



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, as amended (“the 2016 Act) and Rule 110 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/PR/23/3817

Re: Property at 132 Queens Crescent, Livingston, West Lothian, EH54 8EJ (“the Property”)

Parties:

Miss Hannah Hallett, Mr Nathan MacKenzie, 2 McNeill Place, Loanhead, Midlothian, EH20 9JX; (“the Applicant”)

Dr Shashank Sharma, Dr Satbir Kaur Gill, 6 Miller Gardens, Bishopbriggs, G64 1FG (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £1,950 should be made by the Respondent to the Applicant.

Background

1. The application submitted by the Applicant on 27 October 2023 sought a payment order against the Respondent in respect of an alleged wrongful termination of tenancy. The Applicant sought an order for the maximum sanction which the Tribunal can impose, namely six times the amount of the rent. The rent paid by the Applicant at the end of the tenancy was £650 per calendar month, and accordingly the maximum sanction payable would be £3,900. Supporting documentation was submitted including details of the

tenancy, Notice to Leave and advertisements of the Property as available to rent on Gumtree.

2. Following initial procedure, on 28 December 2023 a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 18 January 2024, a copy of the Application and supporting documentation was served on the Respondent by Sheriff Officer, together with intimation of the date, time and arrangements for a Case Management Discussion (“CMD”) to take place by telephone conference call on 26 February 2024 at 2pm. Any written representations by the Respondent were to be lodged with the Tribunal by 6 February 2024.
4. Written representations were lodged by the Respondent on 6 February 2024, explaining their position in respect of the matter. The Respondent denies the claim. The Respondent also lodged supporting documentation in respect of their position, including a copy of the tenancy agreement, details of rising costs in respect of the Property, communications with the Applicant and medical information concerning the Second Respondent. The Respondent subsequently authorised circulation of the medical information and that was done.
5. The Case Management Discussion (“CMD”) took place by telephone conference call on 26 February 2024 at 2pm and was attended by both Applicants and both Respondents. Both parties explained their respective positions and many of the background facts were agreed. The Legal Member decided that, in the circumstances, the application would require to be continued on to an Evidential Hearing as there were issues in dispute which require to be decided by a two-member Tribunal. It was necessary for evidence to be heard from the parties and any witnesses and for the Tribunal to consider fully any documentary evidence lodged in order to determine if there had been a wrongful termination of tenancy and, if so satisfied, to determine the appropriate level of sanction to be imposed. It was agreed that the Evidential Hearing should take place by video-conference on a date and time to be arranged.
6. Following the CMD, the Legal Member issued a CMD Note and a Direction to parties dated 26 February 2024 in the following terms:-

“The Applicant and Respondent are required to provide:

1. *A numbered list or index page of any documentation upon which the parties wish to rely at the Evidential Hearing, including any reports, communications or other documentary evidence in respect of the termination of the tenancy, the background to the termination, the Property being re-let by the Respondent and the chronology of events; and in respect of the sanction to be imposed in the event of the Tribunal deciding that there was a wrongful termination of tenancy in terms of the legislation; together with numbered*

copies of any such documents; and

2. *A list of any witnesses that the partes wish to call to give evidence at the Evidential Hearing to be fixed in respect of this application, and to make arrangements for the attendance at the Hearing of any such witnesses.*

The above documentation should be lodged with the Tribunal Administration no later than 14 days prior to the Evidential Hearing.”

7. An Evidential Hearing was subsequently set down to take place on 30 May 2024 at 10am by video-conference and parties notified.
8. Nothing was lodged by the Applicant in response to the Tribunal’s Direction. On 28 May 2024, the Respondent emailed a further document that they wished to lodge, being copy screenshots of some further messages between the parties.

Evidential Hearing

9. The Evidential Hearing took place on 30 May 2024 by video conference, commencing at 10am. Both Applicants and both Respondents were in attendance.
10. Following introductions and introductory comments by the Legal Member, both parties confirmed that the only documentation lodged since the CMD was by the Respondent on 28 May 2024 and that neither party had any additional witnesses that they wished to call to give evidence.
11. The Legal Member referred to the CMD Note issued following the CMD and confirmed with parties that they were happy that the Note was accurate in its terms and that, in particular, a number of the background facts regarding the tenancy and its ending were agreed between parties, as per the CMD Note, namely:-
 - 1) The Respondent let the Property to the Applicant under a Private Residential Tenancy commencing 3 April 2021 at an initial rent of £625 per calendar month, which was raised after approximately two years to £650 per calendar month.
 - 2) The Respondent tried to increase the rent again to £700 per calendar month, citing increasing costs including mortgage payment rises, but the Applicant did not accept this and drew the Respondents’ attention to the legislation and the rent freeze which was in place at that time.

- 3) The Respondent served a Notice to Leave on the Applicant dated 16 July 2023, in terms of which the Applicant was asked to vacate on 12 October 2023.
- 4) The ground for eviction that the Respondent stated in the Notice was that they intended to sell the Property to alleviate financial hardship.
- 5) The Respondent offered to extend the period to vacate to assist the Applicant and provided them with a good reference in connection with their attempts to seek alternative accommodation.
- 6) The Applicant secured alternative accommodation and vacated the Property around 26 September 2023 [the keys were handed back on 1 October 2023 – clarified at Evidential Hearing].
- 7) The Respondent subsequently advertised the Property for let on Gumtree, stating availability as from 29 October 2023, and seeking rental of £950 per calendar month.
- 8) The Property was let out to a new tenant at a monthly rental of £950, commencing 1 November 2023.
- 9) That tenant still occupies the Property.

12. The Legal Member then confirmed the issues to be decided by the Tribunal today, with reference to the relevant legislative provisions.

13. The Tribunal then heard evidence and submissions from both parties and asked a number of questions.

Evidence of Miss Hannah Hallett – 1st named Applicant

14. Miss Hallett stated that she moved in to the Property on 30 April 2021 and that Nathan McKenzie moved in on 14 June 2021 with the Respondent's agreement. Miss Hallett's contact throughout was with the first-named Respondent, Dr Sharma. She asked Dr Sharma on three separate occasions for a new tenancy agreement in joint names but never received this. Dr Sharma had explained that he was busy. On 16 July 2023, they were served with a Notice to Leave. Dr Sharma had explained that they were struggling with the expense of the property and required to sell it. A few weeks prior to this, on 27 June 2023, she and Dr Sharma had had telephone discussions, during which Dr Sharma had explained that he was in a tricky financial position and wanted to put the rent up to £800 per month. The original rent had been £625 per month, which had already been increased from around July 2022 to £650 per month. Miss Hallett explained that Dr Sharma had first mentioned that he was struggling financially in February 2023 when an increased rent to £700 per month had been mentioned. Miss Hallett did not agree with the proposed £800 per month and Dr Sharma indicated during the discussions on 27 June 2023 that he would come down to £700 per month. She informed him that she thought that this was being done within the wrong timeframe and against the rent freeze which was in place at the time. Dr Sharma had then stated they would need to

look at selling the Property as they needed to be financially stable. There was further contact between them on 29 and 30 June 2023. Miss Hallett explained to Dr Sharma that she was not happy about only receiving verbal notice, so requested formal written notice. Dr Sharma then emailed her, confirming that they wished to sell the Property but would give the Applicant an extended notice period. Miss Hallett again requested a formal Notice to Leave as she wanted to have a definite date to work towards. She had researched and advised him of the 84-day Notice period required for this ground of eviction and the formalities of the Notice to Leave. The Notice to Leave was then sent to her by email on 26 July 2023, with the date for leaving specified as 12 October 2023.

15. In response to questions from the Tribunal Members, Miss Hallett confirmed that the reason she had wanted a new tenancy agreement was to have Mr MacKenzie's name on it. She also wanted certainty and this is why she insisted on them receiving a formal Notice to Leave. She explained that, although not diagnosed, she has been assessed and it is thought that she is autistic. This means she likes to have certainty and she wanted everything done 'by the book' in relation to the tenancy. Miss Hallett confirmed that the Respondent had provided her with a letter confirming that Mr MacKenzie was a joint tenant at the tenancy and the monthly rental payments, etc which Mr MacKenzie needed in relation to a claim he was making. She also confirmed that the Respondent had provided them with a good tenancy reference dated 6 July 2023 and that she had requested this on 30 June 2023 after viewing a flat in Edinburgh that they liked. She confirmed that they had started looking for alternative accommodation immediately after the telephone discussions she had had with Dr Sharma on 27 June 2023. Miss Hallett reiterated that Dr Sharma had first stated that they intended to sell due to financial hardship on 27 June 2023 and that this was repeated in subsequent communications by email and in the Notice to Leave.
16. Miss Hallett confirmed that she had told Dr Sharma that they had put down a deposit on a flat on 21 September 2023 and they subsequently made arrangements to hand the keys back on 1 October 2023, earlier than the 12 October date in the Notice to Leave. Relations were amicable between them and there was regular communication in the run-up to them vacating the Property. Not long after they vacated, Miss Hallett had been scrolling on Gumtree and noticed an advert for the Property up for rent again, but at £950 per month. It stated that the Property was available immediately for long term rental. She thought from looking at the comments on Gumtree that it had been advertised for around a week before she saw it. She is happy to accept the date Dr Sharma had stated of 26 October 2023 being the date the Gumtree advertisement had been put up. She took some screenshots of the Gumtree advert and then researched the position, concluding that this had been a wrongful eviction. She did not make any contact with the Respondent about the matter before submitting the Tribunal application.
17. Miss Hallett said that they had started looking for a new flat immediately after her discussions with Dr Sharma on the telephone, However, flat hunting proved very difficult and they looked at around one hundred places, of which only two

led to them being asked for references. Livingston was the perfect location for them and they looked at at least four properties there but did not manage to secure one. They had required to move right out of their preferred catchment area as the new property is in Loanhead, Midlothian whereas this Property was in Livingston, West Lothian. The properties are around 24 miles apart but on completely different sides of Edinburgh. Loanhead is much less convenient to them. Miss Hallett works in Edinburgh City Centre but is also studying at Queen Margaret as she is a student nurse. This involves a much longer commute and her taking two buses. It also impeded her studies and disrupted her work placements as she had already had these allocated with living in Livingston in mind. This meant that she had to travel back to St John's Hospital in Livingston from Loanhead with the extra commuting added on to doing 12.5 hour shifts. Mr MacKenzie works from home but also attends college, so his commuting to college is also affected. They were having difficulty keeping up with all of their bills and the new rent and had to spend their savings. Mr MacKenzie eventually had to sell his car. They had to move GP practices and change all their documentation to the new address. Miss Hallett stated that they are also having to pay a much higher rental of £950 per month. They had not realised that alternative accommodation would be quite so expensive and had been hoping to secure a property for around £900 per month. They were very stressed at the situation. The Respondents did not take any steps towards selling the Property whilst the Applicants were living there. Dr Sharma never mentioned in any of their communications about any change in the Respondent's position about their stated intention of selling the Property. She does think that they were given notice simply so that the Respondent could get increased rent, especially given that Dr Sharma had initially tried to increase their rent. Given that they had ended up having to pay a higher rental anyway, Miss Hallett was asked if they ever re-considered accepting the higher rent that Dr Sharma had requested so that they could stay on in the Property. She replied that she really did not know as by this time, she felt quite uncomfortable in the ongoing relationship with the Respondent, not just because they tried to put up the rent more than they were entitled to but also because they seemed to want to do everything concerning the tenancy and ending the tenancy on an informal basis and it was she who had to chase everything up and request things in writing. It was, however, only after seeing the advert on Gumtree, that they started to question whether the Respondents had ever actually intended to sell. Miss Hallett said that she had then looked at the various selling sites and saw that the Property had not been mentioned as up for sale anywhere. They felt let down and considered that this had gone against what the Notice to Leave had said. She does not think that the Respondent could have exhausted their selling options within a period of 25 days, before advertising the Property for let again.

Evidence of Mr Nathan MacKenzie – 2nd named Applicant

18. It was primarily Miss Hallett who gave evidence for the Applicant but Mr MacKenzie was present throughout and confirmed much of what Miss Hallett was saying. He did state at one point that, in respect of the property they have moved to, they are paying much more rent than they would ideally like but had no other option.

Evidence of Dr Shashank Sharma – 1st named Respondent

19. Dr Sharma stated that they had never wanted to cause difficulties for the Applicant. They knew that the Applicant too was in a difficult position. This is why they tried to be so flexible and to assist the Applicant in any way they could, including providing a reference when this was requested on 5 July 2023 after the Applicant had looked at another flat and said they had liked it. They had also offered to extend the period of notice beyond the 84 days required in the Notice to Leave which Miss Hallett had wanted served so that they had a definitive date for leaving. Dr Sharma explained why he had not provided a new lease, as requested by Miss Hallett and that he had thought there may be issues with formally splitting the rent between Miss Hallett and Mr MacKenzie, due to multiple occupancy regulations. He had, however, produced the 'residency letter' referred to by Miss Hallett to assist the Applicant. Dr Sharma stated that they had been trying to be good landlords throughout and considered that they had a good relationship with the Applicant, who were good tenants.
20. Dr Sharma confirmed that the rent had been increased from £625 to £650 previously and that he had tried to increase the rent for a second time, as Miss Hallett had stated. Dr Sharma confirmed that, at the time of their discussion on 27 June 2023, he and his wife were facing a lot of difficulties. Their mortgage costs were increasing from £148 in July/August 2023 to £339 per month, as were factors fees and other expenses. They have two young children and had also had to look at selling a vehicle. In addition, Dr Sharma said that his wife was not feeling well and that he had mentioned this in the telephone discussions with Miss Hallett, although had not gone into detail. His wife had been off work for three months. He referred to the documents lodged confirming that she had been off work and all the medical appointments she had been attending. She had had several blood tests and scans and had also attended private doctors and even returned to her home country to have some investigations carried out, as they were not getting answers here. Dr Sharma himself was facing redundancy and these matters were all adding to their financial pressures. He had tried to negotiate a further rent increase with Miss Hallett and had been willing to come down from the £800 sought to £700 but when he realised that this was not going to be possible, the plan was then to sell the Property as they could not continue to rent out at a loss. Dr Sharma reiterated that they had never intended to cause any difficulties. When the Respondent had first looked for an apartment for themselves in 2016, they had found somewhere within two months. Dr Sharma stated, however, that the intention had never been just to get more money. In support of this, he referred to the fact that they had not tried to recover rent up to 12 October 2023 from the Applicant, although that was the date stated in the Notice to Leave and had also offered to extend the notice period further, until 26 October 2023. They had also been given a quote of £700 for decorating the Property but did not look to recover any costs from the Applicant to do with that.
21. Dr Sharma confirmed that the Notice to Leave was correctly served as it was their intention at that time to sell the Property. He stated that they only decided not to sell after the Applicant had moved out on 1 October 2023. Dr Sharma

explained that they had never sold a property before and that, when they realised the expense and what was involved in this, they decided that it would be quicker and easier to re-let the Property instead. They had not spoken to an estate agent or had the Property valued. They had, however, spoken to some friends who rent out property too, for some advice. It was their friends who had recommended that they let out the Property again instead, rather than selling. Dr Sharma said that they were told it was easier to re-let and that they were unlikely to have any difficulty re-letting this Property for a higher rent than previously. They would not have to incur all the selling fees and costs of advertising the Property for sale through an estate agent and they thought it would be easier for them to arrange re-letting rather than sale, given that they live near Glasgow, whereas the Property was in Livingston. Dr Sharma explained that they were very caught up with his wife's health concerns at that time. This led to their decision to put the Property up for let on Gumtree on 26 October 2023, seeking rent of £950 per month. Interest in the Property was so high that it only took until 29 October 2023 for them to secure a new tenant who was willing to pay the £950 rent. That tenant was able to move in very quickly and the new tenancy started on 1 November 2023 and is still there.

22. In response to questions from the Tribunal Members, Dr Sharma stated that they had not been aware of the legislation about wrongful eviction and that it was a shock to them when they were served with the Tribunal papers. He can see the inconvenience caused to the Applicant but that was never their intention. As far as they are concerned, they did everything correctly and did not do anything wrong.
23. Dr Sharma was asked if they own any other property and he confirmed that they purchased one other property in 2022 which they let out. They have not served notice in relation to that tenancy, explaining that the monthly rent received in respect of that property is fine compared to the mortgage payments. On the contrary, this Property was loss-making. Reference was made to the supporting paperwork produced from Birmingham Midshires, the mortgage lender. It was noted by the Tribunal that the monthly mortgage payments had increased from £148.70 in July 2023 to £339.80 in October 2023 but that the letter advising the Respondent of this was dated 6 September 2023, namely after the discussions with the Applicant in June 2023 and the Notice to Leave being served in July 2023. Dr Sharma explained that they had known in advance with mortgage rates increasing that their payments would be going up. It was also noted by the Tribunal that, even with the increased mortgage payment of £340, there would still have been a profit from the monthly rent of £650 being paid by the Applicant. Dr Sharma clarified that they were incurring other expenses too in relation to the Property including factors' fees, insurance and tax which Dr Sharma said was paid at the rate of 42% on the gross monthly rental payments, equating to £273 per month tax.
24. Dr Sharma confirmed that the Respondent's intention to sell the Property continued from the discussions with Miss Hallett in June 2023 until the Applicant vacated the Property on 1 October 2023. Their reason was that they could not afford to make a monthly loss on the Property. Although they did not instruct

any estate agent, solicitor or other property agent with a view to selling, they had looked on sites such as Zoopla and thought that the Property could sell for around £125,000, which would make them a profit as they had originally purchased it in 2019 for £105,000. They had not intended to instruct anyone in relation to the sale until after the Applicant had vacated. Their discussions with their friends which had changed their minds about selling did not take place until the period between 1 October 2023 and advertising the Property for let on Gumtree on 26 October 2023. Dr Sharma conceded that they had needed to secure an increase in the rent for the financial reasons stated but denies that they had misled the Applicant by stating an intention to sell the Property. At the time of serving notice, they considered that they had to sell. They had been trying to make their lives simpler because of all that was going on and needed the time to focus on his wife's health.

Evidence of Dr Satbir Kaur Gill – 2nd named Respondent

25. Dr Gill had interjected at various points during Dr Sharma's evidence to explain further in relation to her health concerns and medical information. She explained that Dr Sharma is a very supportive husband but that she feels responsible for what has happened as much of the decision-making by them in relation to this matter has been due to concerns about her ongoing health concerns. Dr Gill confirmed that it had never been their intention to cause difficulties for the Applicant. They did not do anything wrong and they did not do all this just to secure a higher rent for the Property. They had intended to sell.
26. Dr Gill referred to her health concerns and the supporting documentation lodged. She confirmed that she was signed off work for periods during 2023. She works as a scientist and can thankfully work flexibly now as she still does not have a diagnosis. They are still awaiting results from her last CT scan. She has had several scans and tests done, including a lumbar puncture in November 2023. She spent four days in hospital and explained that in October 2023 things were particularly bad. They were worried and could not focus on selling the Property. It was suspected that she may have cancer, although that has now been ruled out. However, she had eventually had to go back to India in April 2024 and pay privately for further investigations to be done. She has been on antidepressants and has had some mental health sessions. Her husband has been under pressure too, with redundancy and he is actually due to work his last day the day after the Evidential Hearing.

Summing-up

27. Miss Hallett said in summing-up that she understands the Respondent's evidence and the health concerns of Dr Gill which she had not known about and that it is difficult to talk about. However, she thinks, on paper, and looking at the circumstantial evidence, that there was a wrongful eviction here and that the circumstances of the Respondent do not alleviate the fact that they moved out on the basis of a Notice to Leave which stated that the Respondent intended to sell and then they did not sell. She does not believe that the Respondent only decided to re-let the Property in the 25 day period between them vacating and

the Property being advertised for re-let on Gumtree. Miss Hallett stated that, as the Respondent had been aware, she and Mr MacKenzie also had their own financial pressures but the Respondent had still attempted to put up their rent again. They had required to move out and this has caused them further financial difficulties as their current property was the only place they could find. They would therefore still like to be awarded some compensation to address this and still consider that they should receive the maximum compensation of six times the monthly rent.

28. Dr Sharma stated in summing-up that they believe they have not done anything wrong. They tried to do everything the best way and avoid unnecessary formality. They had a good relationship with the Applicant and tried to support and assist them. They feel harassed by the process and that they should not be considered to have misled the Applicant or to have to pay any compensation.
29. Dr Gill stated in summing-up that she wishes she was well and wishes now that they had sold the Property. Their circumstances had changed. They do not have pots of money or investments. She and her husband have basic salaries. They had a clear intention to sell but things changed. She sympathises with the Applicant and feels sorry for the issues they experienced. They would have given the Applicant more time to find somewhere else but it was the Applicant who had insisted on the Notice to Leave being served and a date being specified.
30. The Tribunal Members thanked parties for attending and the manner in which everyone had conducted themselves and given their evidence. It was explained that the Tribunal would now deliberate and that parties would be issued with the Tribunal's decision in writing in due course. The Evidential Hearing was brought to a close.

Findings in Fact

1. The Respondent is the joint owner and landlord of the Property.
2. The Applicant was the tenant of the Property by virtue of a Private Residential Tenancy commencing on 3 April 2021.
3. The written tenancy agreement originally entered into was in the name of the first-named Applicant alone and she was the sole occupant until on or around 14 June 2021.
4. On or around 14 June 2021, the second-named Applicant moved in, with the agreement of the Respondent and the tenancy was thereafter considered to be a joint tenancy, albeit that a new written tenancy agreement was not entered into.

5. The initial monthly rent was £625 per calendar month which was increased by the Respondent to £650 per calendar month, applicable from 1 July 2022.
6. The Respondent sought to increase the rent again, initially to £800, but then to £700 per calendar month during a telephone discussion with the Applicant on or around 27 June 2023.
7. The Applicant was not agreeable to the further rent increase proposed by the Respondent and did not consider it to be in accordance with the law at that time.
8. The Respondent stated that they would require to sell the Property and gave verbal notice to the Applicant.
9. The Respondent offered to be flexible about the notice period and provide a tenancy reference to the Applicant if required.
10. The Applicant immediately started looking for alternative accommodation.
11. At the Applicant's request, the Respondent provided a tenancy reference to the Applicant dated 6 July 2023.
12. The Applicant messaged the Respondent on or around 11 July 2023, requesting notice in writing.
13. The Respondent replied by message on or around 12 July 2023, confirming their intention to sell the Property and giving notice.
14. The Applicant responded by further message, requesting a formal Notice to Leave.
15. The Respondent further responded by message on or around 13 July 2023 to confirm that a Notice to Leave would be issued to the Applicant by email.
16. On 16 July 2023, the Respondent issued a Notice to Leave on the Applicant by email, in terms of which the Applicant was to vacate by 12 October 2023.
17. The ground for eviction relied upon in terms of the Notice to Leave was Ground 1A – that the landlord intends to sell the let property to alleviate financial hardship.
18. The Applicant was experiencing difficulties in securing suitable alternative accommodation.
19. The Respondent offered to extend the notice period to 26 October 2023 to assist the Applicant.

20. The Applicant subsequently secured alternative accommodation and vacated the property on 1 October 2023.
21. The parties were in communication between the Notice to Leave being served and the Applicant vacating the Property.
22. The Property was advertised by the Respondent for let on Gumtree on 26 October 2023, for immediate long-term rental at a monthly rent of £950 per calendar month.
23. The Respondent entered into a new tenancy agreement with a third party, commencing on 1 November 2023 at a rate of £950 per calendar month.
24. The new tenancy is ongoing.
25. The Property has not been sold, nor marketed for sale, by the Respondent.
26. The Respondent's outgoings, including mortgage costs, were increasing such that they did not consider they could afford to continue letting out the Property to the Applicant at the rate of £650 per calendar month.
27. The second-named Respondent was experiencing health issues and concerns during 2023 and periods of absence from work.
28. Investigations are ongoing into the second-named Respondent's health issues.
29. The first-named Respondent's current employment was due to end on or around 1 June 2024, causing the Respondent financial concerns.
30. The Applicant has suffered financial and other losses as a consequence of having to vacate the Property and find alternative accommodation.
31. The Applicant experienced difficulties finding suitable alternative accommodation.
32. The Applicant's rent in respect of their new accommodation is £950 per calendar month, £300 higher than they had been paying in respect of the Property.
33. The Applicant's new accommodation is a considerable distance from the Property and is not as geographically convenient to them as the Property had been.

Reasons for Decision

1. The relevant provisions in the legislation are Sections 58 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016, which are as follows:-

“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.

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.

(2) Subsection (3) applies where—

(a) the First-tier Tribunal intends to make a wrongful-termination order under section 57 or 58, and

(b) two or more persons jointly were the landlord under the tenancy in question immediately before it was brought to an end.

(3) The Tribunal may make a wrongful-termination order—

(a) against all, some, or only one of the former joint landlords,

(b) stating that each person against whom the order is made is liable to pay a specified amount, but the cumulative total of each of the specified amounts must not exceed six months’ rent,

(c) stating that each person against whom the order is made is jointly and severally liable for the whole amount to be paid.

(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.”

Section 58(1) above states that it applies where a Private Residential Tenancy (“PRT”) is brought to an end in accordance with Section 50, which is as follows:-

“50 Termination by notice to leave and tenant leaving

(1) A tenancy which is a private residential tenancy comes to an end if—

(a) the tenant has received a notice to leave from the landlord, and

(b) the tenant has ceased to occupy the let property.

(2) A tenancy comes to an end under subsection (1) on the later of—

(a) the day specified in the notice to leave in accordance with section 62(1)(b), or

(b) the day on which the tenant ceases to occupy the let property.

(3) For the avoidance of doubt, a tenancy which is to come to an end under subsection (1) may be brought to an end earlier in accordance with section 48.”

2. The Tribunal carefully considered all the documentation before it, together with the evidence and oral submissions given by the parties at the Evidential Hearing. The Tribunal was satisfied that the PRT had come to an end by the Respondent having served a Notice to Leave and the Applicant having left the Property, in terms of Section 50. The Tribunal was also satisfied that the Applicant was the tenant of the Property immediately before the PRT was brought to an end and that the Applicant had been misled into ceasing to occupy the Property by the Respondent who had been the landlord of the Property immediately before the PRT was brought to an end, all in terms of Section 48. The Applicant had therefore been entitled to make the application for a wrongful termination order in terms of Section 48(2).
3. The parties were essentially in agreement regarding the pertinent background facts of the tenancy and the chronology of events leading to the service of the Notice to Leave by the Respondent and the events which occurred thereafter. The first issue for the Tribunal to determine, in terms of Section 48(3) was whether the Applicant had been “misled” into vacating the Property by the Respondent. This involved the Tribunal assessing whether it accepted the Respondent’s position that they had the genuine intention of selling the Property to alleviate financial hardship (Ground 1A), as this was the ground they had stated to the Applicant and stipulated in the Notice to Leave. The Tribunal noted the additional information stated in the Notice to Leave by the Respondent, namely:- *“We need to sell out this property as it is getting difficult to manage mortgage each month”*. The Tribunal also had to assess whether it accepted the Respondent’s explanation as to why the Property was not sold or marketed for sale following the Applicant vacating but was instead advertised for re-let and subsequently re-let to a new tenant at a significantly higher rent than the Applicant had been paying. The Respondent’s position that this was

due to a change of mind on their part only after the Applicant had vacated, primarily due to concerns regarding Dr Gill's health, but also for financial reasons.

4. The Tribunal did not consider that there was any doubt that the Applicant had ceased to vacate the Property as a result of the Notice to Leave having been served. Although the Applicant's evidence was that they had started looking for alternative accommodation prior to the Notice to Leave being served, the Tribunal considered it clear from the Applicant's evidence that they had immediately started looking, following Miss Hallett's telephone discussions with Dr Sharma, when verbal notice had effectively been given. Furthermore, the Tribunal was satisfied from the Applicant's evidence that they were well-settled in the Property, having lived there for over two years and that it was suitable for their needs and geographically convenient to them both, in terms of their work and further education.
5. The Tribunal accepted the evidence of the Dr Sharma and Dr Gill, that they were experiencing some financial pressures as a consequence of their mortgage payments and other costs in respect of the Property increasing. Dr Sharma had been quite candid in his evidence that he had sought to increase the rent paid by the Applicant in respect of the Property for a second time in discussions with Miss Hallett on 27 June 2023 and, when she had refused, that he had then informed her that they would have to sell and gave notice. There was supporting evidence produced by the Respondent from their mortgage lender showing that their monthly mortgage payments increased from October 2023 from just under £150 per month to just under £340 per month. The Tribunal accepted Dr Sharma's evidence that, although the letter from the mortgage lender confirming this was dated September 2023, some months after notice had been given to the Applicant, that the Respondent was aware of mortgage rates increasing at the time notice was given. It was noted by the Tribunal that the monthly rent payable by the Applicant had already been increased by the Respondent in 2022. It was also noted that the monthly rent being received of £650 would still have exceeded the increased mortgage payments by over £300. The Respondent also let out another property in addition to this one. The Tribunal was not of the view, given these factors, that the Respondent would have been able to make out a case for 'intending to sell to alleviate financial hardship' had eviction proceedings been necessary, but that is a separate matter. However, given Dr Sharma's evidence about other costs in respect of the Property rising, combined with other personal and financial circumstances, the Tribunal accepted that there were surrounding financial pressures for the Respondent at the relevant time and that this had had a bearing on the Respondent's wish to recover possession of the Property.
6. The Tribunal also accepted the Respondent's evidence regarding the health issues of Dr Gill and the worry and stress this had understandably been causing both Respondents. It was clear from the manner in which both Dr Sharma and Dr Gill gave their evidence that these health issues were continuing to have a significant impact on them. Supporting documentary evidence had been produced in the form of confirmation from Dr Gill's GP surgery that Dr Gill had

attended eight appointments at the surgery between 17 August 2023 and 23 January 2024; hospital letters dated 20 July 2023 concerning a chest x-ray to take place on 14 August 2023 and 23 October 2023 concerning an outpatient appointment for General Surgery on 3 January 2024; and Certificates of Fitness for Work/Statutory Sick Pay showing that Dr Gill had been certified as not fit to work between 13 July 2023 and 7 September 2023 due to 'abdominal pain' and from 12 December 2023 to 26 December 2023 for 'headache/backache'. Dr Sharma and Dr Gill had also both given oral evidence that Dr Gill had also had a number of scans and blood tests carried out, sought private medical treatment and had travelled to India in April 2024 for further medical investigations and that although cancer had been suspected, that had fortunately now been ruled out, although the outcome of a further scan was still awaited. The Tribunal noted that, although most of the medical appointments/investigations had post-dated the discussions between Dr Sharma and Miss Hallett on 27 June 2023 when notice had been given and the service of the Notice to Leave on 16 July 2024, Dr Gill had first been certified as unfit for work on 13 July 2023. The Tribunal concluded that this supported Dr Sharma's evidence that Dr Gill was already feeling unwell on the June and July 2023 dates. The dates in the medical evidence also supported the Respondent's evidence that concerns surrounding Dr Gill's health continued throughout the period between notice being served and the Applicant vacating on 1 October 2023, and beyond.

7. That said, taking account of all the evidence together and the chronology of events, the Tribunal was not persuaded that the health concerns surrounding Dr Gill were sufficient to establish the Respondent's position that these concerns had changed their minds about selling the Property and opting to re-let the Property instead, nor that this change of intention had only occurred between the Applicant vacating on 1 October 2023 and the Property being advertised for re-let on 26 October 2023. The Tribunal was not persuaded by the Respondent's argument that the ongoing health concerns of Dr Gill and the distance between the Respondent's home and the Property meant that it was necessarily easier for them to let out the Property again than selling it.
8. There is no statutory definition or guidance in the 2016 Act as to how the Tribunal should assess whether or not a landlord had a genuine intention to sell or had "misled" the tenant into vacating a property. As intention is entirely subjective, the Tribunal must look at the surrounding circumstances to try and ascertain whether, objectively, the facts point to one conclusion or the other. In this case, the Tribunal considered that the evidence overall supported the Applicant's position over that of the Respondent. The Tribunal considered the significant factors here in favour of the Applicant to be the fact that the Respondent had attempted to increase the Applicant's rent again, for the second time, within a relatively short timescale; on the Applicant refusing the rent increase and explaining that a further increase was not in accordance with the legislation in place at that time, the Respondent immediately gave verbal notice, stating that they would have to sell; the fact that after giving notice, the Respondent took no steps towards having the Property valued, marketed or sold and had not taken any professional sales advice; the fact that the Property was advertised on Gumtree on 26 October 2023 as available for immediate long-term rent when the Applicant had only vacated on 1 October 2023, the end

of the notice period in terms of the Notice to Leave had expired on 12 October 2023 and the extended notice period offered to the Applicant had ended on 26 October 2023; the Property was advertised on Gumtree at a rental of £950, £300 higher than the rent which was being paid by the Applicant; the Respondent secured a new tenant as of 1 November 2023 at the monthly rental sought of £950. The weight of these factors led the Tribunal to the conclusion, on the balance of probabilities, that the Respondent had misled the Applicant into vacating the Property. There was no evidence before the Tribunal substantiating the Respondent's stated assertions that they had intended to sell before serving notice and throughout the whole notice period. The Tribunal did not consider it credible that the decision not to sell and instead to re-let the Property for a significantly higher rent was made only after the Applicant had vacated. The Tribunal determined that the terms of Section 48(3) were met, that this had been a wrongful termination of tenancy and that a wrongful termination order should be made.

9. The second issue for the Tribunal to decide was the amount that the Respondent should be ordered to pay to the Applicant by way of a wrongful termination order. In terms of Section 59(1), the maximum amount payable is six months' rent, "rent" being, in terms of Section 59(4)(a), the amount of rent payable under the tenancy immediately before it ended, namely £650. The Applicant had sought the maximum order in the application and reiterated this view at the Evidential Hearing. Again, there is no further guidance in the 2016 Act as to the how the amount of any such order should be calculated. Accordingly, the Tribunal considered both the 'severity' of the breach of these legislative provisions by the Respondent and the financial and other impacts on the parties of the tenancy being wrongfully terminated.
10. The Tribunal did not consider that the actings of the Respondent here merited an order at the top end of the scale. The Tribunal understood and accepted the evidence of both Dr Sharma and Dr Gill regarding the financial pressures they were under and the additional pressures arising from the concerns regarding Dr Gill's health and their wish to raise the rent paid by the Applicant. The Tribunal did not consider that the Respondent had embarked on the process of trying to increase the rent and thereafter seeking to recover possession of the Property in a deliberately malicious or underhand way. There did appear to be an initial reluctance to serve formal written notice on the Applicant but the Tribunal did not consider, having heard Dr Sharma's evidence, that there was anything underhand about this. The Tribunal accepted Dr Sharma's explanation that he considered that the parties had a good relationship and that he was simply trying to deal with things in an informal way and to be as flexible and helpful as possible to the Applicant in terms of notice periods and providing tenancy references. The Tribunal also accepted the evidence of Dr Sharma and Dr Gill that they had been unaware of the existence of this remedy for a tenant who considers their tenancy to have been wrongfully terminated. They both repeatedly stated that they did not consider they had done anything wrong and regretted the impact that the ending of the tenancy had had on the Applicant.
11. Nor, however, did the Tribunal consider it appropriate in the circumstances to make an order at the low end of the scale. As a consequence of the termination of tenancy, the Respondent had been able to secure a new tenant almost

immediately, for a monthly rental amount exceeding the rent which they had been receiving from the Applicant by £300 per month. The Tribunal had noted that the Respondent had another property that they let out in addition to this one and had also sought advice from landlord friends who knew the local rental market. The Tribunal considered that the Respondent was therefore most likely aware of the likely demand and achievable rent in respect of the Property before it was advertised on Gumtree. In comparison, the Applicant had suffered significant financial and other detriment as a consequence of this tenancy being terminated and gave detailed evidence in this regard. The Applicant experienced significant difficulties finding suitable alternative accommodation, despite having embarked on viewing other properties as soon as verbal notice was given by the Respondent. Miss Hallett had explained the numerous properties they had viewed and the high demand for suitable rental properties in the locale. In the end, the Applicant had to move out of the area altogether and move some distance away in order to secure a property by the end of the notice period and was requiring to pay a significantly higher monthly rental of £950. Apart from financial loss, the Applicant had to endure the stress and disruption of moving properties and the practical difficulties and inconveniences caused by the geographical location of their new rental property. It was clear to the Tribunal that Miss Hallett, in particular, had been upset and distressed to see the Property being advertised for re-let by the Respondent so soon after she and Mr MacKenzie had vacated.

12. Weighing all of the above, the Tribunal determined that it was appropriate to make an order for three times the rent, namely the sum of £1,950 to be paid by the Respondent to the Applicant.

13. The Tribunal's decision was unanimous.

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.

N Weir

Legal Member/Chair

30 May 2024
Date

