

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/PR/20/0063

Re: Property at 60 Clarion Crescent, Glasgow, G13 3LG (“the Property”)

Parties:

Mr Anthony McDaid, 42 Millhouse Drive, Glasgow, G20 0UE (“the Applicant”)

Mr Robert Geelan, 16 Greenwood Drive, Bearsden, Glasgow, G61 2HA (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Linda Reid (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a wrongful- termination order for the sum of ONE THOUSAND TWO HUNDRED POUNDS (£1,200) in terms of Section 59 of the Private Housing (Tenancies) (Scotland) Act 2016 be made against the Respondent.

Background

- 1. This is an application under Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act). It is dated 23rd December 2019. A case management discussion was held on 5th March 2016. A Hearing was held on 18th August 2020 and, because of the public health crisis, was conducted by audio conference. The Respondent had submitted written documentations and documentary evidence prior to the Hearing.**

The Hearing

Preliminary Matters

- 2. Both the Applicant and Respondent were present. The Respondent indicated that he intended to lead a witness and arrangements were confirmed regarding the ability of the witness to join the conference call at the appropriate juncture. The Legal Member set out suggested protocols for the conduct of the conference call.**

Findings in Fact

- 3. The tribunal found the following facts to be established:-**

- The Respondent is the owner of the Property.**
- The Respondent let the Property under a private residential tenancy to the Applicant from April 2018.**
- The Respondent served a Notice to Leave on the Applicant and this was dated 18th May 2019.**
- The date of termination stated in the notice to leave is dated 12th August 2019.**
- The Tenancy terminated on 11th July 2019.**

Findings in Fact and Law

- 4.**

- The Notice to Leave served by the Respondent constituted wrongful termination in terms of Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016.**
- The ground for termination of the residential tenancy stated in the notice to leave was that the Respondent intended to live in the Property as his or her only or main home.**
- The Respondent did not live in or intend to live in the Property as his only or principal home for three months after the expiry of the notice period stated in the Notice to Leave.**

Matters Agreed

- 5. Parties helpfully confirmed what facts were agreed between them. The Applicant and the Respondent were parties to a private residential tenancy in respect of the Property which is owned by the Respondent. The start date of the tenancy was 2nd April 2018 and the rent payable was**

£600. The tenancy was brought to an end by service of a Notice to Leave dated 18th May 2019. The Applicant left the Property on 11th July 2019.

- 6. Two cases arising from the tenancy have previously been determined by the Tribunal. Case No. FTS/HPC/CV/19/3127 related to an application made by Mr Geelan and the sum of £1,507.92 was awarded to him. FTS/HPC/PR/19/2366 related to an application made by Mr McDaid under the Tenancy Deposit (Scotland) Regulations and the sum of £600 was awarded to him.**

The Law

- 7. It is useful to set out the relevant law.**

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.

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.*

Ground 4, Part 1, Schedule 3 of the Private Housing (Tenancies) (Scotland) act 2016

Landlord intends to live in property

- 4(1) It is an eviction ground that the landlord intends to live in the let property.*
- (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months.*
- (3) References to the landlord in this paragraph—*
 - (a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,*
 - (b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.*
- (4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.*

The Application

- 8. The Application states that the Respondent asked the Applicant to leave the Property as he intended to move in to it. The application states that**

the Respondent “has continued to rent the property” and referred to him taking Airbnb bookings. It refers to such a booking on 24th July 2019. The application states that the Applicant considers that the Respondent had no intention of moving into the Property and had caused difficulties for the Applicant and his family by requiring them to move out.

The Respondent’s position as set out in his written representations

9. The Respondent states that the Applicant was given notice to quit the Property and that this notice ran to 12th August 2019. The representations state that the Respondent wanted the Property for use as his own dwelling. They state that the Respondent had to remove from the place he was staying. The representations state that the Respondent “had left the property in a distressed state and to my discomfort.”
10. The representations state that the Respondent considered that he had reached an agreement with the Applicant on 15th July 2019 with regard to financial obligations arising from the tenancy and that it was only because Mr McDaid had submitted the application in respect of the tenancy deposit that he had raised the application in respect of damage to the Property.
11. The representations refer to witness emails from Samantha Hock who was the downstairs neighbour at 58 Clarion Crescent, Daniel Cohen and Seied Rezaeian.
12. The Representations refer to documents lodged by the Respondent to support his position- copies of utility bills for the Property and copies of receipts for train journeys.
13. The representations state that the Respondent used Airbnb for a number of reasons:
 - a. He needed money to repair the damage to the Property which had been caused by the Applicant and the Respondent referred to the Decision in FTS/HPC/CV/19/3127 in support of the extent of the damage.
 - b. The Applicant had left the Property a month early which meant less rental income.
 - c. He had no employment, no income and no savings.
 - d. He had no entitlement to benefits.
 - e. He had no available credit.

- f. He saw no alternative solution to his difficulties.
14. The representations state that Airbnb was not a success because bookings were sporadic and the initial booking for August 2019 was lost due to the “persistent foul odour” caused by the Applicant’s cats “urinating on the carpets which I could not remove in spite of my best efforts.”
 15. The representations state that the Applicant’s claim that the use of Airbnb was pre-planned is not correct. They state that the decision to use Airbnb was taken on 23RD July 2019 well after the Applicant’s vacation of the Property and was driven by the circumstances the Respondent found himself in. The representations state that the Respondent used Airbnb because of the Applicant’s damage to the Property.
 16. The representations state that the occupancy of Airbnb guests was sporadic and covered only twenty four nights out of a possible total of 111 days for the period 11 July 2019 to October 2019.
 17. The Respondent’s representations invite the Tribunal to dismiss the application as having no merit.
 18. The Tribunal had regard to the following documents before it:
 - a. The application.
 - b. The Residential Tenancy Agreement showing monthly rent of £600.
 - c. Notice to Leave dated 18th May 2019.
 - d. Letter from Respondent to Applicant dated 18th May 2019.
 - e. Various documents relating to Airbnb bookings.
 - f. Copies of confirmation confirming air travel from Iran.
 - g. Letter from Dr Saranaz Jamdar to Scottish Courts and Tribunals Service dated 18th February 2020.
 - h. Email from Samantha Hock to Respondent dated 13th May 2020.
 - i. Email from Daniel Cohen to Respondent dated 17th October 2019.
 - j. Email from Seied Rezaeian to Respondent dated 9th March 2020
 - k. Bulb utility bills.
 - l. Print of WhatsApp conversation between the Respondent and the Applicant dated 15th July 2019.

- m. Copies of various AirBnB reservation confirmations.
- n. Copies of booking confirmations for train journeys from Garscadden to Glasgow Central station.
- o. Copies of Whatsapp messages between the Respondent and Dr Saranaz Jamdar.
- p. Copy of Decision in case FTS/HPC/CV/19/3127.

Oral Evidence

19. Mr McDaid's evidence was straightforward. He said that he believes that the Respondent did not intend to live in the Property when he served the Notice to Leave. He said that the reason he left the Property was because he had been served with a Notice to Leave and that the whole situation was extremely stressful for him. He explained that he is a carer for his wife who is disabled and that his son stays with them. Mr McDaid said that, a few weeks after his departure, he discovered that the Property was on the Airbnb website.
20. Mr McDaid said that the fact that the Property was on the Airbnb website so soon after his departure is an indicator that he was misled into ceasing to occupy the Property. He said that the fact that the Respondent spent a significant time staying at Dr Jamdar's house prior to and after 11th July 2019 was another indicator that he had no intention of residing in the Property. Mr McDaid said that he had had sight of a text which Mr Geelan had sent to a neighbour of the Property on 15th May 2019 in which he said that Mr McDaid was to be evicted. Mr McDaid said that he was also aware of a text which Mr Geelan had sent to a neighbour after the tenancy had ended where, in response to a question regarding what he intended to do with the Property had responded that he didn't know. Mr McDaid said that this indicated that the Respondent did not intend to live in the Property.
21. Mr Geelan's evidence was that he had returned to the UK from Canada and that he did not have a job upon his return. He said that he moved into the house of Dr Jamdar, his ex-wife, at 16 Greenwood Drive, Bearsden. He said that Dr Jamdar's family visited her each year and that, as a consequence of this, he required to move from her house. He referred to copies of confirmation of flight bookings from Iran. He said that he owned three properties which were tenanted at that time. In relation to the text to the neighbour on 15th May 2019, he said that there had been difficulties with the Respondent and a neighbour at the Property which had involved the police and his evidence was clear that, in choosing which of his properties to occupy for himself, he took that into account when deciding which of his properties he would make his home. He said that he did text a neighbour at one point and said that he didn't know what he intended to do with the Property. Mr Geelan said that this was no more than him

keeping his cards close to his chest and he referred to his desire to keep his life private.

22. Mr Geelan said that he fully intended moving into the Property in August 2019 upon the departure of the Applicant. He said that he also expected to get rent paid until 12th August 2019 and that the fact that the tenancy ended in July contributed to his financial difficulties. He said that when he took occupation of the Property, he found it to be in a poor condition and that a considerable amount of work required to be done to rectify the defects caused by the Applicant during his tenancy. He said that his registration of the Property with Airbnb was a means to get money to fund the work which required to be done. He referred the Tribunal to the Decision number FTS/HPC/CV/19/3127 which, he said, gave details of the damage caused to the Property.
23. Mr Geelan said that he had a mortgage over the Property and that he was struggling to pay this, other debts and the costs of the work required to the Property.
24. Mr Geelan said that Dr Jandar had kindly provided him with £2,000 to fund some of the work. He said that he had been lucky to get the first Airbnb booking for the beginning of August and that this was to be for a month. He said that it did not go ahead because the guest complained about the smell of cat urine. Mr Geelan said that he stayed in the Property from July 2019 until December 2019 and moved out for any days in that period that the Property had Airbnb guests. He said that, when Dr Jandar's family returned home in September 2019, he would stay with her when the Property was occupied on the temporary lets and when he had to move out on any days prior to September 2019, he would stay at 67 Glenfinnan Drive, Maryhill, Glasgow. He explained that this was a property which he owned and which he let to friends who were away at the time and who allowed him to stay there. Mr Geelan described a pattern where he would stay at 60 Clarion Crescent and, when he had Airbnb bookings, he would, in his words "decant" and stay with friends for the period of each booking. When pressed to give more detail, Mr Geelan was not clear. He referred to spending odd nights with friends but was unable to give more detail to match up with the evidence of the Airbnb bookings which he had lodged.
25. Mr Geelan said that he was now living with Dr Jandar at 16 Greenwood Drive. He said that he had lived at 60 Clarion Crescent until December 2019 when he had moved to Dr Jandar's house because of economic reasons. He said that he was finding it difficult to pay the utility charges at 60 Clarion Crescent and he said that the Property was unoccupied until he rented it out again in March 2020.
26. Mr Geelan was emphatic in stating that, had the Property been in good order when he recovered possession of it, he would have moved in and would not have needed to try and get income from short term lets. He said that he moved out of 16 Greenwood Drive on 15th July when he moved

into the Property and stayed there until 2nd August 2019 when he moved out to facilitate the first Airbnb booking.

27. Mr Geelan said that the documentation regarding train tickets substantiated his position that he was residing in the Property. He explained that Garscadden is the nearest station to the Property. He said that Dr Jandar's house is in Bearsden and nowhere near Garscadden station. Mr Geelan said that the Bulb energy bills also support the fact that he was in the Property and using utility services.

28. Mr Geelan asked the Tribunal to accept the terms of the emails/letters which he had lodged:

The email from Reza Eatedali Rezaeian stated *inter alia*

“Last year I think it was end of July 2019 that Robert called me and told me that he had moved to his house on 15 July which was in number 60 Clarion Crescent, Knightsridge, Glasgow..... I helped him to clean his house, so I went and helped him.... I can testify that Mr Robert Geelan was living in number 60 Clarion Crescent since 15 July until end of October 2019.....”

The email from Samantha Hock stated

“As far as I can remember Mr Geelan was residing at 60 Clarion Crescent from around mid July 2019 until November 2019. During this time I am sure I can also recall him doing a lot of work on the property.

The email from Daniel Cohen stated “I visited Mr Geelan in his property at 60 Clarion Crescent, Knightswood in the afternoon of 4/08/19. He was very tired and down having lost out to an Airbnb booking.” The email went on to refer to the smell of cat urine.

29. Dr Saranaz Jamdar gave evidence. She said that she is a Consultant with the NHS and that she lives at 16 Greenwood Drive, Bearsden. She said that she is the ex- wife of the Respondent. She said that she was aware of the poor condition of the Property when Mr Geelan got recovery of it and she said that he was worried about it. She said that Mr Geelan had been staying with her since his return from Canada in October 2018 and that this was to be a temporary measure until he got his accommodation sorted out. She said that he had to move out from there in July 2019 because her family were coming to stay with her. She said that her family came between July and September each year and usually stayed for a period of six to seven weeks. She said that it would not have been appropriate for Mr Geelan to continue to stay with her when her family was with her and that the house was too small to accommodate them all and had only one bathroom. She said that her recollection was that Mr Geelan was removing the last of his belongings from her house on 15th July 2019 as she left to go to the airport to collect her family.

30. Dr Jamdar said that she supported Mr Geelan emotionally at what was a difficult time for him and that she also assisted in financial terms. She said that she gave Mr Geelan £2,000 to help him with the work which had

to be done to the Property. Dr Jamdar said that she did not know where Mr Geelan stayed when there were any Airbnb lets prior to the departure of her family but she said that, after that, when there were any lets, he would stay with her and when he arrived on each occasion it was with an overnight bag. She said that he only brought what he needed and that his possessions remained in 60 Clarion Crescent to where he returned after each Airbnb guest had left. She said that Mr Geelan was staying in the Property from 15th July 2019 and only stayed with her for the nights where there were Airbnb bookings. She said that she did not know where Mr Geelan stayed when there were Airbnb bookings during the period before her family returned to Iran.

Submissions

- 31. Mr McDaid said that it did not seem that Mr Geelan had ever moved into the Property. He said that there were lots of inconsistencies in the evidence that had been produced by him. He said that Mr Geelan knew that Dr Jamdar's family were coming to stay and knew that they came every year yet the Notice was not served until May 2019. Mr McDaid also said that it was significant that Mr Geelan owned two other properties. He said it was significant that Mr Geelan had told a neighbour on 15TH July 2019 that he did not know what he was going to do with the Property and that surely he would have told that neighbour that he intended to live in the Property himself.**
- 32. Mr McDaid said that his wife is disabled and that, in finding another property, he had to take into account the suitability of it with regard to her disability and his son's schooling. He said that he was under pressure to find somewhere before the expiry of the notice period but that he managed to do so.**
- 33. Mr Geelan said that he had been open and transparent. He said that the Applicant caused problems for him and that the Property had been left in a distressed condition. Mr Geelan said that he saw Airbnb as his only option to try and get income. He referred the Tribunal to his written representations in which he had stated that the Airbnb occupancy was only for a total of twenty four nights out of a total of one hundred and eleven days in the relevant period. Mr Geelan said that he moved into the Property on 15th July 2019 and that Mr McDaid had therefore not been wrongly evicted.**

Deliberations and Reasons.

- 34. There are a number of matters which are not in dispute. The Applicant was served a Notice to Leave on 18th May 2019 and left on 11th July 2019. The Respondent registered the Property with Airbnb and received a number of bookings as a consequence.**

- 35. What the tribunal had to determine is whether or not the Applicant was misled into ceasing to occupy the Property. If the Respondent had removed the Applicant from the Property and immediately let it under a private residential tenancy agreement there would probably be a significant burden on him to prove that he had not misled the Applicant. In this case, the applicant exposed the Property to short term lets under Airbnb. That in itself might indicate that a landlord had served a Notice to Leave to bring a tenancy to an end so that a property could be occupied on Airbnb lets rather than for his own occupation. Exposure of a property to short term lets could be indicative of a landlord removing a tenant to facilitate this and that could possibly constitute wrongful termination under the 2006 Act. Had such an exposure to the short term letting market been made without the Respondent occupying the Property as his dwellinghouse, the tribunal considered that he would have had some difficulty in persuading the tribunal that the Applicant had not been misled.**
- 36. The particular circumstances of this case are not so clear cut. If the tribunal accepts the Respondent's position that he terminated the tenancy to occupy the Property as his own dwellinghouse then the claim of wrongful termination would not succeed.**
- 37. Mr Geelan's position is that he served a Notice to Leave on Mr McDaid because he required to have somewhere to live. The notice to leave states that the respondent requires the Applicant to remove himself and it relies on Ground 5 of Part 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. Ground 5 relates to a property being required for a family member of the landlord. It is Ground 4 which relates to a property being recovered for occupation by a landlord. No issue was taken on this by the Applicant and the tribunal considered that the text of the notice to leave corrected any defect in the wrong number of the ground referred to. It stated "The landlord intends to live in the property as his or her only or main home."**
- 38. Mr Geelan said that he used Airbnb because of the financial position which he found himself in. In support of this he lodged various documents:**
- a. The train ticket receipts**
The receipts lodged were in respect of thirteen journeys commencing from Garscadden station which Mr Geelan said was the nearest station to the Property. Most of the receipts indicated that the journeys commenced in the mornings.
 - b. The Bulb utility bills.**
These are for periods from July 2019 to January 2020 and most show them to be based on estimated readings. Gas and electricity meter readings were provided by the customer on 16th December 2019.
 - c. The emails from Reza Rezaeian, Seied Rezaeian and Samantha Hock.**

The relevant sections of the emails have already been set out in this Decision.

39. The tribunal considered what weight to give the ticket receipts, utility bills and emails.

The train receipts show that journeys were taken from Garscadden station and the tribunal accepted that Mr Geelan took the journeys the receipts refer to. It was also prepared to accept that Garscadden station is near to the Property. This was not challenged by Mr McDaid. The tribunal accepted that the tickets could be supportive of Mr Geelan's position that he had been residing in the Property after he had recovered possession of it but, in themselves, were not conclusive evidence of this. One receipt was for January 2020 when Mr Geelan's evidence was that he was currently staying with Dr Jandar and he had been doing so since December 2019.

40. The tribunal found the utility bills to be of little assistance. They mostly reflected estimated accounts and would have been rendered whether or not Mr Geelan was living in the Property.

41. The emails were not of assistance in advancing the Respondent's case. Ms Hock's refers to Mr Geelan residing in the Property "as far as I can remember." Ms Rezaeian's email states that she had been *told* by Mr Geelan that he had moved in to the Property and that she can testify that he had been living in the Property "since 15 July until end of October 2019..." Mr Cohen's email referred to him visiting the Respondent in the Property but has little evidential value.

42. Neither the tribunal nor the Applicant were able to test the statements from these individuals because they did not provide oral evidence. In relation to the period of occupation, Ms Rezaeian's email was in conflict with the evidence of Mr Geelan and Dr Jandar.

43. Mr McDaid gave evidence which amounted to the belief that he was misled into vacating the Property and that Mr Geelan had not intended to live in it. Not surprisingly he had difficulty in producing evidence to support this other than the factual position which amounted to the fact that he had been asked to leave and that the Property had then been used for Airbnb lets. Tenants raising claims for wrongful termination often could only produce a set of facts for a tribunal to come to a view on. It is for a tribunal to weigh up each set of facts and circumstances and to come to a view.

44. The evidence of Mr Geelan reflected what he had included in his written representations. He said that he had intended to live in the Property upon the Applicant's departure and that it was because of the condition of the Property, the money which he had to spend on it and the financial position he found himself in which led him to expose the Property to Airbnb lets. The Tribunal had regard to the Decision in the case FTS/HPC/CV/19/3127

and accepted that there had been damage caused to the Property during the Applicant's tenancy.

45. The tribunal had to determine what weight to put on the evidence before it.
46. Dr Jamdar stated that the Respondent intended to live in the Property and indeed did so until December 2020. Whilst the tribunal found Dr Jamdar to be credible, her evidence was limited in its value.
Given the support she had given Mr Geelan and the extent of knowledge she had of the work being carried out on the Property as demonstrated by the messages exchanged between them, the tribunal considered it significant that she could provide no evidence as to where Mr Geelan stayed when Airbnb visitors were in the Property and Mr Geelan was not staying with her.
47. The train receipts, whilst in themselves not providing conclusive evidence of residence, were supportive of Mr Geelan's journeys commencing on mornings and therefore that he was staying in the Property but such receipts could be supportive of him occasionally staying in the Property when he was working on it.
48. Dr Jandar said that her family visited each summer and Mr Geelan confirmed that he knew this. The notice to leave had a date for the Applicant's departure around a month after the arrival of the family. It was considered that it is significant that the notice to leave was not sent sooner and that it had been sent after there had been issues identified between the Applicant and a neighbour
49. Mr Geelan accepted that he had told a neighbour that he didn't know what his plans were. The tribunal considered this to be significant. It is probable that the neighbour was seeking reassurance and that this would have been given if Mr Geelan had told her that he intended to occupy it.
50. Mr Geelan's evidence was that the first Airbnb booking failed because of the strong smell of cat urine. He offered no explanation as to why he was not aware that it had not been fully eradicated, if he had been living in the Property.
51. Mr Geelan asked the tribunal to consider the terms of the Decision in the case FTS/HPC/CV/19/3127 which referred to Mr Geelan not occupying the Property "but rather entering into a number of Airbnb lets." The terms of that Decision were considered by the tribunal and supported the Applicant's position that the Respondent did not intend to live in the Property but for it to be used for Airbnb lets.
52. The tribunal noted the terms of the letter which accompanied the notice to leave. The first paragraph of the letter related to the Respondent's

position having returned from Canada etc. The following paragraphs state:

“You may of course challenge this (the notice to leave), however this is a mandatory clause which an appeal tribunal will not overturn and there is ample proof to my circumstances.”

“The good thing is that you just do not seem happy there anyway.

Considering all the issues etc with your dispute with the neighbours I have considered the matter and see that the neighbour doing more than their fair share, they keep the communal area tidy, saving you a lot of time oe expense, and the hedge looked perfectly fine. I find it petty therefore that you start a commotion for the sake of a child playing in the garden area which belongs to 60 Clarion Crescent given all that they do for you. You have to take responsibility for your own reactions and behaviours. The neighbours don’t create noise late at night and they just want to have quiet enjoyment like anyone else.

I do not expect to have the neighbour come to me every time they need to communicate with you regarding the property. This is unacceptable and anti-social.

.....I retain the option of invoking discretionary grounds 3 notice to leave should anti-social behaviour persist, the notice period of which is 4 weeks.”

The terms of this letter supported the Applicant’s position that the tenancy had been terminated for reasons other than that stated in the notice to leave.

53. The tribunal considered all the evidence and, on the balance of probabilities, found that the Respondent had not served the notice to leave with the intention of living in the Property as his main place of residence for a period of three months. It found the decision to be finely balanced and that it was the accumulation of evidence which led it to determine that the Applicant had been unlawfully evicted.

Disposal

Section 59(3) of the 2016 Act states that the tribunal can make a wrongful - termination order for a sum not exceeding six months. The fixing of the quantum of such an order is a matter of judicial discretion. In this case, the Applicant had no period of homelessness but had been inconvenienced and it was accepted that he would have been under pressure to find alternative accommodation. The tribunal considered that, in all the circumstances, it is appropriate for a wrongful-termination order of £1,200 which is equivalent to two months rent.

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.

**Martin J. McAllister, Legal Member
7th September 2020**