

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) (Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/20/2291

Re: Property at Flat 2/1, 36 Polwarth Street, Hyndland, Glasgow, G12 9TX (“the Property”)

Parties:

Mr James Williamson, Ms Faye Simmons, 1 Lawder Place, Dunblane, FK15 0NF (“the Applicant”)

Mr Kenneth Hugh, 141 Faulkner House, Tierney Lane, London, W6 9AT (“the Respondent”)

Tribunal Member:

Jan Todd (Legal Member) and Mary Lyden (Ordinary Member)

Decision

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

Background

1. This was a hearing held to hear evidence and submissions in respect of the application dated 25th October 2020 made by the Applicant against the Respondent for a wrongful termination without eviction order, made in terms of S58(2) of the 2016 Act and Rule 110 of the Tribunal Rules.
2. The Applicant claims in his application that they were given notice to leave the Property on the grounds that the landlord was moving back into the Property; they believe the Property was then put on the market for sale and that they were misled as to the Landlords intentions and moved away as a result of being misled. The Applicant wishes to claim up to 6 months’ rent in compensation.
3. Two Case Management Discussions (CMD) were held by teleconference. The first being held without the Respondent as papers had been served on the Respondent only by service by advertisement as a previous attempt to serve at an address in London had proven unsuccessful. After the first CMD the Respondent’s address was identified, the papers were served and the

Respondent indicated his intention to defend this application and make representations via his solicitor Mr Thomas McFarlane who then lodged submissions and an inventory of productions as well as requesting directions.

4. At the first CMD the Applicant Mr Williamson advised that the owner and manager of the letting agent Ivy Property Ltd was indeed his brother Mr Ian Williamson.
5. The Respondent via his solicitor responded on 5th April to directions from the Tribunal with a "Summary of Representations" on behalf of the Respondent and a Supplementary Inventory of Productions containing various e-mails between the Respondent and Ivy Property the letting agent; a home report and e-mail from estate agent; copy offer from Austin Lafferty solicitors and excerpts from the government website as to private residential tenancies. The Response and Productions are referred to for their full terms.

The Discussion on 13th April 2021

6. At the second CMD teleconference the legal member noted as a preliminary issue that the Applicant had asked that his wife Ms Faye Williamson become a joint applicant and given he had intimated this timeously the Tribunal accepted this was an appropriate variation.
7. The Applicant confirmed that he was seeking compensation as the 2016 Act stated that it was possible to claim 6 months' rent and that they had been told that Mr Hugh, the Respondent, was moving back to stay in the Property but that it was put up for sale 2 weeks later and that he felt wronged by that.
8. Mr McFarlane referred to his written representations and advised that he had set out his client's (the Respondents) position in great detail and stated that, in his view, the application was deficient on legal and factual grounds. Mr McFarlane notes in his Summary of Representations that the Respondent is a medical doctor, that he has lived and worked in London since late 2017, that he had purchased the Property in 2012 for his own occupation but has not lived in it as his principal residence since 2016 when he went to work in Belfast. He also mentioned both orally and in his written submissions that the Respondent was not aware until after the commencement of these proceedings that the first named Applicant is the brother of the individual who runs and controls the letting agents, Mr Ian Williamson, who arranged the letting and the service of the Notice to Leave on 5th August 2020.
9. Mr McFarlane gave details in his Summary of Representations and orally that the Respondent had no awareness or knowledge of the rules of private residential tenancies in Scotland, that he was totally reliant on the letting agent and that he had not even seen either the original notice to leave that he believes was drafted or the one he understands was sent on 5th August. Mr McFarlane advises that the Respondent had verbally offered to purchase a dwelling house in London around the time the Notice to Leave was served; that he formed an intention to sell the Property but also that he intended to move into it for a short time prior to and in order to facilitate a sale. Mr McFarlane submitted at the CMD that an intention to live in the property is not inconsistent with an intention to sell the property and that the landlord had a dual intention. Mr McFarlane also confirmed that although his client had not seen the notice to leave that did not mean he did not give the instruction to use Ground 4 of the 2016 Act (which is an eviction ground based on the landlord intending to live in the Property.)

He emphasised that the Respondent did not know his long term intentions, that he was unfamiliar with this legislation and his only ground of knowledge was from what he was told or sent by Ivy Property, the letting agent. Mr McFarlane went on to advise that it is abundantly plain that the Respondent has received no proper advice. Mr McFarlane referred to the e-mails from Ivy Property sent to his client on 5th August which show the advice and guidance the Respondent was given and in particular Mr McFarlane points out that nowhere was it pointed out that, or did he receive any advice as to the need for, the intended period of occupation (to meet the ground of eviction) was to be a minimum of three months. Mr McFarlane advised that neither the lease, nor the accompanying notes to a Private Residential Tenancy, nor the Scottish Government Website make it clear that the Landlord must have the intention to reside in the Property for at least 3 months. He also refers in his Summary of Representations to the letting agent "not seeking in any shape manner or form to obtain further and better details of his expressed intent either for the purpose of offering advice or testing the veracity of the intent had they harboured any doubts on that score or for the purpose of inserting full details in the proposed notice to leave with a view to affording the tenants a better understanding of why the Respondents was seeking to evict them and to judge whether that proposed course of action was justified." Mr McFarlane advised the letting agent did not seek to lodge an affidavit or discuss with the Respondent how his intention may be proved if that came to be required.

10. Mr McFarlane submits that the Respondent has not done anything reprehensible, that his actions were honest and that S.58 of the Act and an order for wrongful termination requires, on any interpretation of it, that there is some element of egregious or reprehensible conduct that is lacking in this case. "Just because the Respondent did not have the intention to live there for 3 months does not lead to the application necessarily succeeding. There needs to be some conduct that is reprehensible". His view is that the letting agent has acted egregiously and not the Respondent and that the landlord did intend to live in the Property even if it was not for a set period of time but that circumstances which are narrated in his Written representation and noted below caused the Respondent to change his mind.
11. Mr McFarlane then advised that, as a separate point, he felt the Notice to Leave was inadequate and he suggests this would have been obvious to the tenants and as such could not have misled the tenants into leaving the Property as this it could have been challenged at a Tribunal. He also submitted it was not certain that the tenant would have been evicted, given the grounds of eviction under the 2016 are all now discretionary because of the Coronavirus (Scotland) Act 2020 and that the tenant would have been entitled to question the landlord at a Tribunal which meant that leaving would not automatically follow. Mr McFarlane submits in his Written Representations that "if the tenants were under a misapprehension that the ground of eviction stated in the Notice to Leave was a mandatory ground such misapprehension cannot be laid at the door of the Respondent and that therefore the Respondent had not "misled" them into believing that they required as a matter of law to vacate the Property pursuant to the notice to leave being served upon them." Mr McFarlane suggests that the Applicant had worked as a letting agent for a number of years and so must have a level of understanding that goes beyond an ordinary member of the public.

12. Finally Mr McFarlane explained that the Respondent when informed that the tenants were to leave the Property on 3rd October 2020, made arrangements to return to Glasgow in order to make arrangements for the sale of the Property by re-decorating, refurbishing the kitchen and perhaps installing replacement windows. Shortly before the Respondent's departure to London he was informed that the offer for the London property was not to be accepted. After discussing matters with his Estate Agent, Retties, he concluded that the Property did not need redecorating or refurbishment and given issues with travel with Covid 19 and issues with installation of wi fi in the Property he realised that his circumstances had changed and he decided to leave the Property in the hands of the estate agent and left to return to London. Mr McFarlane confirms that the Respondent did not return to live in the Property but advises that he had originally intended to and that circumstances changed his plans and that a change of circumstances where an honest intention to move is then changed, cannot by itself lead to a successful application for wrongful termination.
13. The Applicant in response submitted that when the Notice to Leave was served he took it at face value. He submitted that he has never been issued with an eviction notice and mentioned that at the time his daughter was 11/12 weeks old. He then stated that he had not seen the e-mails from Iain Williamson (whom he confirmed is his brother) of Ivy Property to the Respondent until they were lodged with these proceedings. Further he expressed the view that it was odd that the Respondent could make such a big decision to move to Glasgow between the 7 minutes he alleged there was between the two e-mails from Ivy Letting and when the Respondent replied advising that he wished to proceed on the ground of moving in.
14. In response to some questions the Applicant advised he had no contact with the landlord and there had been no communication about the landlord's intention. That when the tenancy ended on 3rd October 2020 he had then seen the Property advertised on Right Move and made the application. On being asked how he had happened to see it he advised that he "always looked at what is for sale in Glasgow".
15. There was consensus that a hearing would be required to determine the application. When discussing the question of witnesses the Respondent's representative indicated he would wish Mr Iain Williamson to be a witness but was not sure the Respondent would be able to require him to attend as he was likely to be a hostile witness. The Tribunal agreed that it was important that Mr Williamson attended as a witness.

The following Issues were noted;

16. *Whether the Applicant as a former tenant has been "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.*
17. *Whether the landlord held an intention to move into the Property and whether it is crucial that he knew and formed an intention to occupy the let property as the landlord's only or principal home for at least 3 months.*
18. *Whether given the format of the Notice to Leave and the changes making all grounds of eviction discretionary, any misapprehension by the Applicant as to*

the consequences of the Notice to Leave were not caused by the Respondent as Landlord and therefore do not meet the test of S58 and that the legislation could not have intended that a former tenant can complain that they had been misled into vacating the Property earlier than they need have done.

19. A hearing was set down to take place by video conference.

20. Both the Applicant and Respondent were asked to identify any witnesses and to lodge a numbered and indexed inventory of productions.

Hearing

1. The hearing proceeded by video conference at 10am on 2nd July 2021. In attendance on the video conference were the first named Applicant, the Respondent and the Respondent's solicitor Mr McFarlane. Both members of the Tribunal were present and the tribunal's clerk was present. There were 2 witnesses, Mr Ian Williamson and Mr Kenneth Hugh who were waiting to be called but both were advised the clerk would call them and given them 30 minutes notice that to call into the video call.
2. The Legal Member made introductions and advised of the purpose and format of the hearing. Apart from one period in the morning when the legal member could not attend due to internet difficulties the case proceeded by video conference.
3. The Applicant gave evidence first confirming that he and his wife were tenants in the Property and that this was an application for a wrongful termination order because after the tenancy had ended on 3rd October 2020 he had found the property listed on Right Move on 20th October 2020. He advised that as the emergency coronavirus legislation states if a landlord intends to sell they must give 6 months' notice "we believed the landlord misled us into leaving the property early" only to sell the Property. He advised they (he and his wife) were looking for 6 months' rent in compensation.
4. Under questions from the Tribunal the Applicant advised that he and his wife were the tenants in the Property from 9th March 2018 and that they were living there with their baby daughter who was about 12 weeks old when they left last year. He advised they had planned on continuing to live there for a while longer but hoped to buy in the area and had previously sold a property in the vicinity of this one a couple of years before.
5. He advised that on 5th August 2021 Mr Ian Williamson called him to say a notice to leave was to be issued giving 84 days' notice, then the applicant was advised it would be a 6 month notice. He did not recall a separate phone call after that. When asked why he chose to move to Dunblane he explained that they had parents there who could provide support and they decided to move to Dunblane on 1st September and gave notice on 3rd September. Mr Williamson also advised that in a previous job he had been a viewing agent for an estate agent what he referred to as a "classic sales job" and he advised it was not normal for him to create or end a tenancy.
6. Mr McFarlane then proceeded to ask a number of questions to which the Applicant responded as follows.

7. Mr Williamson advised that he was 36 years old and that his brother Ian Williamson was 39 nearly 40. When asked if he was close to his brother he advised that "yes we used to live nearby and ...were close when growing up".
8. Mr McFarlane noted that the notice to leave was served by his brother's company and this was agreed. Mr Williamson confirmed that while he does text his brother it was mostly on family group chats. Mr McFarlane asked if the birth of his daughter had resulted in increased communication and Mr Williamson advised no as at that point we were not allowed to see people but did agree he had frequent communication with his brother, that they have not fallen out and had a normal brotherly relationship.
9. Mr Williamson advised that due to stress at work, his wife's business changing and a difficult financial position resulting from changes to his wife's income they had not purchased a property.
10. With regard to seeing the Property on Right Move Mr Williamson advised that he had set up a filter to see properties in a certain area and that he had done so with a view to buying a property in that area and that was how he saw the Property on Right Move as they send regular updates. He confirmed they had been looking for 2/3 bedroom property in a 2 mile area and that you can apply a filter to check for properties in the last 24 hours or 7 days . He confirmed he had used such a filter.
11. Mr McFarlane asked about the applicant being misled and the Applicant advised that yes he had been misled because the landlord had said he wished to live in the Property and then listed the Property 2 weeks later which showed he did not intend to live there.
12. Mr McFarlane explored why the Applicant did not ask Ivy Property what the Respondent's address was. The Applicant advised it was because he thought he had the correct address from a document from Safe Deposit Scotland. He went on to say that he hadn't asked Ivy Property because it wasn't appropriate to ask his brother, he thought there might have been a data protection issue and again mentioned he thought Mr Hugh could have updated Safe Deposit Scotland.
13. In response to questions about why the applicants moved out without asking any further questions, the Applicant advised that they (he and his wife) reacted quickly by finding another property and moving out. He further advised that "I am an easy going chap and just rolled up my sleeves and get on with it". Mr MacFarlane then asked why in his response to an e-mail from Julie from Ivy Letting sending the Notice to Leave at 17.14 which ends with "any questions please let me know?" he did not ask any questions but just asked for them to use another e-mail address for his wife. The Applicant responded saying "What am I going to do watch my property options waste away" and when further pressed by Mr MacFarlane the Applicant confirmed that he was relaxed about finding a property and it was just "take your medicine. It was only on 20th October that I realised I had been misled."
14. The Applicant was then asked how he knew or did he know that the Respondent was not living in the Property on 25th October and it was put to the Applicant "how were you misled if you didn't know where he was living?" The Applicant advised that if the Tribunal felt there was a case to answer then that would be sufficient. Mr MacFarlane put it to the Applicant that he didn't appear to

establish the relevant facts (of where the Respondent was actually living) and that it was not inconsistent for the Respondent to live in the Property and putting it up for sale. Mr Williamson repeated that he assumed the Respondent wasn't living in Glasgow if he had put the flat up for sale. He assumed that Mr Hugh wouldn't have moved to Glasgow for a few days to list the property for sale. The Applicant also agreed he felt wronged by this. Mr MacFarlane asked why the Applicant did not ask any questions of his brother when he was phoned on 5th August and told initially that the notice period would be 84 days then 6 months then he is sent an e-mail confirming 3 months. The Applicant in response advised that was my reaction that it was fine, I don't remember a call from Ian but there might have been for me it was 84 days/3 months then 6 months and then 3 months.

15. In response to questions regarding the comment noted in the Tribunal's CMD note of 9th February 2021 where at line 6 it says "The Applicant confirmed that he understood the letting agent had told the landlord that to get vacant possession to sell the Property would require giving 6 months' notice to the Tenants and he believes the landlord then advised he wished to move back into the Property." Mr Williamson advised he does not recall a second phone call from his brother just the one advising of 84 days but he admits there is a possibility there is a second call. He also advised "I suppose Ian would have told me in a phone call on 5th August that to get vacant possession would require 6 months' notice and I told the tribunal this." He went on to say that the Respondent changed his intention and when asked if the Applicant had presumed he had changed his intention to use the 3 months' notice and benefit from the shorter period the Applicant responded that "it is clear in the e-mail chain that there was a change of intention."
16. Under further questioning about what his brother had told the Applicant, the Applicant maintained that he thought the change to 3 months was because the Respondent had changed his mind and wanted to move back into the Property.
17. Mr MacFarlane put to the Applicant that his brother had let it be known to him that the Respondent had changed his mind to say he was using it to get 3 months and that as a result the Applicant thought the Respondent had lied. The Applicant denied this saying he thought the Respondent had changed his mind, that he wished to live in the Property and then he put it up for sale. The Applicant again confirmed that Ian Williamson had called him to say there had been a change from 84 days to 6 months and he confirmed that the statement in the CMD note had probably come from Ian when he told the Applicant that coronavirus legislation had changed.
18. When asked why the Applicant believed the Respondent had changed his mind to live in the Property and give 3 months' notice he replied "because Julie sent the e-mail". He denied that his brother had mentioned any change of mind although he admitted that he may have called again but I don't recall it. On being asked why he didn't react to the notice to leave being inconsistent (with previous information) he replied "I just move on". On being asked why then the Applicant had responded so quickly when seeing the Property advertised on Right Move and raising an action within several days he advised that he did not think that was inconsistent and again denied that he had any knowledge of advice given to the Respondent. The Applicant confirmed that he did not see it as inconsistent that there is an intention to sell and live in a Property, but felt it was against the spirit of what the Respondent was doing. He advised that there

is a list of options for a Notice to Leave and you can sell and move in but it is against the spirit of the legislation to have two intentions at the one time. The Applicant confirmed under several questions that he thought on 5th August that Mr Hugh had changed his mind and wanted to move in and that it was only later when he saw the Property for sale that he thought he had been misled. He denied that his brother helped with the application or that he asked any questions of his brother regarding the application form as he didn't want him involved in what the applicant described as a personal matter

19. The Applicant confirmed that he did not take professional advice about the application.

Evidence from Dr Kenneth Hugh

20. Dr Hugh then gave evidence and confirmed that his name is Kenneth Eric Hugh he is 35 and living in London. He confirmed that although he is a medical doctor he does not practice but is an associate medical director for a pharmaceutical company. He advised that he has had several addresses in London and had recently moved again to 141 Falconer Hill London.
21. Dr Hugh advised that he purchased the Property in Polwarth Street in July 2012 and lived there for a while before going to Belfast for a short time and then moving to London. He confirmed he had never let out another Property prior to this and did not know anything about the rules of letting out properties. He agreed that he appointed Ivy Properties to let out the Property towards the end of 2017 when they let it to the Applicants. He also confirmed that the sole director of Ivy Property is Iain Williamson and that the Respondent did not know Mr Iain Williamson was the brother of the Applicant Mr James Williamson until after this action was raised. He confirmed that he did receive an e-mail from the letting agent advising that the Applicants were known to Ivy Letting but not detailing the family connection and he did not assume anything from the name.
22. Dr Hugh then advised that he was living in a one bedroomed apartment in London which he was finding too small and had started to look for a property to buy there especially with the savings in stamp duty that were being offered. He found a property to buy in Fulham and put in an offer which was accepted. He explained that he knew he had to realise equity from the Property in Glasgow and the seller and agent of the London property knew I needed to sell the flat in Glasgow and that was a condition of the offer so they continued to market the London property. He referred to the e-mail from Douglas and Gordon on 4th August 2020 which confirms they had received an offer for 57a Rowallan Road SW6 6AF at 18.38 from you and the offer summary includes under the clause "do you have any offer conditions "Subject to mortgage and sale of Scottish Property" and Dr Hugh confirmed that he agreed that they could continue to market the property. He went on to confirm that securing a property to live in London was important to him, that he worked in London and wanted to live there on a long term basis, this was where his primary location was. He also confirmed that he was working from home and that was likely to continue for some time at least until New Year 2021 and that in those circumstances he resolved to sell the property and engaged Ivy Property to arrange the notice.

23. Mr McFarlane then took the Respondent through a series of e-mails exchanged between himself and Ivy Letting on 5th August which are as follows:-

- a. 10.17 from Dr Hugh "This e-mail is to inform you of my intention to sell the property as soon as possible. Please contact me to let me know how to proceed and ensure contractual needs are met."
- b. The reply at 11.47 stated "Good morning. We will issue your tenants notice later on today. The Notice period will be 84 days. I should mention at this stage that our estate agency team currently hold the record sale price on Polwarth Street for 2 bedrooms at £362K. Please let us know if you would like any further information regarding this service. Signed Kaitlin Glen from Ivy Property."
- c. 11.55 from Dr Hugh:- If you could send on details that would be great."
- d. 12.58 pm a further e-mail from Dr Hugh "Hi Iain I have decided to go with Rettie as the agent. I would appreciate if you could work with Jamie Osborne to arrange access for the valuation and work out what access will be needed for the marketing. ...Please feel free to contact me if there are any issues needing to be discussed."
- e. 13.21 pm response from Iain Williamson "Of course. We can arrange access for the valuation and then keep you up to date on the tenants exit date for marketing to commence."
- f. 14.24 another e-mail from Iain Williamson " We have just taken advice prior to issuing notice and we have been advised that the notice period on grounds selling the property was increased over lockdown from 84 days to 6 months on 7th April 2020. <https://www.mygov.scot/ending-a-tenancy-as-a-landlord/private-residential-tenancies/>. It will now be February for taking back possession and for marketing the property for sale unless the tenants request to leave earlier at which time you could decide to let them out of the contract and proceed to market. I'll contact the tenants and ask them whether they will look to see out the notice period or whether the notice being issued might act as a catalyst for a quicker move. I'll keep you informed."
- g. **14.31 response from the Respondent** – "Hi Iain on that basis I will move back into the property in 84 days as I can afford the London property and London rent @Jamie Osborne we can discuss timelines but I will be selling shortly after moving in." This e-mail also contains a list of the eviction grounds under 2016 Act prefaced by "If your tenant has lived in the property for more than six months and you are evicting them for any of the other twelve reasons set out in the law (in other words for a reason that is not their fault) you must give them 84 days' notice." The list of 12 reasons includes "the landlord intends to sell the property and the landlord intends to live in the let property."
- h. 15.12 response from Iain Williamson "Understood we will change the grounds from the landlord intends to sell the let property" to the "landlord intends to live in the let property". He then goes on to narrate that the section the Respondent had cut and pasted was not correct and was relevant to the period prior to 7th April and he then issued a revised section with three pertinent points highlighted in green. (For ease of reference those parts are marked in bold here.) Notice periods if you serve notice on your tenant on or after 7th April 2020. If you serve notice on your tenant on or after 7th April the amount of notice you must give

your tenant will depend on the eviction ground used. The notice period will either be 6 months, 3 months or 28 days. Details of the amount of notice that you must give for each ground are below. If you are evicting your tenant for any of the reasons below you must give them 6 months' notice –**the landlord intends to sell the property**. There then follows several more grounds such as the property is to be sold by the mortgage lender and intends to refurbish the property. If you are evicting your tenant for any of the reasons below you must give them 3 months' notice–**the landlord intends to live in the property**; the landlord's family member intends to live in the property, the tenant has a relevant criminal conviction and others. The e-mail concludes "the 3 months' notice from tomorrow (with notice given today) means the exit date will be 6th November 2020 unless an earlier date is mutually agreed."

- i. 9 the Respondent replies saying "Thanks Iain. Obviously I will be happy to release them earlier if they are able. Ken"
 - j. 16.36 final e-mail – Noted thank you. I'll pass that on to the tenants."
24. The Respondent then explained that in the first e-mail he was initially seeking advice from Ivy Property and that his first contact was with Kittie Glen but then it switched to Iain Williamson. He advised that selling the Property entailed getting possession, getting a survey and minimising his expenses by stopping paying rent in London. He mentioned that he could come back to Glasgow for a short time as he didn't have too many possessions. The Respondent also confirmed it didn't matter where he worked and there would always be a concern about property and whether it needed any work done on it such as on the kitchen. He thought it was better to have someone in the Property rather than rely on his parents in Bearsden and confirmed he had shared that view with his parents who had offered a temporary loan to cover what he would expect from the sale. The Respondent confirmed that he probably only engaged a solicitor around 20th October.
 25. When asked if there were any phone calls between himself and the letting agent the Respondent advised there was the one phone call with Julie followed by the e-mail but no others. He confirmed that he was not expecting Ivy Property to offer him an outline package to sell but wasn't surprised as they are an estate agent. He explained that he had prior to 5th August he wanted to understand the Glasgow Property market and had been recommended to Rettie.
 26. With regard to the link to the government information he advised that he clicked on this link to see what it said.
 27. The Respondent denied that he had changed his mind in saying that he would then stay in the Property saying "I made my dual intention quite clear. this was meant to be a clarification of a dual intention." He also confirmed that the wording in the e-mail of 5 August 2021 (3.31 pm) is wrong in that he could not afford the London property and rent. "Not being able to sell" he confirmed "would damage my intention to move." The Respondent confirmed that when he received and was responding to these e-mails on 5th August he was working and that was the total of the information he was given. He confirmed he was given no other advice and confirmed again that living in the property was one of his intentions but he was not told by the letting agent that there was any time requirement to live there. The Respondent advised that he expected the letting agent to know the rules and was surprised that it took them over 4 months to know about the new rules. He confirmed that the only advice he got was in that

link to the government website and it did not mention the requirement to live there for 3 months.

28. The Respondent then advised that he was advised by the letting agent that the tenants would be moving out on 3 October 2020 and he made arrangements to come up to Glasgow and see what needs done. The Respondent confirmed he only visited the Property during the day and never moved in or lived in it. He advised that on the same day he received an e-mail from Mathew Jacques advising that they had submitted his offer to purchase the Property in London subject to mortgage and selling the Scottish property but it had not been accepted. The Respondent advised that as he no longer had a property to buy in London it didn't make sense to give up his rented property in London. He further advised that the reason to move back to Glasgow was to facilitate the sale and Retties who he met again while he was up in Glasgow told him the Property was in a sellable condition; they advised the property market was hot and they expected £330,000 to £350,000. He advised Retties to put it on the market and also noted that the travel rules in October were different to those in August and that travel was becoming more difficult. As a consequence the Respondent confirmed he changed his intention. He advised that it was always his intention to move in but was just not clear how long for. "I had no set period of time just as long as it took to sell the property." He confirmed that an offer was made which he then accepted in and sold the Property in December 2020. The Respondent advised that had his original house purchase in London been successful he would have moved into the Glasgow Property as it was furnished and he could have moved in. The Respondent denied it was his intention to mislead and that he as a professional always tried to behave properly and indicated he would not be surprised if the Applicant had spoken to his brother.
29. Mr Williamson then asked some questions of the Respondent and the Respondent advised "My intention was to live there then move into a Property in London it would disadvantage me in the long run to live in Glasgow." The Respondent reiterated he did not get advice and that he did not himself have that knowledge, having rented for a long time and not understanding about being a landlord. He indicated he felt there might be collusion (between the Applicant and his brother) but denied this was suggested to him by Rettie. On being asked "did he use the legislation and ground that the landlord lives in the property to get a shorter time" the Respondent replied "I used the legislation I thought was correct. I did not understand wrongful termination or the full document and I hired professionals to *understand* my ignorance." Under further questions the Respondent confirmed "I expected to be there full time greater than one night, while waiting on a sale, one or two months maybe". He went on to confirm when he was told on 3rd October that the tenants had moved out, he wasn't quite ready and wanted to make sure the property was liveable and had not given notice to his landlord in London to whom he said he only needed to give 2 weeks notice.
30. In response to further questions regarding why he didn't move in anyway if he could have worked in Glasgow and saved money on rent in London, he advised that the Property lacked Wi-Fi and that he would be relying on 4 G only if he had moved in; that he would have had to look at properties in London and wouldn't have been able to see properties there if he was staying in Glasgow and didn't think it would make sense. Finally the Respondent advised "I was

looking for a way to move within 3 months and because it (the ground) was there I thought it was my right to go with that”.

Evidence from Mr Eric William Hugh. Witness for the Respondent

31. Mr Eric Hugh is the Respondent's father and a retired chartered accountant. He confirmed that he and his wife keep in close contact with their son, have regular contact and that the Respondent is open and confides in them.
32. Mr Hugh confirmed that his son was living in one bedroom flat in Hammersmith London and he confirmed that it was always his son's intention to live and buy something in London. It was unlikely Mr Hugh confirmed that his son would ever come back and live and work in Glasgow. He also confirmed that he was aware his son had offered on a property in mid to late summer and that he was successful subject to getting finance. Mr Hugh confirmed his son needed the capital from the Property at Polwarth Street. Mr Hugh advised that because of lockdown it did not matter where his son lived and that he wanted to get the Property vacated, so he could move up and given notice on the London property but events took over and that is not the way it worked out. Mr Hugh advised that it was always his son's intention to move back into the flat that this wasn't arranged in hindsight and he mentioned that as an accountant he was aware there were capital gains tax benefits to getting principle property relief although when asked he could not confirm how long someone had to reside in a property to get this relief.
33. With regard to when the Respondent came up to Glasgow Mr Hugh confirmed that this coincided with the property being vacant, that his son went round and viewed the Property and he thought he had decided to instruct Retties. He thought this was around October. Mr Hugh confirmed he knew the property purchase had fallen through by could not confirm the dates of that. He did confirm that the Respondent did not live in the Property. With the property in London falling through he had a change of plan. Mr Hugh guessed that it would be easier for the Respondent to remain in London although financially it would make more sense to give up the Property in London and work in Glasgow but perhaps easier to get into the Property market from London. He also confirmed while in Glasgow the Respondent stayed with himself and his wife in Bearsden and that he did not believe his son would dissemble to gain a financial advantage. Mr Hugh advised that as far as he was aware there was a difference between long term and short term intention and for a short term Glasgow would be okay but short term was for as long as the sale of the flat took.
34. As the evidence from the first 3 witnesses had taken the full day the hearing was continued to a second day which initially was to be held on and then due to no-one advising the witness of the date, had be rescheduled to 18th November 2021.

Evidence of Mr Iain Williamson – given by video conference on 18th November 2021

35. Mr Williamson was originally called as a witness by Mr MacFarlane but as he advised he thought Mr Williamson would be a hostile witness the Tribunal originally issued the direction to attend. Mr MacFarlane therefore examined the witness as a hostile witness.

36. Mr Iain Williamson confirmed he was the owner and director of Ivy Property Ltd which is an agency for the letting and selling of residential properties. He advised he established the business in 2011 but had been an estate agent previously, having trained with the GSPC and a firm of solicitors. He also advised he had a business degree in housing and property law from Strathclyde.
37. Mr Iain Williamson confirmed he was the brother of the Applicant and that they were quite close. He advised he personally handled the letting of the Property to the Applicant and when asked by Mr MacFarlane if there were any rules about conflict of interest, he advised that the Respondent had been informed of the relationship by either himself or someone else in the agency and the company had waived the sourcing fee, which is the sum normally charged by an agent when they find a tenant. Under further questioning Mr Iain Williamson could not say precisely who told the Respondent of the fraternal relationship but said that "he was sure he knew I was the tenant's brother".
38. Mr MacFarlane then took Mr Iain Williamson through the e-mail sent on 5th August and set out above. In relation to the first one sent at 10.17 Mr Williamson confirmed that the Respondent was asking how to serve the Notice to leave and that they kept him right. He acknowledged that the first two e-mails from Caitlin Glen and then himself refer to service with notice of 84 days and a reference to 30 October and that these were wrong and admitted that it was a fair comment that he and his staff were not up to date about the legislation as they did not know of the change that took place in April 2020. Mr Williamson advised that Dr Hugh had been their first landlord who wanted to sell during the pandemic he advised that it was unusual to give notice during that period so they took advice. Mr MacFarlane points out it was after being told that the Respondent was going with Retties to sell his flat that Mr Williamson and Ivy Property took advice.
39. Mr Williamson advised he took advice from the government website and also phoned Scottish landlord association but could not say exactly when the SLA were phoned. He also advised that he sent a link to the Scottish Government website and his position was that he thought that was sufficient.
40. With regard to the e-mail of 5 August, stating Mr Williamson would offer to contact the tenants and ask them if the notice might act as a catalyst for them to move out earlier he advised that he did tell his brother that the landlord wants to sell and if you choose to move out earlier the landlord will release you. . Mr Williamson confirmed this was part of a general statement advising that his landlord was giving notice. He further advised that the Applicant had to take it in and speak to his wife about whether they wanted to move.
41. Mr Williamson was then asked about any advice he had given to the Respondent and replied that he sent the Respondent the correct version of the Scottish Government Website and told him that the length of time for a notice relying on the ground the landlord wishes to live in the property is 3 months and not 6 months.
42. When asked if there was any dialogue about the consequences of serving a notice to leave the witness replied that he believes the Respondent was going to do what he said move in for a short time and sell in the New Year. Mr Williamson advised the felt "shortly" in relation to the Respondent's email was ambiguous but he thought he did intend to move in

Findings in Fact

43. The Applicant and the Respondent entered into a tenancy agreement whereby the Applicant rented the Property from the Respondent from 9th March 2018 and paid £995 in rent.
44. The Respondent used Ivy Property as his letting agent and they found the tenant and advised the Respondent he was known to them.
45. The Respondent offered to buy a property on 4th August 2020 in London and the offer was subject to obtaining a mortgage and selling a Scottish property, namely the Property.
46. The Respondent on 5th August 2020 at 10.17 advised Ivy Property by e-mail that he it was his intention to sell the Property and he asked how he should proceed to ensure contractual needs were met.
47. Ivy Property responded at 11.47 and advised that they would issue the tenants with notice and the notice period would be 84 days. They also advised they have an estate agency team and the Respondent asked them to send details.
48. The Respondent advised he would go with Rettie as his selling agent and wrote to Ian Williamson of Ivy Letting asking him to work with Retties to arrange access for valuation and marketing purposes. Mr Williamson confirmed that and asked Jamie at Retties to email direct to arrange access.
49. At 14.24 Mr Williamson e-mailed the Respondent to advise he had just taken advice and advised that the notice period had been increased over lockdown and was now 6 months from 7th April 2020, that it would be February before he could take back the Property unless the tenants moved out earlier. A link to the government website was enclosed.
50. At 14.31 the Respondent replied advising that he would move back into the Property in 84 days but he would be selling shortly after moving in.
51. Mr Ian Williamson responded at 15.12 to confirm that they would change the grounds from the landlord intends to sell to the landlord intends to live in the let Property.
52. The communication between the Mr Ian Williamson and the Respondent was conducted by e-mail.
53. Mr Williamson phoned the Applicant twice that day to advise firstly that the Landlord wanted to sell then to advise that the landlord wanted to move in.
54. Mr Williamson did not confirm the landlord wanted to sell shortly thereafter.
55. Mr Ian Williamson provided a list of the grounds of eviction and the notice periods for serving notice to a tenant after 7th April 2020 to the Respondent and highlighted the two the Respondent had referred to showing that
 - a. That the eviction ground the landlord intends to sell the property has a 6 month notice period
 - b. The eviction ground that the landlord intends to live in the let property has a 3 month notice period
56. Mr Ian Williamson indicated that the 3 months' notice period would expire on 6th November 2020 unless an earlier date was agreed.
57. The Respondent confirmed he would be happy to release the tenants earlier if they were able.
58. The Applicant is the brother of Mr Ian Williamson
59. Mr Ian Williamson is the owner and director of Ivy Properties.
60. The Respondent was advised that the letting agent knew the tenants.

61. The letting agent did not provide any advice to the Respondent regarding requiring the detail of the ground of eviction namely that Ground 1 of the Act requires that the landlord intends to live in the property for at least 3 months.
62. The letting agent did refer the Respondent to the Scottish Government Website.
63. The letting agent did advise that selling the Property requires a notice period of 6 months whereas if the landlord intends to live in the Property the notice period is 3 months.
64. The Notice to leave was served on the Applicant on 5th August confirming that an application will not be submitted to the Tribunal for eviction before 6th November.
65. The Applicants had a 12 week old daughter at the time they received the Notice to leave and started searching for other properties as a result of receiving the Notice to Leave.
66. The Applicant did not seek legal advice on being served notice to leave.
67. The Applicant initially looked for but did not find any properties near the vicinity of the Property.
68. The Applicant found a property in Dunblane near family members and gave notice on 3 September that they would be leaving on 3rd October 2020.
69. Silvia at Ivy letting advised the Respondent that the Applicant had given notice and would be leaving on 3 October by e-mail at 13.17 on 4th September 2020
70. The Applicant moved out on 3rd October 2020
71. The Property was advertised for sale on Right Move on 20th October 2020.
72. The Home Report was carried out on 16th October 2020 by Allied Surveyors Scotland
73. The Property was sold with an entry date of 22 December 2020.
74. The Respondent never moved into or lived in the Property.
75. The Respondent did not intend to live in the Property for 3 months
76. The Respondent has misled the Applicant

Reasons

77. S58 of the Act sets out the grounds for a 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 (a 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.
78. The Applicants were the tenants under the tenancy and the Application has been made against the landlord in this tenancy.
79. S50 of the Act sets out how a tenancy can be brought to an end and is headed “Termination by notice to leave and the tenant leaving”

80. S50 goes on to state “
81. (1) A Tenancy which is a private residential tenancy comes to an end if
- a. The tenant has received a notice to leave from the landlord and
 - b. The tenant has ceased to occupy the let property
- (2) A tenancy comes to an end under Subsection (1) on the later of the
- a. the day specified in the Notice to Leave in accordance with section 62 (1)
 - (b) or
 - b. the day on which the tenant ceases to occupy the let property
- (3) For the avoidance of doubt a tenancy which is to come to an end under subsection (1) may be brought to an end earlier in accordance with section 48.
82. It is not disputed from the evidence the Tribunal heard that the Applicants received a notice to leave from the landlord via his letting agent and that they then left the Property prior to the date stated in the Notice to Leave. In that respect subsection 1 of section 58 of the Act is met. The tenancy has been brought an end in accordance with section 50 as a notice to leave was served and the tenants have left the property prior to the date in the Notice to Leave and after giving notice that they would leave earlier.
83. Subsection 2 is also met as the Application is made by the former tenants of the tenancy which has come to an end again this was not disputed.
84. The question for the Tribunal is whether the tenants were misled into ceasing to occupy the let property by the landlord. Mr McFarlane on behalf of the Respondent submits there are 3 tests to be met in this respect 1-that the former tenant must have been misled and he suggests there are two possible meanings to this which are referred to below and that 2 - the tenant must have been misled *by the landlord* and 3-that as a consequence *he vacated the tenanted property*.
85. The Tribunal considered all three submissions. Firstly with regard to the submission that the tenant may not have been misled by the Landlord Mr McFarlane submits that as well as the changes to the notice periods which were introduced by the Coronavirus (Scotland) Act 2020 another effect was that all eviction grounds became discretionary. The effect of this is that originally the landlord intending to live in a property would have been a mandatory ground but it is now discretionary. He notes that this is not reflected on the Notice to Leave and as such a tenant may have formed the inaccurate view that they **had** to leave. The solicitor suggests that “in such a case it could not be said that he was in fact misled by his landlord but rather by his imperfect understanding of the legal effect of the notice”. In addition Mr McFarlane submits that the effect of any notice served under section 62 is to merely place the tenant on notice that if he does not voluntarily vacate the property the landlord will make an application for an eviction order. He submits that if a tenant had good reason to doubt the veracity of the terms of the notice to leave there would be nothing to stop him from challenging the landlord to prove his position or to take the matter to a tribunal. “It is questionable whether a bare notice could have that effect and even more so when a notice was bereft of any supporting evidence or information which would support the basis on which it was served. There must in other words be a causal link between the landlord’s misrepresentation of his position and the tenant’s decision to vacate the property.”
86. The Tribunal notes that Mr Jamie Williamson’s evidence was that he and his wife moved because they received the notice to leave and did not question it. Mr MacFarlane cross examined the Applicant at length but there was no

indication that the Applicant was vague, contradictory or anything but straightforward in his giving of evidence. The Tribunal accepts that the Applicant was told that his landlord initially wanted to sell the Property and that the notice period would be 84 days, then 6 months and then he was advised that actually the landlord had changed his intention and would be moving into the Property. The Applicant advised that he did not question this sudden change of heart that he and his wife accepted they had to move and got on with looking for properties, especially in view of having a very young baby he did not have a lot of time. This evidence is supported by that of Iain Williamson who confirmed that he did not say anything to his brother other than you will have to move. The Applicant also explained why and how he saw the Property come onto the market so quickly namely that he had signed up for notifications from Right Move for properties in this area of the west end of Glasgow an area they had lived in for several years where he wished to stay. The Tribunal finds this reasonable and credible. It is reasonable that someone faced with an eviction notice will sign up for property sites.

87. Mr MacFarlane has submitted that a tenant cannot have been misled by a landlord if the Notice to leave they receive is deficient and submits that the notice to leave served on behalf of his client was deficient in that was not accompanied by any evidence to support the ground of eviction such as an affidavit or other statement. The Tribunal notes the terms of the notice to leave are simply to tick the box stating that the landlord intends to live in the Property and that statement is repeated in section 3. The Tribunal also notes that in the easy read notes that accompany a Private Rented tenancy agreement and which accompanied the one the Applicant has lodged with the application the notes say the tenant has 4 options when served with a notice to leave namely
- a. To stay and wait to be taken to a tribunal
 - b. The Tenant could choose to leave on the date stated in the notice to leave
 - c. Despite the tenancy end date the tenant may ask the Landlord to agree to a later date in which case the tenancy will end on that date _ only if the landlord agrees
 - d. If the tenant believes the ground for ending the Agreement given in the notice do not apply then they should discuss this with the landlord and also contact the advice groups given at the end of these Notes
 - e. The other option is for the tenant to wait for the landlord to apply to the Tribunal for an Eviction Order as at that stage the landlord will be asked by the Tribunal to prove that the ground specified for eviction do apply. You don't need to move out until an Eviction Order is granted by the Tribunal.
88. The Tribunal concludes that the purpose of the notice to leave is to tell a tenant that the landlord wishes to reclaim the property for one of 15 reasons. These reasons are prescriptive and set out in the Act. It is intended that the tenant leaves when this is served although it is clear in the statute and in other legislation that the tenant cannot be forced out by his landlord and if he refuses to move that the landlord will need to apply to the Tribunal for an order for repossession to enforce repossession. It is not however to be expected or unreasonable for a tenant to accept a notice to leave at face value and to leave. Many tenants will leave when served with such a notice especially if they are

able and wish to seek another tenancy in the private sector. Mr McFarlane submits that leaving when a tenant has received a “defective notice” could mean that the tenant has not been misled by the landlord but by the notice itself. The Tribunal does not accept this argument. If parliament had intended that tenants either wait until all notices are followed by an eviction order it could have stated that the notice has to be followed by such an order. It would also not have created the provision in S 69 which is the subject of this application namely that there can be a wrongful termination where a notice to leave was served only not where a notice was served and a tribunal grants an order for repossession which is the subject of the separate ground of action in S68. On the matter of whether this particular notice to leave was so defective that no reasonable tenant would have taken that to be a valid notice to leave the Tribunal also does not accept this argument. The Applicant is not an expert in housing law and practice. He admits he was once employed by a letting agent but did not deal in notices. The content of this notice is similar to many used by agents and landlords across the country. It may be that it should contain more detail but this does not in the Tribunal’s view nullify the Applicant as the tenant accepting that this is a genuine notice that they require to adhere to and leave the Property failing which they will be taken to a Tribunal. The Tribunal is aware that other such notices have been used in applications under S51 and at the point of application the tribunal will seek additional evidence from the landlord to support the ground of eviction but if the tenant has already left the landlord will of course not need to produce this. Indeed even the Scottish Government in its notes suggests that evidence will only be produced at that point.

89. The Tribunal accepts that the tenants in this case left because they received the notice to leave and genuinely accepted they had to leave and find alternative accommodation within the time limit specified. The ground specified in the notice was the ground instructed by the Respondent and so on that basis the Applicants accepted and believed that the Respondent intended to live in the Property and they left within 3 months as requested.
90. The Tribunal therefore accepted that the tenant left due to receiving the notice to leave which was drafted according to the instructions of the landlord and have therefor ceased to occupy the property as a result of the landlords actions in arranging for the service of the notice to leave and not as a result of an imperfect understanding of the legal effect of the notice.
91. The Ground of Eviction ultimately chosen by the Respondent is Ground 4 which is set out in Schedule 3 of the Act and states
 - (1) “It is an eviction ground that the landlord intends to live in the property.
 - (2) The First Tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord intends to occupy the property as the landlord’s only or principal home for at least 3 months
 - (3) References in this paragraph to the landlord in this paragraph
 - a) in a case where 2 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 landlords 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 above includes (for example) an affidavit stating that the landlord has that intention.”

92. The Respondent has never suggested that he did intended to live in the Property for 3 months or more. His submission is he would live there for a short while only. His solicitor submits in his first legal submissions that at the time the notice to leave was served the Respondent had verbally offered to purchase a dwellinghouse in London. He had been led to believe that his offer was likely to be accepted in principle. He accordingly formed the intention of selling the Property and of returning to live there for a short period prior to such time as a sale could be affected." He goes on to submit that "the Respondent was never informed by the letting agent of the effect of the legislative changes wrought by the Coronavirus Scotland Act 2020 to convert mandatory grounds to discretionary grounds, he did not receive any advice as to the need for the intended period of occupation to be a minimum of three months and the letting agent did not seek further details of his intent or to gain details with which to complete the notice more fully. The Respondent, he submits, was therefore mistaken through, Mr McFarlane submits, no fault of his own as to the effect of the notice and as to the minimum legal requirements associated with establishing the ground of eviction noted therein.
93. With regard to whether the tenant has been misled the Tribunal has to consider what was the landlord's (Respondents) intention. The landlord's clearest intention as admitted by the Respondent himself and his father is that he wished to live in London and sell the Property in Glasgow. This intention is clear from his e-mail where he says he wishes to sell, and even the second e-mail when he appears to change his mind and says "in that case I will move and sell shortly thereafter" He needed the proceeds of the sale to move, this is confirmed and openly admitted by him lodging the offer to purchase the London property. The question for the tribunal is did the Respondent also have an intention to live in the Property as well. The Respondent advises he always had a dual intention but there is no mention of that in his first e-mail to the estate agent, merely that he intended to sell. He had already put in an offer that was conditional on selling and getting the proceeds of sale. He does not talk about moving in and spending time there to do the house up at that point. He did seek advice from the letting agent and the only advice he received was firstly that a notice would be served giving 84 days' notice and then after he had intimated a choice to go with a different selling agent that the law had changed and it would now be 6 months.
94. It is not suggested that any-one from the letting agent suggested or advised him that if he were to move into to live in the Property the time period would only be 3 months. Both parties have indicated the e-mails sent on 5th August were the total sum of the correspondence between the Respondent and the Ivy Property on that day the day the Notice to Leave was sent. The Respondent appears to have been told, then has seen the different grounds to leave and notice periods himself on the government website. He and he alone chose to then say he would move into the property, but he also sets out that he will be doing that only for a short period of time "that it is his intention to sell shortly thereafter". The Tribunal notes and accepts he did not receive any further advice from the letting agent, or seek advice from anyone else.
95. The Tribunal notes the Respondent thought he could move in for a short time and then sell the Property. That he did not know there was a particular period of time related to this ground of eviction that he should have lived in the Property

to qualify for this and as he himself stated “I was looking for a way to move within 3 months and because it was there I thought I was in my rights to go with that.” He admits that he was likely to only stay there for a short time not likely to be as long as 3 months, the Respondent mentioned more than one night maybe one to two months but could also be shorter if he sold earlier.

96. The Tribunal finds the Respondent to be open and candid in his evidence. He has openly stated his primary intention was always to sell the Property but he submits that he formed a dual intention to live there as well and that the two are not incompatible. The Tribunal however notes that this second intention only appears to have occurred after being told of the change in the time periods of notice, that the Respondent admits he wanted to take advantage of that and that he did not know he required to live there for at least 3 months. The Oxford English Dictionary interprets one meaning of to live (as opposed to being alive) as “to spend your life in a particular way or make your home in a place”, this is the ordinary and natural meaning of to live and it is this meaning the Tribunal accepts as the meaning behind the legislation when a landlord states he intends to live in the Property. The Tribunal does not find it credible or believable that the Respondent intended to live in the Property in that ordinary sense of the words. The Tribunal fully accepts that on 5th August the Respondent intended to move in or stay in the property because he thought that he could use that ground to give 3 months’ notice but staying somewhere for a short time only is not the equivalent of “intending to live there” where the natural and ordinary meaning of those words is that a person would be making his home even a temporary home there. A person could intend to live somewhere for a period of time and then move on, but that intention has to be shown that he is moving his life there for that period of time. There is no indication that the Respondent intended to do that. He did not give notice to his landlord in London, he did not instruct or even explore putting Wi-Fi in the Property he didn’t even move in for a few days when he was in Glasgow around the 3rd October which he could have as he himself acknowledged the Property was furnished and he had been told on 4th September that the tenants were going to move out on 3rd October. In short there is no evidence to support the Respondent’s assertion that he intended to live in the Property but that circumstances changed.
97. Mr McFarlane submitted that circumstances had changed in October 2020 and that there was a steady tightening of restrictions and it looked increasingly likely that travelling would become more difficult. The Scottish Government was reviewing the coronavirus regulations every 21 days in September and October 2020. They issued further rules on 1st October 2020 that limited the number of people gathering in outdoor spaces and in public indoor spaces and at the same time advised people should work from home where practicable. The Respondent knew in September the tenant’s likely moving date he did not act to arrange to make plans to live in the Glasgow property and on his visit to Glasgow did not stay overnight or prepare to move in and live there. He had not arranged Wi-Fi despite it being publicly acknowledged people should work from home if they could and having indicated he could do so from Glasgow. It was in fact only on or around 3rd October that he learned his house purchase had failed and that he would need to look for an alternative option in London. The selling agent wrote a letter dated 5th October which confirms the Respondent’s offer was not successful. It was on 8th October the Scottish Government announced a further tightening of restrictions nationwide and in particular in the

central belt which included advising people not to travel to or through the central belt areas and indeed whether they needed to travel through their local health board areas. The Tribunal accepts that due to the current pandemic there was uncertainty as to what restrictions could and would be introduced, however it notes that even when the restrictions on movement and travel were at their highest moving one's home was still allowed and travel was not restricted until around October 2020 some weeks after the Respondent knew and could have prepared for the move to Glasgow.

98. Mr McFarlane submits that there are two ways to consider the word "mislead" in the legislation and he submits that it has to be interpreted strictly as this is a penalty and his client should only be penalised if he has misled the Applicant by behaving in a way that is egregious or otherwise reprehensible. Mr McFarlane has lodged in submissions two definitions of mislead:- the first definition is "to lead astray in action or conduct, cause to have an incorrect impression or belief; mismanage or lead or guide in the wrong direction". The second definition is set out in and states "misdirect, deflect or misinform, lead astray, pervert; beguile lead one a dance lead one up the garden path." Having regard to both definitions the Tribunal is satisfied that the Respondent did mislead the Applicant. He has led or guided him in the wrong direction or led him astray giving the Applicant the wrong impression that he intended to live in the Property as that is the only information the Applicant had about the landlord's intentions and as stated above although it is unfortunate the Respondent was not advised that he may need to intend to live there for more than 3 months the Tribunal is not satisfied that the Respondent intended to live there in the normal and natural meaning of the word. An intention by a landlord in respect of recovering property should as noted at page 338 of Adrian Stalker book on Evictions in Scotland be an intention that is both "genuine" and "firm and settled". This expression is taken from the judgement of Lord Denning in *Fisher v Taylor's furnishing Stores Ltd* and Stalker goes on to produce the full quotation:-

"for this purpose the court must be satisfied that the intention to reconstruct is genuine and not colourable that it is a firm and settled intention not likely to be changed that the reconstruction is of a substantial part of the premises indeed so substantial that I cannot be thought to be a device to get possession; that the work is so extensive that it is necessary to get possession of the holding in order to do it; and that it is intended to do the work at the time at once and not after a time. Unless the court were to insist strictly on these requirements tenants might be deprived of the protection Parliament intended them to have. It must be remembered that if the landlord having got possession honestly changes his mind and does not do any work of reconstruction the tenant has no remedy. Hence the necessity for a firm and settled intention."

99. The Respondent's solicitor submits that the Respondent always had a dual intention to live in and sell the property but that circumstances occurred that changed that intention and that a change of circumstances should not mean that his client is at fault or guilty of misleading. Firstly the Tribunal finds that the Respondent has misled the Applicant. He advised he intended to live in the flat, for the reasons set out above the Tribunal does not accept that the Respondent had that intention. The Tribunal accepts that he intended at the time of instructing the Notice to Leave to stay for a few days or weeks but did not intend to *live* there even for a few months. There was no firm or settled intention to live

in the Property. The Respondent was quite candid in admitting he had applied to buy a house in London and candid about his need to sell to realise capital. He told his agent that he would move in then but would be selling shortly thereafter. Unfortunately the shortly thereafter does not appear to have been passed on to the Applicants there is therefore no ambiguity for the applicants. They were told the Respondent was moving in to live in the Property, they received a notice to leave that stated that. The box indicating the landlord wants to sell was not ticked and so on a straightforward interpretation they were misled as to the landlords intentions. He intended to stay for only a short time and has admitted that he thought he was entitled to do that given the wording of the grounds he had seen, he did not want therefore to use the ground that meant he would have to give 6 months' notice. The Tribunal accepts that having one intention does not necessarily exclude having another but it does not find it credible that the Respondent intended to live there when he made no attempt to plan to move into the Property and only appears to have formed an intention to stay there after being told of the changes in the notice periods to be given to a tenant, there is no evidence of a settled or firm intention prior to that date and none after that date.

100. The purpose of the change in the legislation is to afford tenant's further time to prepare for leaving a rented property during the pandemic. The difference in 3 months if the landlord intends to live in the Property to that of 6 months if the landlord wishes to sell reflects the greater priority the Government has given to a landlord that requires or at least intends to live in their own Property. Given the sudden change of mind in choosing the ground of eviction, the lack of preparation to move in and the fact the Respondent did not move in for any time the Tribunal is satisfied that on any interpretation the Respondent has misled the Applicant as he did not have a firm or settled intention to live there and as set out above the Applicant then left the Property as a result of being told in the Notice to Leave he had to leave within 3 months.

101. The Tribunal is therefore satisfied that there was a wrongful termination of the tenancy and now considers what if any monetary award is appropriate. The Tribunal has carefully listened to all the parties and accepts that the Respondent was not an expert in housing law, that he was not advised about the detail of the grounds of eviction and in particular the requirement if he was to proceed to a tribunal that he would be required to show that he intended to live in the Property for 3 months. Taking into account all the circumstances the Tribunal is satisfied an award of two times the rent is reasonable and fair in the circumstances, this is at the lower end of an award that can be made and reflects the mitigating circumstances while compensating the Applicant for the inconvenience and disruption they experienced in having to move more quickly than they otherwise had to do.

Decision

The Tribunal orders the Respondent to pay the Applicant the sum of £1,990.

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.

Jan Todd

Legal Member

7th January 2021

Date