organise viewings. The Applicant felt that something strange was happening and that he had been misled into leaving the Property. He would not have done so otherwise.
10. The Respondent said that he had left everything to be dealt with by Mr Ross, who he appointed as his agent because he appeared to be ideal for the job of managing the tenancy. Mr Ross also appeared to get on well with the Applicant. The Respondent expressed regret about the whole situation. He confirmed to the Tribunal that at no time after instructing Mr Ross to withdraw the Notice to Leave had it been his intention to live in the Property. He had acted on impulse in asking Mr Ross to serve the Notice to Leave and had realised very quickly that the proposal to live in the Property would not be in

the best interests of his family. The issue had he said, been one of miscommunication.

### **Reasons for Decision**

11. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation it required to enable it to decide the application without a Hearing.
12. Section 58 of the Act applies where a private residential tenancy has been brought to an end by service of a Notice to Leave, following which the tenant has vacated the property. 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 landlord.
13. Section 59 of the Act provides that a Wrongful-termination Order is an order requiring the landlord to pay the person who made the application an amount not exceeding six months' rent.
14. The Tribunal considered carefully all the evidence, written and oral, before it. The Tribunal noted in particular that the Notice to Leave stated that the ground for eviction was that the landlord intended to live in the Property and accepted that the Respondent instructed Mr Ross three days later to withdraw the Notice. It appeared to the Tribunal, however, that Mr Ross continued to communicate with the Applicant in a manner that implied the Notice itself was not actually withdrawn, but that the date by which the Respondent wished the Applicant to move out had been put back, initially to December 2023 and then to January 2024. No formal withdrawal of the Notice to Leave had taken place.
15. The Tribunal accepted that the Respondent may not have been fully aware of the discussions that Mr Ross was having with the Applicant, but Mr Ross was acting as an agent for a disclosed principal, and the Applicant was entitled to assume that he had full authority to act.
16. The Tribunal noted the terms of the Gumtree advertisement for the Property. There is no mention of the Property being available for only a limited time and, whilst the Applicant's statement that viewers told him they expected to be there for longer than four months was hearsay, the advertisement did not indicate that only a short-term let was envisaged.
17. The Tribunal was unable to make a determination that the Mr Ross had told the Applicant that he could stay on if he was prepared to pay an increased rent, in excess of that which would be permitted under Scottish Government rent restrictions.

18. Having considered all the evidence, it was clear to the Tribunal that, whether inadvertently or not, the Applicant had been misled into ceasing to occupy the Property. The Tribunal accepted his evidence that he was settled there, had established good relationships with the neighbours and that, but for the Notice to Leave, he would not have looked for another rental property and would not have moved out on 6 October 2023.
19. The Tribunal decided to make a Wrongful-termination Order against the Respondent.
20. The Tribunal accepted that the Applicant had suffered considerable inconvenience as a consequence of the Respondent's wrongful termination of the tenancy but did not consider the effects of that to be long-lasting, as he had found alternative accommodation, albeit at a higher rent than he had been paying for the Property. The view of the Tribunal was that a fair, just and reasonable compensation figure for the wrongful termination would be £1,500.

### **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.**

George Clark

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Legal Member/Chair

2 May 2024  
Date