



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/23/0311

Re: Property at 19 Walker Street (2/1), Paisley, PA1 2EP (“the Property”)

Parties:

Ms Maria Guttierrez Ochoa and Mr Frank McKechnie, residing together at 82 Kintyre Avenue, Linwood, PA3 3JB (“the Applicants”)

Mrs Elizabeth Evans and Mr Peter Evans, residing together at 11 Imperial Way, Hemel Hempstead, Herts, HP3 9JF (“the Respondents”)

Tribunal Members:

Andrew Cowan (Legal Member) and John Blackwood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application for a Wrongful Termination Order is refused.

Background

1. An application dated 26th January 2023 was submitted to the Tribunal under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a Wrongful Termination Order against the Respondent on the basis that the Applicants were misled into ceasing to occupy the Property by the Respondents by virtue of service of a Notice to Leave.

2. A Case Management Discussion (“CMD”) took place on 8th September 2023 by tele-conference. At the CMD it was agreed by Parties that the residential tenancy between the Parties had come to an end in terms of Section 50 of the Act. The Applicants had received a Notice to Leave, dated 28th March 2022 from the Respondents. The Notice to Leave informed the Applicants that the Respondents intended to apply to the Tribunal for an eviction order on the ground that the Applicant’s family member intended to live in the Property. Following the receipt of the Notice to Leave, the Applicants ceased to occupy the Property on 1st July 2022.
3. The Tribunal determined to treat the Application as having been made under Section 58 of the Act. The CMD was adjourned, and a Hearing fixed for evidence to be led by parties.

The Hearing

4. A Hearing took place on 26th January by way of tele-conference. Both Applicants joined the conference call and were represented at the hearing by Mr Kevin Montgomery of Renfrewshire Citizens Advice Bureau. Both Respondents also joined the conference call. The Tribunal members asked questions which were answered by Mr Montgomery (who conferred with the Applicants where necessary) and Mr Evans on behalf of the Respondents.

Findings in Fact

5. The Respondents are the joint owners and heritable proprietors of the property at Flat2/1, 19 Walker Street, Paisley PA1 2EP (“the Property”).
6. On 31st January 2021 the Respondents leased the Property to the Applicants under a Private Residential Tenancy Agreement.
7. On 11 March 2022 the Respondents (via their letting agent) served a notice to leave on the Applicants which required them to remove from the Property on 1st July 2022. Said Notice to Leave relied upon Ground 5 of Schedule 3 to the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”).
8. Ground 5(1) of Schedule 3 to the 2016 Act states that “It is an eviction ground that a member of the landlord's family intends to live in the let property.”
9. Mr Peter Evans (“The Second Respondent”) intended to move into the Property at the point the Notice to Leave was served. At the date of the Notice to Leave the Respondents were having marital difficulties and the Second Respondent intended to move into the Property after the Applicants had left the Property and after certain works to upgrade the Property were completed.
10. The Applicants moved from the Property on 2nd July 2022.

11. The reason for the Applicants moving out of the Property was a direct result of the Notice to Leave being served on them. The Applicants would not have moved out of the Property at that time had it not been for the service of the said Notice to Leave.
12. After the Applicants had removed from the Property, the Respondents completed certain works to upgrade the Property.
13. By the 31st July 2022, the Respondents had resolved their marital difficulties and decided to continue to live together at the family home in Hemel Hempstead, England. By that date the Second Respondent no longer required to move into the Property.
14. By the end of July 2022 the property had been upgraded (and was then vacant) and the Respondents decided to use the Property for the purposes of short term lets arranged through AirBnB.
15. The Respondents' intentions in relation to the occupancy of the Property changed after the Applicants had left the Property.
16. Between the date of service of the Notice to Leave upon the Applicants, and the date upon which the Applicants moved from the Property, it was, and remained, the genuine and settled intention of the Respondents that the Second Respondent would move into the Property.

Reasons for Decision

17. The Applicants' evidence was provided in written form and further supported by supplementary evidence at the hearing. The Applicants were suspicious of the motives of the Respondents. They became aware that the Respondents had several properties which they rented out as short term lets on Airbnb. The Respondents had advertised the Property for let on Airbnb in August 2022, less than two months after the Applicants had moved from the Property. They had moved from the Property as the notice to leave had indicated that a member of the Respondents' family was moving into the Property. They had not been told that the member of the Respondents' family who intended to live in the Property was, in fact, the Second Respondent. They were concerned that the Respondent could have served a notice to leave which founded upon Ground 4 of schedule 3 of the Act. That ground is applicable where "the landlord intends to live in the let property." The Applicants consider they were misled as the Respondents chose to cite ground 5 in the notice to leave and were not clear that the Second Respondent intended to move into the Property. The Applicants confirmed in their evidence to the Tribunal that, had they understood the Property was being required for the Second Respondent to move into, they would have sought to dispute any application to enforce their eviction on the basis that the Landlord had several properties to move to for his own

accommodation. They explained they had chosen to move from the Property as they understood another member of the Respondents family required the Property as their only accommodation and they recognised that they would not want that member of the Respondents family to be homeless. For all these reasons the Applicants consider they were misled into ceasing to occupy the Property by the Respondents.

18. The Respondents' evidence was provided in written form and further supported by oral evidence of the Second Respondent at the hearing. In the Second Respondent's written statement to the Tribunal dated 9th June 2023 he explained that in March 2022 he had the intention to move into the Property as, at that time, he wished to move out the home he shared with the First Respondent as a consequence of marital difficulties. The First Respondent had also provided a written statement to the Tribunal dated 9th June 2023. In that statement the First Respondent confirmed the notice to leave was issued as the Second Respondent was going to move into the Property. The First Respondent confirmed in that statement that the Respondents had been having marital difficulties and were planning to separate at the time the Notice to Leave was issued. Both Respondents confirmed in their written statements that they had reconciled and decided to continue to live together. The Second Respondent confirmed in his evidence to the hearing that his decision not to move into the Property was reached in late July 2022 by which time the Respondents had agreed to reconcile and to continue to live together in England. The Respondents provided the Tribunal with a copy of a letter from a relationship therapist which confirmed they had been attending relationship therapy from October 2021.
19. The Second Respondent explained to the Tribunal that he had cited Ground 5 (and not Ground 4) in the notice to leave because he did not wish his letting agent and others to know of his marital difficulties. He explained that he was friends with his letting agent and, being a private person, he did not want to share his own personal business. He explained that he had chosen this Property to move into as it was close to other Properties let by the Respondents in the vicinity, and it would be a suitable place for him to live and operate from in the event of his separation from his wife.
20. Mr Montgomery, for the Applicants, accepted that the wording of both Grounds 4 and 5 of Schedule 3 of the Act allowed for the Respondents to seek recovery of possession on either ground, given that it was one of the Respondents (and Landlords) who intended to occupy the Property. He submitted however that it would have been more accurate for the Respondents to have cited Ground 4 as that clearly stated that the Landlord intended to occupy the Property. It was the Applicants contention that the Respondents had been deliberately misled by the Respondents choice of eviction ground in the Notice to Leave.
21. In considering their decision the Tribunal had regard to the terms of Section 58(3) of the Act which states:

58(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.

22. The Guidance notes to the Act confirm (at paragraph 90) that:

Section 57 provides that where a tenancy has been ended by eviction order and the tenant is not satisfied that the landlord was genuinely entitled to recover possession of the property under one of the specified eviction grounds, meaning that the Tribunal was misled into issuing an eviction order, the tenant can apply to the Tribunal for a wrongful-termination order. In such cases – and in the case of section 58 wrongful termination applications – the test will be whether the landlord genuinely intended to use the property in the way that the eviction ground required (even if, for some reason, that intention has not come to fruition).

23. In this case the Tribunal was satisfied that the Applicants moved out of the Property as a direct result of the Notice to Leave being served on them. The Tribunal have sympathy for their position as, by citing Ground 5, rather than Ground 4, the Respondents motives for recovery of possession of the Property were not wholly transparent, and confusing.

24. The Tribunal accept, however, the evidence of the Respondents as to the reason they chose to cite Ground 5 and their intentions for the Second Respondent to move into the Property. The Tribunal are satisfied on the balance of probabilities, that between the date of service of the Notice to Leave upon the Applicants, and the date upon which the Applicants moved from the Property, it was, and remained, the genuine and settled intention of the Respondents that the Second Respondent would move into the Property. The Respondents genuinely intended to use the property in the way that the eviction ground required.

25. For these reasons the Tribunal is not satisfied that the Applicants had been misled into ceasing to occupy the Property as a direct result of the Notice to Leave issued by the Respondent, in terms of section 58(3) of the 2016 Act.

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.

**Andrew Cowan
Legal Member/Chair**

**26th January 2024
Date**