



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 “The Act”

Chamber Ref: FTS/HPC/PR/23/0450

Re: Property at 69 Ruthrieston Road, Aberdeen, AB10 7JR (“the Property”)

Parties:

Mr Nathan O'Reilly, Mr Jonathon Frank, 152 Great Northern Road, Aberdeen, AB24 2BE (“the Applicant”)

Alison Forbes, 18 Westfield Park, Stonehaven, Aberdeenshire, AB39 2EF (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Mike Scott (Ordinary Member)

Decision

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the Application.

Background

[2] The Applicants seek a Wrongful Eviction Order under Section 58 of the Act on the basis that they contend that they were misled into leaving the Property by the Applicant.

[3] They contend that they received a Notice to Leave under ground 5 of Schedule 3 of the Act on the basis that the Applicant intended for her son to move into the Property. The Applicants subsequently moved out and then became aware that the Property had in fact been marketed for sale and sold. The Respondent has submitted representations denying deliberately misleading the Applicants and explaining that her son had changed his plans and moved elsewhere after the service of the Notice to Leave.

[4] There had been a previous Case Management Discussion at which case management orders in the form of Directions had been made regulating the conduct of the Application. There had been a previous Hearing which had been adjourned due the non- availability of an Ordinary Member of the Tribunal.

The Hearing

[5] The Application called for a further Hearing by conference call at 10 am on 26 January 2024. The parties were all personally present. There were no preliminary matters to raise by either side. The Respondent explained that her son would not be available to give evidence but that she was content to proceed in his absence. The Tribunal began hearing evidence. The Tribunal also asked questions of each witness. The Tribunal heard evidence from each Applicant and the Respondent. Each party had the right to ask questions of each witness. After hearing evidence, each party then made closing submissions. The Tribunal thereafter adjourned to consider its decision. Having done so, the Tribunal made the following findings in fact.

Findings in fact

- I. *The parties entered into a tenancy agreement in terms of which the Respondent let the Property to the Applicants by virtue of a Private Residential Tenancy Agreement which commenced in July 2020.*
- II. *The Respondent's agents sought to increase the Applicants' rent in or around November 2021. The Applicants were unhappy with this and the attempt to increase the rent was ultimately abandoned by the Respondent.*
- III. *On 25 November 2021, the Applicants then received service of a Notice to Leave by email under ground 5 of Schedule 3 of the Act. The Notice to Leave informed them that the Respondent intended for her son to move into the Property.*
- IV. *At that time, the Respondent and her son had genuinely intended that the Respondent's son would move into the Property.*
- V. *The Applicants had to look for another Property and they moved out of the Property on or around 30 December 2021. They moved into alternate accommodation which they had secured at that point although they did not fully vacate the Property until nearer the end of January 2022.*
- VI. *On or around 25 January 2022, the Respondent's son made her aware that he had changed his plans and no longer wished to move into the Property. He had been working in Aberdeen and his friends lived in the city centre which had explained*

his motivation to live at the Property which is located in Aberdeen city centre. The Respondent's son had been living with his parents during lock down in their home which is in Stonehaven and which was less convenient for the Respondent's son. The Respondent's son had however now accepted another job offer in Edinburgh and so changed his plans.

- VII. *By the time the Respondent became aware of this, the Applicants had already effectively moved out of the Property into their alternate accommodation.*
- VIII. *The Respondent was going through personal issues at the time in that her mother had just passed away and then her aunty passed away aswell. The Respondent decided just to sell the Property to avoid any further stress.*
- IX. *There is no basis for suggesting that the Respondent intended to, or did in fact, mislead the Applicants into leaving the Property.*

Decision.

[6] Having made the above findings in fact, the Tribunal refused the Application.

Note:-

[7] The Tribunal understood the Applicants' concerns. They had left the Property on the basis that the Respondent told them her son was going to move in, then they discovered that he hadn't moved in and that the Property was in fact being sold. The Tribunal did think it might have been helpful if the Applicants' had attempted to correspond with the Respondent prior to bringing this Application, as it appears that they proceeded to raise this Application without seeking any explanation in advance from the Respondent.

[8] The Tribunal accepts the Respondent's explanation and has no reason to conclude that she is lying. The Applicants asked the Tribunal to consider that it was suspicious that the Respondent attempted to increase their rent shortly before calling upon them to leave. The Applicants also asked the Tribunal to consider that it's suspicious that the Respondent's son would need a three bed terraced house. But the Tribunal finds that much of the Application is premised on speculation. There is insufficient evidence to make a finding that the Respondent misled the Applicants into leaving the Property.

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.

A McLaughlin

Legal Member/Chair

26 January 2024

Date