

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘The Procedure Rules) in relation to an application for civil proceedings relative to a Private Residential Tenancy under Rule 110 of the Procedure Rules.

Chamber Ref: FTS/HPC/PR/23/2863

Re: 24-1, Springfield Street, Edinburgh, EH6 5DE (“the Property”)

Parties:

Ainslie Hughes residing at 4-1, North Weber Place, Edinburgh, EH4 1TE (“the Applicant”)

Toby Mathews residing at 24-1, Springfield Street, Edinburgh, EH6 5DE (“the Respondent”)

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

Tribunal Members: Jacqui Taylor (Legal Member) and Angus Lamont (Ordinary Member)

Background

1. The Applicant submitted an application to the Tribunal under section 58(2) (wrongful termination without eviction order) of the 2016 Act. She sought payment of the sum of £5550.00 as the Respondent had wrongfully terminated the Applicant’s lease of the Property. She explained that although the Respondent’s reason for the eviction was claiming to move into the property himself, the property was listed for sale 16 days after he moved out. She moved out earlier than the notice period with the written permission from the landlord that no further rent would be owed. She handed the keys back to the letting agency on 31st May 2023, the notice period was to leave by 20th June 2023. Since he listed the property on 16th June 2023 she does not believe that he would go through the hassle of moving into the property at all and therefore was not convinced his primary residence is 24/1 Springfield Street.

2. Documents lodged with the Tribunal.

Documents lodged with the Tribunal by the Applicant was:

2.1 A copy of the Private Residential Tenancy Agreement of the Property between the parties dated 17th November 2022.

3. Written Representations

3.1 Written Representation received from the Respondent dated 17th November 2023 which included:

3.1.1 Proof of address whilst renting 24-1, Springfield Street, Edinburgh, EH6 5DE.

3.1.2 Offer for 28/7, Broughton Road, Edinburgh, EH7 4ED dated 29th May 2023 with date of entry being 7th July 2023.

3.1.3 Email to the Letting Agent advising them to serve notice to leave on the Tenant with flexibility re the leave date.

3.1.4 Extracts from Scottish Government's website re notice periods and grounds of eviction.

3.1.5 Proof that the Respondent moved into 24/1 Springfield Street including correspondence with the council tax department, details from Octopus Energy website and orders from Hellofresh to the Property in August.

3.2 Relevant sections of the Written Representations received from the Respondent dated 17th November 2023 are in the following terms:

'I welcome the opportunity to take part in the Case Management discussion to address some of the claims made in my previous tenant's case. I must start by saying my reaction to receiving this information is one of shock. Although Zone Letting dealt with the administration of renting my flat, I've always been a reasonable landlord who rented my property, after living in it for over 8 years as my primary residence, solely because I moved in with my partner. I am not a greedy landlord out to profit at my tenant's expense. In opting to pay a letting agent I elected to sacrifice a portion of rental income to ensure the whole process is dealt with professionally and to make both mine and the tenant's life easier. As for being accused of carelessness, I've never sought a rise in rent, I've let the tenant decorate my property, I've allowed pets, I've offered extended notice periods and I had no problem with the tenant not paying rent for the legislated 28 days after they found alternative arrangements. In addition to this I'm owed money from the tenant for a cleaning fee which I have not pursued as I felt it was a good-natured thing to do. I was a landlord for two years and always had good relationships with my previous tenants and Zone Letting alike.

I sympathise with my previous tenant and her circumstances however I am not to blame for these issues, and they do not alter government legislation and the fact that it has been adhered to. I appointed Zone Letting for their experience and expertise in managing thousands of rental properties, and it is worth noting they have also expressed their confusion at my tenant's claims.

In the documentation attached I have provided various pieces of evidence to dispel the claims made about the handling of the deposit and the grounds for eviction. I have also included additional documents which I believe to be relevant. These are listed below.

Proof that deposit regulations were adhered to:

- A) *Email from Zone Letting confirming that the deposit was dealt with in accordance with the relevant regulations*
- B) *Snip of Safe Deposit Scotland payment confirmation*
- C) *Snip of Safe Deposit Scotland regulations*
- D) *Snip of tenancy agreement*
- E) *Bank holiday calendar proving payment was made within 30 working days of tenancy start date*

Proof that notice period and eviction reasoning was adhered to:

- F) *Proof of address (my partner's property) whilst renting out 24/1 Springfield Street*
- G) *Solicitors letter showing the offer accepted on the property I was living in and the date we needed to be out of the flat*
- H) *My email to Zone Letting to serve notice and associated reasons along with flexibility on eviction date. (The email stated 'As I mentioned Katie has accepted an offer on her flat so we will move back into my flat before putting that on the market too.')*
- I) *Snip from Scottish Government website showing notice periods*
- J) *Snip from Scottish Government website showing grounds for eviction*

Proof of living back at 24/1 Springfield Street after the tenant moved out:

- K) *Screen print from Edinburgh council website showing I was liable for 24/1 Springfield Street from 31st May and that council tax payment was made and that there is a zero outstanding balance*
- L) *Second screen print from Edinburgh council - including my name on the account*
- M) *My email to Zone Letting confirming my residential address in July*
- N) *My email to Edinburgh council on 31st May (the day the tenant moved out) stating I will be taking over the account and moving back in.*
- O) *Snip from Octopus Energy website confirming energy use and payment (June/July)*
- P) *Snip from Octopus Energy website confirming energy use and payment (July/August)*

Q) *Snip from Octopus Energy website showing my account for 24/1 Springfield Street with a zero balance (i.e. I've paid the bills for my time living back in the flat). It also has my new address to prove it is an up-to-date image.*

R) *Hellofresh grocery delivery to the address in August (1)*

S) *Hellofresh grocery delivery to the address in August (2)*

T) *Removal van confirmation showing we moved our possessions from 24/1 Springfield Street to our new house*

Correspondence between Zone Letting and I regarding the boiler repair:

U) *Email from Zone Letting stating they felt the tenant's claim for a reduction in rent was unjustified*

V) *Email correspondence between Zone Letting and I regarding boiler repairs (1)*

W) *Email correspondence between Zone Letting and I regarding boiler repairs (2)*

X) *Confirmation of payment for repairs taken from my rental remittance*

Other relevant documentation:

Y) *Correspondence between Zone Letting and I in which they state their confusion as to the tenant's claims and I offer to speak to the tenant directly*

Z) *Message from Ross at Zone Letting stating I was due a fee for cleaning the flat after the tenant moved out. This was never received.*

AA) *My mortgage offer on the property from 2012 - proof I didn't buy the property in August 2022 (1)*

BB) *Factor fees on the property from 2014 - proof I didn't buy the property in August 2022 (2)*

Timeline of events

My partner and I each owned a flat and I moved in with her in 2021. From this point on I rented my flat through Zone Letting and have had three separate tenants at various points between then and when this tenant moved out in May 2023. We decided in 2023 that we wanted to sell both of our properties and buy a place together. We listed my partner's property on the market in April and accepted an offer in May. Consequently, we were required to move back into my property at Springfield Street as we had nowhere else to live from the beginning of July. As well as moving back in, we also wanted to sell my property to order to afford a place together. I emailed Zone Letting on 17th May to serve the tenant's notice. We had agreed a provisional date with the buyer of my partner's flat of July 7th• so I offered the tenant

an extra 12 days' notice to the standard 28 days for us to have the flat back on 1st July (giving just under a week to move out of the flat we lived in). I hoped this would be helpful to the tenant in showing this flexibility to give her more time to find alternative accommodation.

On 22nd May I emailed Zone Letting acknowledging that I was happy for the tenant to not be liable for any further rent if she found a new property before I was due to move back in. Indeed, the tenant opted to move out earlier than the date I needed to move back in, so the flat sat empty in June. Given she moved out earlier than required I listed the property on the market earlier than I had expected I could {16th June as referenced). I would have done this in July when we moved back in had the tenant opted to stay in for the extended notice period offered.

On the date she moved out (31st May), I emailed Edinburgh council to update them with this information, to re-take over the account and state that I would be liable for council tax going forward.

My partner and I stayed in her property until the date the new owner moved in (7th July). Then we both lived at 24/1 Springfield Street which was our primary and only residence. We have council tax records, energy bills and other evidence proving we were living in the property.

We moved out once we received a satisfactory offer on the property and had found another home.

Wrongful eviction claim

The grounds and notice period given to the tenant were legitimate as my partner and I did live in the property from July up until the point the property was sold and we found a new home as per the council tax records (amongst others). We would have stayed in the property as long as required until this was achieved. The property was empty in June but was put on the market and viewings carried out during this time. The property was only put on the market in June once I found out the tenant was moving out earlier than anticipated. I had assumed they would take the extended period offered which ran to 1st July. Either way, the notice period for selling a property is the same as when the landlord wants to move back in (28 days provided the tenant has been in the property less than 6 months). Both reasons were applicable in my case as per my email to Zone Letting when serving the notice as I was moving back into the property and wanting to sell it. Zone Letting selected one of those two reasons for the purpose of completing the notice to leave forms. When Zone Letting first notified me of the tenant querying the reason for the eviction I emailed back with the relevant information and included snips stating the government regulations, of which my actions complied with. This email is included in my documents provided.'

3.3 Written Representations received from the Applicant dated 30th November 2023 in the following terms:

'I would like to address some of the responses and comments made by Mr Mathews that substantiate my claim the grounds for my eviction were wrongful and confirm he had not planned to move into the property to make it his primary residence, the basis for the eviction. His explanations do not change my mind on the belief that I was treated unfairly during my tenancy regarding the boiler issue and how the tenancy was offered. Why I thought the flat to be a recent acquisition by Mr Mathews. When I viewed the rental in mid-November 2022, attached to the railings of the building there was a Warner Estate Agent's sales board depicting the flat number (the same agency the property was sold by in 2023). I then searched online and found the August 5th 2022 listing details. This is why I assumed the property had only recently been purchased. Given the timeframe of just three months between it being for sale and then offered for rent, I had assumed it must have been purchased as a buy-to-let investment and as such would likely be my home for the longer term. When I viewed the property, I asked if the landlord was looking for a long-term tenant to which I was told they were. Therefore, warranting the investment of my time and money in cleaning and redecorating the property throughout and in the purchase of new furniture to fit and suit the space as well as new window coverings and furniture, plants and planters for the decking area. Had I known this had been Mr Mathews' property for some time and in only two years he'd already had two previous tenants, as well as a failed attempt to sell the property immediately before my moving in, I would not have done so. This information would have been concerning to me and I would have questioned Mr Mathews dedication to being a landlord for the longer term. Even more so now, having discovered he also evicted his previous tenant as shown on the Zone Letting remittance [F] that Mr Mathews submitted. With the time frame between that tenant being given notice to leave in June 2022 and the flat listed for sale 05/08/2022, it begs the question, were they too evicted within their first 6 months of tenancy so that the minimal notice period was due? This further supports my opinion that I was simply a means to keep money coming in until it was a better time to sell and that it was the intention all along to relist before my tenancy reached 6 months. The images following show that the property was listed for sale on August 5th 2022, and remained listed until November 2022 as it was included in the agency's November newsletter. The flat was listed to let on or just before November 13th 2022, I took tenancy at the end of the month

In reply to Mr Mathew's response to the suggestion of his 'carelessness' as a landlord I was not in tenancy long enough for him to have lawfully invoked any rent increase upon me. Mr Mathews had already increased the rent from his previous tenant's rate before my moving in as shown on a copy of a Rental Remittance [F] that he provided. I have never asked to have a pet at the property so this is not something to benefit me. Mr Mathews says he "let me decorate his property" suggesting that I should be grateful for doing something that he should have done himself as it was his property, not mine. It's not a renter's duty to redecorate a landlord's property when this was more of a necessity than a choice. I'm certainly not grateful to incur the expense involved or the inconvenience caused by my delay in moving in. I asked Zone Letting during the viewing if the Landlord would be repainting the flat given that the walls, skirting boards and door frames were dirty and scuffed. Their response was "unlikely". As it's important to me to live in a clean and well-maintained property I

requested to just do this myself. I would suggest that Mr Mathews benefited from this as much as I did since we both had a clean and aesthetically pleasing residence to stay in, not to mention making it more sellable than it had been previously. The offer of an extended notice period was equally if not more beneficial to Mr Mathews, providing him extra rent and coinciding with his move. Email [H] to Zone Letting. As for my leaving the property earlier than the legislated notice period, I do appreciate that Mr Mathews agreed to do this without a rent cost. This went some way towards compensating me for the additional expense I had to incur with arranging storage and yet more moving costs just months after moving in. I moved earlier solely to take advantage of help with moving that was only available at that specific time, the ability to secure a storage unit and the offer of a place to stay short term. It would alleviate my overwhelming concern of trying to plan a last-minute move around my challenging work commitments and the worry of securing a new place within a defined timeline. It was not something I wanted to do but realised and accepted that it made sense to take advantage of this help at what was a very stressful and upsetting time. In hindsight, this difficult decision proved to have been the best thing to do given that I couldn't find a suitable flat to move to during or even after my notice period.

I find the comment from Zone Letting about the cleanliness of the flat insulting and untruthful. They were asked if they wanted to arrange a time for us to do a walk-through to check on the property before I left but said no, that it would "be best" to drop the keys off at the office; showing their usual lax interest in doing their job. I spent May 30th moving out of the flat and cleaning, I then spent the morning of May 31st further deep cleaning the now empty flat. On my way to drop the keys off at Zone's office, they called me when I was on my way to ask when I would be there (you'll see the 32-second phone call between us, as I was around the corner at the time). They said they were going over there right then so they had sufficient time to check and call me back if they had any issues. They didn't, so I assumed all was well and that they were happy with how I had left the flat, certainly cleaner and in better condition than when I moved in. So to find that they were looking to hold back some of my deposit for cleaning came as a surprise, bearing in mind I heard no mention of this until weeks after I moved out. It was only when I initiated the return of my deposit on 9th June 2023 through Safe Deposits Scotland as Zone had not returned it to me that I knew anything about it. I emailed them straight back and offered to show them the video I took of the flat in perfectly clean order and not as they had suggested. They did not respond to me, they took no further action and I received my full deposit back. I believed they were trying it on and had not anticipated me taking a video of the property. Mr Mathews may have been relying on and trusted the information he received from Zone letting, text message [Z], "minor cleaning, 2 hours max", but it was their duty to have informed me straight away if they had any issues. I was after all still entitled to be at the property so would happily have met them personally to inspect and put right any issue they found. I don't know if Mr Mathews even knew I had refuted the claim and that I had video evidence to show it was false. Maybe Zone just kept that to themselves to save embarrassment and let Mr Mathews believe I was at fault. Therefore, Mr Mathew is not, as he has been led to believe, owed any cleaning fee or was doing a "good-natured thing" for me by not pursuing this. Wrongful Eviction I was offered this tenancy under the impression of letting agents as long-term let, despite Mr Mathews' known intent to sell the property in the near future and purchase a home with his girlfriend. I don't believe that any consideration was given to the inconvenience, stress or cost that doing this to a tenant would cause.

I feel I was used as nothing more than a means to collect revenue in the interim between the failed attempt to sell the property and it being relisted at a more favourable time in June 2023. The flat's location, which is set behind and accessed off of Leith Walk, meant it was often subject to restrictive and difficult access as a result of the ongoing tram works. I would be detoured on many occasions and from one day to the next I would not know what route I could take to get home. In my view, it affected the earlier ability to sell the property. It was an inconvenience that I was willing to endure knowing it was expected to end early summer. To find myself being evicted just as the tramline opened and the roadworks completed, seemed a very unlikely coincidence. The Warners Estate Agency's sales board remained in place at the building throughout my tenancy, I now question if that was because it wasn't worthwhile removing it if they knew that they would be putting it back on the market when conditions improved a more favourable time to sell. To evict a tenant on the grounds of 'Moving in' and say that this was "legitimate" when in fact the property was merely a stop-gap of just 6 weeks is neither considerate nor within the tenancy rules. Mr Mathews used this property after the sale of his previous residence and until the completion of the purchase of his new home, he states in his email to Zone Letting [H], that he intends to sell. He also says in his 'Timeline of Events' that in 2023 he and his girlfriend were planning on buying a place together. Whether or not Mr Mathews followed the advice or direction of Zone letting in doing this, it was still his responsibility to follow the correct procedure in requesting eviction. It was not difficult to find the rules regarding this. Whatever date he decided to list the flat for sale, be it earlier than planned or after my notice period was served, it remains that it was not going to be his primary residence for at least 3 months before listing the property, as required under the Tenancy Act. By moving into the property on 7th July 2023 he should have been planning on residing there until at least 7th October 2023. It is still my belief that claiming to be moving into the property was used as a quicker means to invoke my eviction and give me the minimum notice. Just one week later the twelve-week notice period would have been required. If Mr Mathews new home purchase was already underway this would have certainly interfered with his planned sale of the Springfield Street property

Other Points I do not agree with Mr Mathews saying that some of the information that I provided to the Tribunal is irrelevant or that it is his place to decide what is considered relevant to me. I've done my best to include information that I feel added to my case, how I feel I was treated and matters that I felt were not being dealt with appropriately by both Zone Lettings and Mr Mathews. The situation he placed me in and the difficulties I endured during the tenancy have had an adverse and ongoing effect on me. Given my employment as a full-time midwife and the longer than contracted hours of work that I was committed to, I relied upon having the security of a permanent and long-term place to stay. My free time was precious and often spent catching up on rest so unpacking and making the flat a home took me some time. I never anticipated having to move so soon after finally getting settled. This came as a blow and took a toll on my emotions. Having moved from London for my new job placement, I was only just getting to know and settling into the area when I was forced to leave. I included the property listings of many flats simply to show the difficulty in acquiring a new residence that was comparable to Mr Mathews place, albeit a small one-bedroom property. His flat provided secure parking, a quiet location (a necessity for a night worker), and was within a reasonable travel time to my place of work. I don't necessarily need a larger property, simply one that meets my needs as

mentioned and within my budget. Even now in December, it is incredibly difficult to find a property in that price range with the same criteria. Getting the opportunity to view any let is near impossible as there are tens of enquiries for every listing, and many people applying for one place. I hold Mr Mathews responsible for my being homeless because I feel he was negligent in his duty as a registered landlord. By letting his property to me knowing that he was only intending it to be for a short while, he denied me the opportunity to have taken a different rental property. The market has changed in that time period and the availability of homes and rent costs have changed significantly too. The last thing that I needed at an already difficult time was taking this matter to a tribunal and causing myself further stress and anxiety but I feel it is important that Landlords are held accountable for how they treat their tenants and for them to appreciate that we are more than just revenue streams or investment opportunities. Evictions for any reason can cause devastating effects on a tenant's life and disruption to their employment with moving, finding a new home and possibly not being within a reasonable travel time to their place of work.'

4. Case Management Discussion

The case called for a conference call Case Management Discussion on 11th December 2023 at 2pm.

The Applicant attended the CMD accompanied by her mother.

The Respondent attended the CMD.

4.1 Oral Representations by the Applicant at the Case Management Discussion.

She had been sent the Notice to Leave after living in the Property for five and a half months as the Landlord wanted to move back into the Property. She felt let down. She has spoken to Warners who advised that the offer for the sale of the Property was accepted at the end of June 2023. She received the Notice to Leave and took it to be notice telling her to vacate the Property. As she had to leave the Property it suited her to leave two weeks earlier at the end of May 2023, when she had help available to assist with her move. The Notice to Leave did not mention that the eviction ban that was in place. She referred the Tribunal to production H lodged by the Respondent which is an email he sent to the Letting Agent dated 17th May 2023 which states that the Respondent and his partner will move back into the Property before putting it on the market.'

4.2 Oral Representations by the Respondent at the Case Management Discussion:

He had been living with his partner and she had sold her Property with the date of entry being 5th or 7th July 2023. He needed to move back into 24-1, Springfield Street, Edinburgh, EH6 5DE as he did not have anywhere else to stay after 7th July 2023. He spoke to his Letting Agent who advised that the Tenant would have to be given 28 days notice. The Letting Agent said they would serve Notice on the Tenant. The next thing that happened was that the Tenant advised the Letting Agent that she wanted to move out of the Property sooner at the end of May 2023. He explained that he intended to move into the Property and save up to buy something larger probably towards the end of the year. However, matters changed when he found out that his

partner was pregnant. The Property is a one bedroom flat. As his partner was pregnant they would have to move to a larger property sooner. They put the Property on the market in the middle of June 2023. An offer was received and accepted by late June 2023 and the date of entry was 18th August 2023. He lived in the Property for six weeks. It was his sole residence. He paid the utilities and council tax during this period.

He emphasised that at the time the Notice to Leave was served he did intend to reside in the Property as he did not have anywhere else to live after 7th July 2023. After he moved back into the Property he found out that his partner was pregnant and this meant his intention changed and he decided to sell the Property.

He confirmed that his partner Katherine Gater and the letting agent Ross Winton could attend as witnesses. His partner is due at the beginning of March and it would suit best if the hearing could take place at the beginning of the year.

4.3. Outcome of the Case Management Discussion.

The Tribunal determined that the application should proceed to a hearing and the Respondent could arrange for the witnesses Katherine Gater and Ross Winton to attend.

5. Direction.

The Tribunal issued a Direction dated 13th December 2023 in the following terms:

'The Respondent must produce to the Tribunal evidence of:

- (i) When he first instructed his solicitor to act for him in connection with his purchase of his new Property 90 Whitehouse Road, Edinburgh, EH4 6PD.*
- (ii) When he applied for a mortgage in connection with his purchase and*
- (iii) When the Home Report for **24-1, Springfield Street, Edinburgh, EH6 5DE** was instructed.*

The said documentation should be lodged with the Tribunal no later than close of business on 15th January 2023.'

6. Response to the Direction.

The Respondent sent an email to the Tribunal dated 9th January 2024 and provided the following documents:

6.1 A copy of an email dated 15th June 2023 from the Respondent to his solicitor instructing him to submit an offer for another property.

6.2 A copy of an email from the Respondent's solicitor to the Respondent confirming that there is no mortgage over the property he bought.

6.3 An email from Warners LLP to the Respondent dated 7th June 2023 acknowledging that they had been instructed to act in connection with the sale of the Property. It also confirmed that the Home Report had been instructed and it would be carried out on 9th June 2023.

7. Witness Statement.

The Respondent provided a witness statement by Ross Linton, Letting Agent, in terms of a letter sent by email dated 21st June 2024. The witness statement was in the following terms:

'My name is Ross Winton and I am an Associate Director at Zone Letting Ltd

(Edinburgh). We were employed by Mr Mathews as the managing agency for his rental property and managed the tenancy with Ms Ainslie Hughes between 25th November 2022 to 31st May 2023. We were asked by Mr Mathews to serve notice to end the tenancy on 17th May 2023. The grounds given by Mr Mathews were that he intended to use the let property as his primary and sole residence. In accordance with the grounds set out in the PRT signed by the tenant, we gave 28 days' written notice for the tenancy to end and subsequently offered a further extension to 1st July 2023, should the tenant require extra time to vacate the property. On 25th May 2023 we received communications from Ms Hughes that she intended to vacate the property on 31st May 2023. We approached Mr Mathews concerning this and he agreed to terminate the tenancy early given the tenant seemed to have found alternative accommodation. My understanding is that Ms Hughes has lodged case against Mr Mathews for unfair eviction, on the grounds that Mr Mathews listed the property for sale less than 3 months after the tenancy ended. As I am sure Mr Mathews will have already advised you, his personal and family circumstances changed dramatically in a very short period of time, leaving him with no option but to list his former rental property on the market for sale. At the time the notice was served to end Ms Hughes' tenancy, Mr Mathews intention was to use the let property as his primary and sole residence and indeed, he did this for a period of time until the property was sold. I believe that Zone Letting Ltd and Mr Mathews have acted in a fair, reasonable and professional manner throughout this process. I would also be keen to reiterate that Ms Hughes counteracted the notice served by the landlord, by giving notice of her own to willingly end the tenancy. I would also be keen to point out that Mr Mathews agreed to end the tenancy early to ease any potential financial strain on the tenant and initially offered an extension to her stay, in excess of the minimum 28 days' notice period. I trust you find the above to be accurate and in accordance with the evidence already provided by Mr Mathews.'

8. Hearing.

The case called for a video Webex hearing on 24th June 2024 at 10.00am.

The Applicant attended the CMD accompanied by her mother, as a supporter.

The Respondent attended the CMD and called his partner Katy Gater as a witness.

8.1 At the start of the hearing Mrs Taylor referred to the fact that the statement by Ross Winton had been received on Friday 21st June 2024 and in terms of Procedure rule 22 it should have been sent to the Tribunal no later than 7 days before the hearing and the Tribunal can only receive a document late if they are satisfied that the party lodging it late had reasonable excuse.

The Respondent explained that the statement had been lodged late as Ross Winton was unable to attend the hearing as he was going to be on holiday. The Tribunal accepted that the Respondent had a reasonable excuse for lodging the witness statement late. The Appellant did not object to the witness statement being lodged late. The Tribunal adjourned for a short time to allow the Applicant to review the statement by Ross Winton.

8.2 The Applicant advised as follows:

8.2.1 Since the CMD she has reviewed the documents. She explained that the Notice to Leave that she had received had been prepared on the incorrect form as it did not refer to the eviction moratorium.

8.2.2 She referred to the email the Respondent sent to the Letting Agent dated 17th May 2023 that states:

'As I mentioned Katie has accepted an offer on her flat so we will move back in to my flat before putting that on the market too.' She explained that this shows that the Respondent did intend to sell the Property.

8.2.3 She said that it was easier for the Respondent to obtain an eviction on the basis of Ground Four (intention to live in the Property) than Ground One as he would have had to obtain a Home Report first.

8.2.4 She believes that the dates provided by the Respondent explaining the change in circumstances are not consistent. She does not know the exact due date but if the due date was 1st March 2024 the Respondent's partner would have known that she was expecting at the end of May 2023.

8.2.5 She moved out of the Property two weeks early as her father was visiting from Canada and he was able to hire a van.

8.2.6 She felt let down that she was being asked to move out of the Property after a short period of time.

8.2.7 Since she moved out of the Property she has been living with her mother. She can no longer afford a private tenancy. She has applied for social housing but there is a waiting list of two and a half years.

8.3 The Respondent advised as follows:

8.3.1 He sympathises with the position the Applicant finds herself in. He was not being malicious by asking her to leave. He had instructed the Letting Agent to serve notice knowing that the eviction ban is in place and had no intention to sell the Property at that time. He was in no rush.

8.3.2 He did not prepare the Notice to Leave. The Notice to leave had been prepared by the Letting Agent. He had discussed preparation of the Notice to Leave with the Letting Agent and explained that he would move back into the Property and their longer term plan was to buy a house. If he had intended to sell the Property once the Applicant had vacated he would have instructed the Letting Agent to prepare the Notice to Leave using the ground that he intended to sell the Property but he didn't have this intention at that time and so did not do so.

8.3.3 He and his partner found out that she was expecting a child in early June 2023. The due date was the end of February 2024.

8.3.4 His partner moved all of her belongings into the Property 24-1, Springfield Street, Edinburgh, EH6 5DE after she sold her flat. Living in this Property suited them as they could walk into town.

8.3.5 When he found out that his partner was pregnant their priorities shifted. This was life changing news and they acted on it by offering for a house and putting the Property 24-1, Springfield Street, Edinburgh, EH6 5DE on the market.

8.3.6 He had instructed his solicitor to submit an offer for a house by email dated 15th June 2024. He had viewed that property the previous day.

8.4 The Respondent led Ms Katie Gater through her evidence and the Applicant was given an opportunity to cross examine her. Miss Gater's evidence was as follows:

8.4.1 She had lived with the Respondent in her property before they both moved into 24-1, Springfield Street, Edinburgh, EH6 5DE. Their long term plan was to sell both properties and buy a house. They had intended to live in 24-1, Springfield Street, Edinburgh, EH6 5DE for a year or two. She had recently become self employed and it made financial sense.

8.4.2 She had moved all of her belongings into 24-1, Springfield Street, Edinburgh.

8.4.3 She found out she was pregnant in the first week of June 2023. Their plans then changed and they decided to buy a house sooner than they had originally intended.

8.4.4 Her child was born on 6th March 2024.

9. Decision.

9.1. Requirements of Procedure Rule 110.

The Tribunal confirmed that the application correctly detailed the requirements of Procedure Rule 110.

9.2 The Tribunal determined that the Tenancy had been brought to an end in accordance with section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 as the Applicant had received a Notice to Leave and had ceased to occupy the Let Property. The tenancy came to an end on 31st May 2023.

The Tribunal acknowledged that the Notice to Leave did not refer to the eviction moratorium in place in terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022 but accepted the evidence of the Respondent that he had not prepared the Notice to Leave as it had been prepared by his Letting Agent.

9.3 The Tribunal also acknowledged that the Applicant had ceased to occupy the Let Property without an eviction order and consequently sections 58 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016 apply to this application. They are in the following terms:

'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.’

9.4 The following findings in fact were agreed at the CMD on 11th December 2023 and were not disputed. They were accepted by the Tribunal:

9.4.1 Mr Mathews purchased the Property 24-1, Springfield Street, Edinburgh, EH6 5DE in July/ August 2012.

9.4.2 The Applicant was Tenant of a Private Residential Tenancy agreement between the parties dated 17th November 2022.

9.4.3 The commencement date of the tenancy of the Property was 25th November 2022.

9.4.4 The rent due in terms of the Tenancy was £925 per month.

9.4.5 The Letting Agent sent the Applicant a Notice to Leave dated 18th May 2023.

9.4.6 The Notice to Leave was posted to the Applicant and she received it on 19th May 2023.

9.4.7 The Notice to Leave stated that the ground of eviction was that the Landlord intends to live in the Property as his primary residence.

9.4.8 The Notice to Leave stated that an application would not be submitted to the Tribunal before 20th June 2023.

9.4.9 The Applicant moved out of the Property on 31st May 2023. She did not pay rent for the month of June and this was accepted by the Landlord.

9.4.10 The Respondent moved into the Property on 7th July 2023.

9.4.11 The Property was sold on 18th August 2023.

9.5 The Tribunal found the evidence of Miss Gater and the Respondent to be credible. They found the evidence of the Respondent to the effect that if he had wanted to sell the Property after the Applicant had vacated he would have instructed the Letting Agent to prepare the Notice to Leave under Ground One (Landlord intends to sell) to be highly persuasive. The Tribunal did not accept the Applicant's suggestion that it was easier to obtain an eviction on the basis of Ground Four (intention to live in the Property) than Ground One. Had the Respondent wanted to proceed with the eviction application on the basis that he intended to sell the Property he could have provided evidence of a letter of engagement concerning the sale of the Property.

9.6 The Tribunal made the following findings in fact:

9.6.1 During mid May 2023 Miss Gater and the Respondent intended to move into 24-1, Springfield Street, Edinburgh, EH6 5DE for a period of at least three months, which intention changed once Miss Gater found out that she was pregnant.

9.6.2 When the Respondent instructed the Letting Agent to serve the Notice to Leave he had the intention to sell 24-1, Springfield Street, Edinburgh, EH6 5DE sometime later. His intention was not to place the Property on the market in the short term.

9.6.3 The Respondent's intention to reside in 24-1, Springfield Street, Edinburgh, EH6 5DE as his main residence changed to an intention to sell the Property once he found out that his partner was pregnant.

9.6.4 Miss Gater found out that she was pregnant in the first week of June 2023.

9.6.5 The Respondent instructed Warners to market the Property 24-1, Springfield Street, Edinburgh, EH6 5DE on 6th June 2023.

9.6.6 The Applicant vacated the Property 24-1, Springfield Street, Edinburgh, EH6 5DE because she had been served with the Notice to Leave.

9.6.7 The Respondent lived in the Property 24-1, Springfield Street, Edinburgh, EH6 5DE as his main residence for the period 7th July 2023 to 18th August 2023. The Tribunal accepted the evidence of council tax, utilities and grocery deliveries that had been produced.

9.7 The Tribunal acknowledged that paragraph 90 of the explanatory notes of the Private Housing (Tenancies) (Scotland) Act 2016 explains that Wrongful Termination Orders do not come into play where "the landlord genuinely intended to use the property in the way that the eviction ground required (even if, for some reason, that intention has not come to fruition)." The Tribunal concluded that it was the intention of the Scottish Parliament that Wrongful Termination Orders would not be issued where a Landlord's intended use of a property changed for a genuine reason.

9.8 The Tribunal find that when the Respondent instructed the Letting Agent to prepare the Notice to Leave he intended to live in the Property as his main residence

for at least three months. The Tribunal find that this intention later changed after the Respondent and his partner found out that she was expecting and after that time they decided to change their plans, sell the Property and purchase a house sooner than they had originally intended.

9.9 The Tribunal acknowledged that there was a short period of time between 19th May 2023 (when the Applicant received the Notice to Leave) and 7th June 2023 (when the Respondent instructed the marketing of the Property). However, the Tribunal accept the reason for this change in intention was genuine and was due to the Respondent finding out that his partner was pregnant during this period.

9.10 The Tribunal determined that the Applicant was not misled into ceasing to occupy the let property by the Respondent who was landlord of the Property.

10. 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.

Jacqueline Taylor

Legal Member

24th June 2024