



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

Chamber Ref: FTS/HPC/PR/25/0653

Re: Property at 14/2 Burns Street, Edinburgh, EH6 8DS (“the Property”)

Parties:

Ms Joanne Fitzpatrick, Chemin de Procharrat 35, Versegers 1947, Switzerland (“the first named Applicant”)

Mr Michal Topolski, Flat 1, 33 Sidegate, Haddington, EH41 4BU (“the second named Applicant”)

Mr Michal Lisowski, Porsveien 31, Fyllingsdalen, 5142, Norway (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the first named Applicant was misled into ceasing to occupy the let property by the Respondent before it was brought to an end and made a Wrongful-termination Order requiring the Respondent to make payment to the first named Applicant in the sum of EIGHT HUNDRED AND THIRTY-FOUR POUNDS (£834.00) STERLING, being a sum equal to one-month’s rent; Further determined that the Application insofar as brought by the second named Applicant should be refused.

Findings in Fact

1. The Respondent was the landlord and the Applicants the Tenants of the Property under and in terms of a Private Residential Tenancy Agreement.
2. Prior to December 2023, the relationship between the Parties had been generally positive.
3. The Applicants had been good tenants.

4. The Respondent increased the rent to £834 per calendar month, with the agreement of the Applicants.
5. During the period June 2022 until December 2023, the Respondent discussed the prospect of selling the Property with Northwood Edinburgh. In August 2023 he was advised by Northwood Edinburgh that marketing the Property in Spring was likely to be his best option.
6. In December 2023, the Respondent instructed his letting agent, Northwood Edinburgh, to give Notice to Leave to the Applicants specifying as a ground for eviction that he intended to sell the Property. That Notice to Leave was given on 21 December 2023 and specified that the earliest date that an application for an eviction order may be raised was 1 April 2024.
7. Between 21 December 2023 and 12 March 2024 the second named Respondent removed from the Property.
8. In or around early March 2024 the Respondent instructed contractors to provide quotes for works proposed to improve the sale appeal of the Property. At that time, the Respondent received new advice from Northwood Edinburgh that the Property was unlikely to achieve the sale price he was hoping for and that the Property would likely achieve a significantly higher rent if certain additional renovations were undertaken.
9. In or around early March 2024, the Respondent lost his intention to sell the Property.
10. On or around 12 March 2024 it was communicated to the Applicants that the Respondent no longer intended to sell the Property and instead intended to renovate and re-let it.
11. The Respondent replaced the carpets in the Property prior to the Applicants moving out.
12. The Respondent undertook further works to the Property after the Applicants moved out.
13. The Respondent did not propose that the Applicants remain in the Property under and in terms of the existing Private Residential Tenancy Agreement following his change of intention.
14. The first named Applicant was employed under a fixed term contract of employment. The fixed term was due to end on 30 June 2024. The first named Applicant required to termination that contract three months early due to her inability to find alternative local accommodation.
15. The first named Applicant would have continued to occupy the Property had the Respondent not represented to her that she required to remove.
16. The second named Applicant ceased to occupy the Property due to the breakdown of his relationship with the first named Applicant.
17. The Respondent was wholly reliant on the advice of Northwood Edinburgh in his management of the Property and the Private Residential Tenancy.

Findings in Fact and Law

1. The Respondent having lost his intention to sell the Property, the Notice to Leave ceased to be enforceable on or around 12 March 2024.
2. By email dated 12 March 2024, Northwood Edinburgh wrote to the Applicants in terms confirming that the Respondent no longer intended to sell the Property but which gave rise to an inference that the Applicants required to remove from the Property regardless.

3. On or around 14 March 2024, Northwood Edinburgh forwarded an email from the Respondent to the Applicants in terms which explained why he had intended to sell the Property, which he no longer intended to sell the Property, but which gave rise to an inference that the Applicants required to remove from the Property regardless.
4. The inference that the Applicants were required to remove from the Property notwithstanding the Respondent's change of intention was a representation which misled the first named Applicant to cease occupation of the Property before the tenancy ended and the Tribunal may make a wrongful-termination order.
5. In all of the circumstances, the appropriate sanction to be applied is payment of a sum equal to one month's rent, which is the sum of £834.00.
6. The Respondent did not make a representation that misled the second named Applicant to cease occupation of the Property before the tenancy ended.

Statement of Reasons

1. This Application called for a Hearing by video conference on 10 August 2026. The Parties were all present.
2. In this Application the Applicants seek a wrongful-termination order. They claim that the Respondent misled them into ceasing to occupy the Property. In particular, they found on a Notice to Leave given to them by the Respondent, acting through his letting agent, and dated 21 December 2023 asserting that the Respondent intended to sell the Property.

The Evidence

3. For the most part, the key facts in this matter are not in dispute. The Respondent was the landlord and the Applicants the Tenants of the Property under and in terms of a Private Residential Tenancy Agreement. The relationship between the Parties had been generally positive. The Applicants had been good tenants. The Respondent increased the rent to £834 per calendar month, with the agreement of the Applicants. The Respondent instructed his letting agent, Northwood Edinburgh, to give Notice to Leave to the Applicants specifying as a ground for eviction that he intended to sell the Property. That Notice to Leave was given on 21 December 2023 and specified that the earliest date that an application for an eviction order may be raised was 1 April 2024. On or around 12 March 2024 it was communicated to the Applicants that the Respondent no longer intended to sell the Property and instead intended to renovate and re-let it.
4. By email dated 12 March 2024 Northwood Edinburgh wrote to the Applicants in the following terms:

"I understand you are both aware of the Landlord's plans to renovate the property after your tenancy ends and subsequently re-list for rent."

As the notice was originally served on the grounds that the property was to be sold, we do require written confirmation from you both that you are happy with this and do not wish to rent the property again when it comes back on the market.

Michal I am aware you have already moved out but as you are still a named tenant we do also require this confirmation from you."

5. By email dated 14 March 2024 the Respondent instructed Northwood Edinburgh to write to the Applicants in the following terms:-

"When we instructed the Northwood agency to issue the notice to you, it was based on information available to us at that time and our decision about selling the property which was made based on this information in 2023.

The high costs associated with the mortgage, insurances, staggering interest rates and other expenses, coupled with insufficient income from rental payments, have led us to this difficult choice...

Unfortunately, circumstances have changed, and we have decided not to proceed with the sale now. We have reevaluated our options for the property. Recently, we received information about the potential selling price, and unfortunately, it fell below our expectations and our needs. Northwood has also informed us about a new potential rental price that appears to be sufficient in our current financial situation. By renting out the property, we can generate consistent income while retaining ownership. This option aligns with our financial goals and ensures stability for our Family...

Moving forward, our plan is to renovate the whole apartment, and re-rent the apartment once you vacate. We appreciate your understanding and cooperation during this transition period. If you have any questions or concerns, please feel free to reach Northwood agency.

Thank you once again for being a wonderful tenant. We wish you all the best in your future endeavours, and we hope that your next living situation brings you comfort and happiness."

By email later that day, Northwood Edinburgh confirmed to the Respondent that this had been passed to the Applicants.

6. The Respondent arranged for carpets in the Property to be replaced prior to the Applicants moving out. The Respondent completed additional renovations after both Applicants had moved out. The second named applicant moved out before the first named applicant.

The Applicants

7. The Applicants did not have evidence to add to the agreed facts or the documentary evidence submitted. In particular, their evidence was that they were led to believe that their tenancy was terminating regardless of the

Respondent's change of mind. The expectation was that they would move out so that the refurbishment of the Property could take place. They were invited to say whether they wished to re-let the Property on new terms after the works completed, but it was clear that the Property was going back on the market..

Michal Lisowski

8. Mr Lisowski resides in Norway. He is an engineer. The Property is the only property that he owns and lets. It is his only property in Scotland.
9. Mr Lisowski instructed Northwood Edinburgh to manage his letting of the Property. He said that he is reliant on the advice that Northwood Edinburgh gives him in relation to the Property, including his obligations.
10. Mr Lisowski spoke of having had some financial difficulties. He said that the costs associated with the Property had started to exceed the rent coming in. He had considered selling the Property in 2022 and referred to lodged correspondence between him and Northwood Edinburgh about that. Ultimately, in or around August 2023 he determined to sell the Property. He sought advice from Northwood Edinburgh and was told that a sale in the Spring was likely to attract the best price. Accordingly, he resolved to sell the Property in Spring 2024 and instructed Northwood Edinburgh to take steps to end the Property for that purpose. On the back of that instruction the Notice to Leave was served in December 2023.
11. Mr Lisowski spoke of wishing to carry out some minor refurbishments to make the Property more attractive to potential buyers. He spoke of that being a common occurrence in Norway, though the Tribunal recognises that many sellers of property in Scotland take similar steps to make their property as attractive to buyers as possible. In any event, Mr Lisowski instructed contractors to attend the Property in or around early March 2024 for the purposes of providing quotations for refurbishment works. Around that time, Mr Lisowski received updated advice from Northwood Edinburgh to the effect that (i) the likely sale price for the Property was unlikely to be as high as had been anticipated by Mr Lisowski, and (ii) the market rent for the Property if certain parts of the Property were subject to additional renovation was likely to be markedly increased. Based on that advice, Mr Lisowski changed his mind and decided not to sell the Property. Instead, he resolved to undertake more extensive renovations and thereafter re-let the Property.
12. Mr Lisowski instructed Northwood Edinburgh to notify the Applicants of his change of position. He did not see the email from Northwood Edinburgh to the Applicants of 12 March 2024 and had no editorial input to it. He relied on Northwood Edinburgh's advice when handling this change of circumstances. He was not advised that his change of mind might impact the validity of the Notice to Leave. He was not advised that proceeding with a proposed eviction might be unlawful.

13. Mr Lisowski's evidence was that his intention to sell was genuine at the time the Notice to Leave was issued. He subsequently changed his mind. He intimated his change of mind to the Applicants. He relied on Northwood Edinburgh's advice at all times.
14. Mr Lisowski spoke of having been advised by the second named Applicant in or around November 2023 that there was a 50% chance that the Applicants would be giving Notice to Leave the Property by June 2024. Mr Lisowski spoke of the relationship between the Applicants having broken down and the second named Applicant having moved out as a consequence.
15. In cross-examination, Mr Lisowski admitted that he had sought to impose a rent increase that was above the statutory cap on rent increases in place at the time, but that he did so because he was looking at remortgaging at the time and his bank required to be satisfied that the rent was above a certain level. He spoke of being thankful to the tenants for agreeing to that rent increase, albeit it amounted in real terms to £7 per month above the capped level.

Submissions

16. The Applicants' submission was that they had been misled to remove from the Property by service of the Notice to Leave. They submitted that the Respondent never had a genuine intention to sell the Property. Their submission was that the Respondent's conduct supported a finding that he was seeking to remove the Applicants in order to re-let the Property at a higher rent. In particular, the replacement of carpets and proposal to redecorate were more consistent with refreshing the Property for a new tenant than with a sale. Their basis for that submission was their own view that a purchaser would want to decorate a new property themselves. They submitted that when the Respondent's intention changed they ought to have been allowed to remain in the Property on the same terms as before. Instead, they were led to believe that they would need to agree to pay a vastly increased rent. In any event, by the time of the Respondent's supposed change of heart they had had to make alternative living arrangements. The first named Applicant in particular had required to terminate her fixed-term employment contract three months early due to her inability to find other local accommodation. In all of the circumstances, they submitted that they had been misled by the Respondent into ceasing to occupy the Property and that the appropriate sanction was a sum equal to six months' rent.
17. The Respondent submitted that he did not mislead the Applicants. He submitted that his intention to sell was genuine when the Notice to Leave was served in December 2023. He changed his mind. He was allowed to do so. He informed the Applicants that his circumstances had changed and that he no longer intended to sell the Property. They ceased to occupy the Property in the knowledge that it would not be sold. He had relied on the expertise and advice of Northwood Edinburgh when dealing with the Property. He followed their advice.

Decision

18. In terms of section 58 of the Private Housing (Tenancies) (Scotland) Act 2016:-

“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.”
19. Section 58 applies where a tenancy is terminated under section 50 of the Act, which is to say by service of a Notice to Leave by the Landlord and the Tenant removing. That is the case here; the Respondent served Notice to Leave and the Applicants removed.
20. The key requirement for section 58, and the one at the heart of this Application, is that set out in subsection (3): were the tenants misled into ceasing to occupy the property? In *Reynolds v Henry*, 2024 Hous. L.R. 67, Sheriff Collins KC, sitting in the Upper Tribunal, held that subsection (3) required an applicant to establish four principal issues:-

“[12] Section 58(3) of the 2016 provides that a wrongful-termination order may be made if “the former tenant was misled into ceasing to occupy the let property by the person who was the landlord”. This applies in the situation where the tenant has chosen to remove in the face of a notice to leave rather than to try and contest an application to the FTS for an eviction order. In effect, section 58(3) requires the FTS to decide whether the applicant has established four principal issues:

- (i) First, the landlord must have made some form of representation to the tenant (which might be by concealment of relevant and material facts). The landlord will necessarily have represented to the tenant that he has a ground for eviction in a notice to leave under the 2017 Regulations, since such a notice must have been served in order to terminate the tenancy under section 50 - a necessary precursor to an application under section 58. But conceivably other forms of written or

oral representations may have been made to the tenant by the landlord, and if so might also be founded upon.

- (ii) Second, the representation must have been objectively misleading. Where it consists of a notice to leave, a representation will - in particular - be misleading if it states that the landlord has a ground for eviction under schedule 3 of the 2016 Act when in fact he does not.
- (iii) Third, the tenant must have actually been misled by the landlord's representation. If the tenant knew, for whatever reason, that the landlord's representation was false - for example because he knew that the landlord did not in fact have the ground for eviction stated in a notice to leave - then he will not have been misled by it and the application cannot succeed.
- (iv) Fourth, the representation must actually have misled the tenant into ceasing to occupy the property, that is, it must have been at least a significant or material cause of him doing so. So if the tenant's decision to leave the property was for reasons other than the landlord's representation, then again, his application cannot succeed.

Importantly, these are all issues of fact, on which the FTS should make clear findings in reaching its decision."

- 21. The Upper Tribunal's decision is binding on the Tribunal. The Tribunal must assess the Application having regard to those four principal issues.

The Representation

- 22. Having considered the evidence, the Tribunal identified two representations made by or on behalf of the Respondent to the Applicants. The first was the representation principally founded upon by the Applicants, which was the Respondent's representation in the Notice to Leave that he intended to sell the Property ("the First Representation").
- 23. The second was the Respondent's subsequent representation, after informing the Applicants that he no longer intended to sell the Property, that they still required to remove from the Property ("the Second Representation"). The Second Representation was made by inference by Northwood Edinburgh in correspondence issued to the Applicants. There were references to works being undertaken after the Applicants vacated, and to the Applicants having the option to enter a new tenancy agreement, at higher rent, for the Property when it came back on the market. The inference from that was that the Notice to Leave remained valid, the Respondent continued to insist upon it and the Applicants required to remove.

Misleading

- 24. Having considered the documentary evidence provided by the Parties and heard from the Respondent personally, the Tribunal determined that the Respondent had a genuine intention to sell the Property when the Notice to Leave was served in December 2023. In reaching that conclusion, the Tribunal had regard to the correspondence lodged by the Respondent

showing the extensive exchanges between him and Northwood Edinburgh regarding the proposed marketing of the Property. The Tribunal accepted the Respondent's oral evidence as both credible and reliable. That evidence, other than the Respondent's statements about his intention to sell, was not contradicted by the Applicants; they only invited the Tribunal to draw different conclusions from it. The Tribunal was not persuaded to do so. The Respondent's evidence was logical. His reasons for selling were due to financial concerns. His reasons for changing his mind were tied to his disappointment at the proposed sale price and the likely improved rental price he could achieve. In any event, had the Respondent's motivation been, as the Applicants contended, to receive a higher rent he could have achieved that by other means than claiming an intention to sell. He could have founded on the ground for eviction that he intended to carry out substantive works. He could have sought to simply increase the rent to a market rent following the removal of the cap on rent increases.

25. For those reasons, the Tribunal determined that the First Representation was not misleading.
26. However, after the Respondent informed the Applicants of his change of mind, his agents continued to represent that the Applicants required to remove from the Property. There were references to works being undertaken after the Applicants vacated, and to the Applicants having the option to enter a new tenancy agreement, at higher rent, for the Property. The inference from that was that the Notice to Leave remained valid, the Respondent continued to insist upon it and the Respondents required to remove. In fact and law, having lost his intention to sell the Property the Respondent's notice founding upon Ground 1 for eviction (landlord intends to sell) ceased to be valid. The Respondent was not entitled to found upon it to demand that the Applicants remove from the Property.
27. It follows that the Second Representation was misleading.

Actually Misled

28. The Tribunal's decision that the First Representation was not misleading is sufficient to determine that the First Representation is not sufficient for a wrongful-termination order. However, for completeness, the Tribunal observes that the Respondent told the Applicants prior to expiry of the Notice to Leave that he no longer intended to sell the Property. That being the case, the Applicants could not have been misled into removing by the First Representation. They knew that the Respondent did not intend to sell the Property.
29. As regards the Second Representation, the Applicants' positions are slightly different. At the time the Second Representation was made, the first named Applicant was still occupying the Property but the second named Applicant was not. For that reason, the second named Applicant could not have been

misled by the Second Representation to leave the Property. He had already left.

30. However, the Tribunal was satisfied that the first named Applicant was misled by the Second Representation. She had good reason to remain in the Property. She was employed under a fixed term contract that had three months left to run. She required to terminate that contract early because she could not find alternative local accommodation. Had she not been misled, she would not have left.

Caused cessation of occupation

31. As regards the First Representation, and again for completeness, the Tribunal determined that this could not have caused the Applicants to cease occupation. The Respondent confirmed that he did not intend to sell the Property before the expiry of the Notice to Leave. In any event, the only person who removed between the making of the First Representation and the intimation to the Applicants that the Respondent no longer intended to sell was the second named Applicant, and the Tribunal determined that the second named Applicant removed due to the breakdown of his relationship with the first named Applicant and not the making of the First Representation.
32. As regards the Second Representation, for the same reasons as before, the Tribunal determined that this could not have caused the second named Applicant to cease occupation, but that it did cause the first named Applicant to cease occupation.

Wrongful-termination order

33. Accordingly, for the foregoing reasons, the Tribunal determined that the Respondent misled the first named Applicant to cease to occupy the Property. That being the case, the Tribunal determined that it was appropriate to grant a wrongful-termination order.
34. In terms of section 59(1) of the Act, 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*". The section therefore sets an upper limit as opposed to a specific level of sanction. The exercise for the Tribunal in determining an appropriate sanction is therefore an exercise of judicial discretion.
35. The principles of judicial discretion were neatly summarised by Sheriff Welsh Q.C. in *Jenson v Fappiano*, 2015 SCEDIN 6. That case concerned the failure by a landlord to pay a tenancy deposit into an approved scheme and the consequent breach of statutory duty under the Tenancy Deposit Schemes (Scotland) Regulations 2011. In similar fashion to the provision under consideration here, the Regulations specify a maximum sanction and require the Tribunal to determine an appropriate level of sanction. At paragraphs 11

and 12, Sheriff Welsh Q.C. makes the following observations on judicial discretion:-

“11.... In my judgment what is implied, is a judicial discretion and that is always constrained by a number of settled equitable principles.

1. Judicial discretion is not exercised at random, in an arbitrary, automatic or capricious manner. It is a rational act and the reasons supporting it must be sound and articulated in the particular judgment.

2. The result produced must not be disproportionate in the sense that trivial noncompliance cannot result in maximum sanction. There must be a judicial assay of the nature of the noncompliance in the circumstances of the case and a value attached thereto which sounds in sanction.

3. A decision based on judicial discretion must be fair and just (‘*The Discretion of the Judge*’ , Lord Justice Bingham, 5 Denning L.J. 27 1990).

12. Judicial discretion is informed and balanced by taking account of these factors within the particular circumstances of the case. The extent to which deterrence is an active factor in setting the sanction will vary (cf *Tenzin v Russell* 2014 Hous. L.R. 17). The judicial act, in my view, is not to implement Government policy but to impose a fair, proportionate and just sanction in the circumstances of the case.”

36. The Tribunal considered that those observations apply equally here.

37. In this case, the Respondent is not a sophisticated or career landlord. He has one property that he lets out. He has sought to ensure his own compliance with his obligations as a landlord by instructing a professional letting agent to assist him. He is reliant on them. He seeks their advice and follows it. It is apparent in this case that he has poorly advised that he may rely on the Notice to Leave and seek to remove the first named Applicant, notwithstanding his change of intention. The Tribunal did not consider that the Respondent had set out to mislead either Applicant. The Respondent could have stayed quiet about his change of intention but chose to inform the Applicants instead. He sought to be open and upfront about it. Against that background, the Tribunal did not consider that a need for deterrence was a significant factor here. The Respondent did not act duplicitously. There was nothing to suggest that he would do so in the future that may necessitate an order that put him off doing so. That being said, the Respondent did in fact mislead the first named Applicant to cease occupation in circumstances that had a significant impact on her personal circumstances.

38. Taking the above into consideration, the Tribunal is satisfied that the misleading representation was more than trivial, but not sufficiently so to justify sanction at the higher end of the scale. In all of the circumstances, the

Tribunal determined that an appropriate sanction was a sum equal to one month's rent, which is the sum of £834. The Tribunal made a wrongful-termination order requiring the Respondent to make payment to the first named Applicant in that sum. The Tribunal refused the Application insofar as raised by the second named Applicant.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

A. Upton

10th August 2026

Legal Member/Chair

Date