

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/21/1563

Re: Property at 43 Earn Court, Grangemouth, FK3 0HT (“the Property”)

Parties:

Mrs Amy Mcfadzean, 42 Thornbridge Road, Falkirk, FK2 9AX (“the Applicant”)

Ms Carol Judge, 15 Hillhead Drive, Falkirk, FK1 5NG (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

Background

1. An application was received by the Housing and Property Chamber dated 28th June 2021. The application was submitted under Rule 110 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent being wrongfully evicted from the Property by the Respondent.
2. A CMD was held on 24th August 2021 at 2pm by teleconferencing. The Applicant was present and represented herself and had her husband, Mr Mcfadzean, present with her. The Respondent was present and represented herself. The Applicant had left the Property with husband and 3 young children on 5th February 2021. She considered that her tenancy had been wrongfully terminated as the Respondent did not return to live in the Property. The Respondent had decorated the Property and then it had been put on the market to relet at a higher rental price. The Respondent stated that her relationship had been breaking down and she sought to gain possession of the Property in order

that she could return to live there. When it came to moving into the Property she had reconciled her relationship. She did not consider that it was a wrongful termination as it had been her intention to live in the Property albeit that she did not do so. Parties remained in dispute and a full hearing was set. A direction was issued to both parties requiring all evidence, including witness lists, to be submitted to the Housing and Property Chamber no later than close of business on 24th September 2021.

The Hearing

3. A hearing was held on 5th October 2021 at 10am by teleconferencing. The Applicant was present and represented herself and had her husband, Mr Mcfadzean, present with her. The Respondent was present and represented herself.
4. Both parties had lodged submissions prior to the hearing.
5. The Respondent told the Tribunal that on 12th October 2020 she had contacted the letting agency to ask when the Applicant would leave. She had been aware that they were to build their own house and intended to leave at some point. As the Applicant did not know when she would be leaving the Respondent proceeded with a Notice to Leave. The Property was vacated by the Applicant on 5th February 2021. The Respondent did not get access to the Property until a week after as the letting agents had end of tenancy checks to be carried out. Once that was completed she instructed decorators to refurbish the Property. She instructed a joiner to carry out works to repair the floors. The joiner did not attend the Property until April. She did not look to buy furniture until she had the Property back in her possession as she had been told that there can be issues with properties being returned to owners. Once all the decorating had been completed at the end of May 2021 the Respondent decided that she did not wish to move into the Property but try to reconcile her relationship. She did not wish to move into the Property once she had gained possession as she did not wish to be disturbed when she worked from home by works being undertaken in the Property. She stated that she would not have decorated to such a high standard had she intended to let it out. She had lived in that Property for 20 years and wished to return to it.
6. The Applicant noted that the Respondent had sought to remove her from the Property after she had reported repairs with the letting agent. The Applicant and her husband had raised the issue of the poor condition of the flooring with the letting agent concluding that the Respondent was aware that this needed attending to whether she or another tenant lived in the Property.

Finding in fact

7. Parties entered into a Private Rented Tenancy on 11th March 2019 with a monthly rent charge of £695 per month due on 11th of each month.

8. On 12th October 2020 the Respondent asked her letting agent when the Applicants would leave the Property. As the letting agents were not given a date the Respondent proceeded to issue a Notice to Leave.
9. A Notice to leave was served on 2nd November 2020 with an expiry of 5th February 2021. The Notice to Leave was based on ground 4 that the Respondent intends to live in the Property as her main residence.
10. The Applicants left on 5th February 2021.
11. On or around one week later the Respondent took possession of the Property.
12. The Respondent undertook decoration works in the Property that ended at the end of May 2021.
13. At the end of May 2021 the Respondent decided not to return to live in the Property. She had not occupied the Property for the period from when she gained possession of it.
14. The Property has since been let at a higher rental value per month.

Reasons for the decision

15. The Tribunal was not persuaded by the evidence that the Respondent presented. The Tribunal found it to be not credible that the Respondent would wish to return to the Property by serving a Notice to Leave but delay the return to the Property by four months due to the redecoration. It would be reasonable to expect that if she was in the midst of a relationship break down that had caused her to move tenants from the Property that she should take active steps to return to the Property particularly as she had sought to gain possession of the Property for this purpose. The Property had been considered to be in a suitable condition for the Applicant and her family to live in. The Respondent had taken no steps to ensure that she would have furniture to move into the Property. In her evidence she said that she would not have refurbished to such a high standard had she intended to let it but she did let the Property soon after the repairs had been completed albeit that it was not let out immediately. The Tribunal found this to raise issues of credibility. Both parties were issued with a direction stating that witnesses, legal submission and other evidence could be submitted. The Respondent did not cite any witnesses to support that she had decided to return to the Property. She did lodge a GP record stating that she had been diagnosed with low mood in February 2020. This did not state if this was an ongoing matter or if treatment had been available and effective. The Tribunal did not consider this to support the Respondent's position. The Tribunal considered that the Applicants had been misled to cease to occupy the Property by the Respondent who was the landlord under the tenancy immediately before it was brought to an end.

Decision

16. The Tribunal decided that the Applicants had been misled to cease to occupy the Property by the Respondent who was the landlord under the tenancy immediately before it was brought to an end.
17. The Tribunal decided that it was fair, just and proportionate to order the Respondent to pay the Applicant four times the amount of the monthly rent charge of £695 per month (£2780) for the wrongful termination of the tenancy.

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.

Gabrielle Miller

5th October 2021

Legal Member/Chair

Date