



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

**Chamber References : FTS/HPC/PR/22/1074 & FTS/HPC/PR/22/1075**

**Re: Property at 0/1 41 Tobago Place, Calton, Glasgow, G40 2RT (“the Property”)**

**Parties:**

**Mr Murray McKinstry, PO Box 12595, Boness, EH51 1AQ, Mr Wolfgang Tzaferis, PO Box 12595, Boness, EH51 1AQ (“the Applicants”)**

**Mr Frank Donaldson, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Wrongful Termination Order should be made against the Respondent in each application. The Respondent is required to pay to the sum of £950 to each applicant (a total of £1,900, calculated on the basis of a total of four months’ rent)**

**Introduction**

1. These are conjoined applications under Rule 110 in which the two applicants, who are the former tenants of the relevant property, seek compensation in the form of a Wrongful Termination Order under sections 58 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016

2. Service of the applications and intimation of the Case Management Discussions (CMDs) were effected upon the respondent by way of service by advertisements on the Chamber website under Rule 6A. The respondent’s whereabouts are unknown.

Relevant certificates confirming that the advertisements were placed on the website for the relevant period commencing 9 June 2022 have been produced.

3. The applicants both joined the hearing personally and represented their own interests. The respondent failed to join the hearing.

#### Findings and Reasons

4. The property is Flat 0/1, 41 Tobago Place, Calton, Glasgow G40 2RT.

5. The applicants are Mr Murray McKinstry and Mr Wolfgang Tzaferis, who are the former tenants. The respondent is Mr Frank Donaldson who is the former landlord.

6. The parties entered into a private residential tenancy in respect of the property which commenced on 9 August 2019. A deposit was paid in the sum of £475 and the monthly rent was £475.

7. On or about 14 September 2021 the applicants received a notice to leave on behalf of the respondent which had been completed by Ms Annette Hanna of Victoria Letting. This relied upon ground 4 contained with part 1 of Schedule 3 of the Act, namely that the respondent required the applicants to leave the property on the ground that he intended to live in it. The end of the notice period was specified as 20 December 2021, being the first date that tribunal proceedings for eviction could be commenced.

8. The applicants vacated the property in advance of the date specified when an application may be have been made to the tribunal for eviction. They did so purely due to the service of the Notice to Leave.

9. Following the applicants vacating the property, they became aware that their deposit had not been paid into an approved scheme timeously. It was paid into the scheme operated by SafeDeposits Scotland on 14 January 2022. The deposit was ultimately returned in full to the applicants. In terms of a former application to the tribunal under reference FTS/HPC/PR/22/0378 the tribunal found that the respondent landlord had failed to comply with his duties under Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and required him to make payment of the applicants in the sum of £950. He has not yet paid this sum.

10. The applicants subsequently became aware that the property was not being occupied by the respondent and in fact had been let out to a new tenant. These circumstances have been confirmed to the Housing and Property Chamber in the form of a Sheriff Officer's report by Walker Love, Messengers at Arms and Sheriff Officers, dated 30 March 2022. It was found that the respondent was not occupying the property and that a new tenant was now living in the property. The Tribunal finds this report to be a credible and reliable source of evidence regarding the occupation of the property and attached considerable weight to it.

11. The Tribunal scrutinised the notice to leave produced by the applicants in this process which was served upon them on or about 16 September 2021. The notice is clear with regards to the respondent's proposed intentions to live in the let property and this sets out the respondent's intention to bring proceedings to the tribunal for an eviction order if necessary.

12. On the basis of the threat of eviction, the applicants voluntarily terminated the tenancy and vacated on or about 10 December 2021. The applicants would not otherwise have left. They were both happy with the accommodation. It was convenient for them. Neither applicant was able to source alternative suitable affordable accommodation in Glasgow. Mr McKinstry required to give up part time work and move away from Glasgow to stay with family. Mt Tzaferis required to register as homeless initially for a period before relocating elsewhere.

13. Section 58 of the 2016 Act allows an application for a Wrongful Termination Order to be sought, even where no eviction order has been granted by the Tribunal and the former tenants vacated the tenancy voluntarily having been misled. The Tribunal is satisfied on the primary facts found that that is the position here.

14. Section 59 of the 2016 Act provides that the maximum penalty which can be opposed is six times the monthly rental. The monthly rental on the property was £475.

15. In assessing the quantum of compensation required to be specified in the Wrongful Termination Order, all relevant circumstances must be taken into account.

16. The Tribunal has already determined that the respondent failed to comply with the Tenancy Deposit Regulations. The respondent was acting as an unregistered landlord throughout the entire duration of the let.

17. The applicants have already been compensated in respect of the respondent's failure to adhere to the tenancy deposit. The Tribunal has made an Order in that regard and the respondent is yet to pay it. There are ongoing difficulties with regards to recovery of that debt which includes service of the Order upon the respondent.

18. The applicants had been in occupation of the property for a period of 2 years and 3 months. They had no intention to leave. They had paid their rent timeously and were 'good tenants'.

19. The tribunal was satisfied that the respondent has been dishonest in his dealings with the applicants. He is also an unregistered landlord. His behaviour and actions have caused the applicants inconvenience and been adverse to their interests. There are no other aggravating circumstances. In the circumstances the Tribunal found that the respondent should be required to pay the total sum of four times the monthly rental which reflects a fair and proportionate disposal. This equates to a total sum of £1,900 which requires to be divided equally between the two applicants - £950 each.

20. The Tribunal requires to notify the relevant local authority (Glasgow City) of the making of the Wrongful Termination Order under section 60 of the Act. It is also the Tribunal's duty under section 72 of the Act to notify the relevant local authority of the respondent acting as an unregistered landlord.

### **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.**

**R Mill**

**26 July 2022**

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**Legal Member/Chair**

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**Date**