



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 57 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/CV/23/0396

Re: Property at 2/2 95 Curle Street, Glasgow, G14 0RR (“the Property”)

Parties:

Dr Alistair Antonopoulos, Dr Betzabe Torres Olave, 132 Longridge Way, Weston Super Mare, BS24 7HS (“the Applicant”)

Mr Victor Pearce (SBA), 3/2, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined not to make a wrongful-termination order under section 58 of the 2016 Act

Background

- 1** By application to the Tribunal dated 7 February 2023 the Applicants sought a wrongful-termination order against the Respondent in the sum of £3750. In support of the application the Applicants provided a copy Notice to Leave, private residential tenancy agreement between the parties and excerpts of correspondence with the Respondent’s agent Martin and Co.
- 2** On 13 June 2022 the Tribunal wrote to the Applicants highlighting information from Registers Scotland which indicated that the property had been sold on 18 November 2022. This appeared to align with the ground relied upon in the Notice to Leave, namely the landlord’s intention to sell the property. The Applicants were asked to clarify the basis upon which they believed they were misled into vacating the property. The Applicants responded to explain that they believed they were served with Notice to Leave due to an access issue, which had been confirmed by Martin and Co. Martin and Co had stated that the Respondent

would consider withdrawing the Notice to Leave if the Applicants were cooperative and allowed viewings to take place. Martin and Co had also deliberately misled the Applicants regarding their rights during the moratorium on evictions.

- 3** The Tribunal wrote again to the Applicants on 14 July 2023. It requested further information on the legal basis for the application, noting that there did not appear to be a stateable case for wrongful termination as the landlord served the Notice to Leave on the grounds of their intention to sell and the property had been sold. The Tribunal highlighted that an application could be brought under the Letting Agent Code of Conduct if they had concerns about the actions of Martin and Co. The Applicants responded to advise that they wished to continue with the application and believed they had been misled into ceasing to occupy the property.
- 4** The Tribunal issued a further request for information from the Applicants, seeking evidence that the property had been sold to a family member of the Respondent and the reasons for the sale. The Applicants responded by email dated 28 August 2023 advising that they were not aware that the property had been sold until this had been raised by the Tribunal. No viewings of the property had been carried out whilst they were still in occupation, nor was the property surveyed. The surveyor had sought access with no prior notice and this was the reason the Notice to Leave had been served following the Applicants' failure to allow access. The Applicants sought to submit phone recordings on 12th September 2022 and 14th September 2022. In one of those conversations a representative of Martin and Co had stated that the son of the Respondent was looking to purchase the property and it was conditional on whether he wished to take on the property tenanted or with vacant possession. This was a matter under discussion between the Respondent and his son. The Tribunal responded by email dated 15 September 2023 and again raised the concern that there was no lawful basis for the application based on the Applicants' narration of the circumstances outlined. The Applicants were directed to the relevant provisions of the 2016 Act. The Applicants responded to confirm that they wished to proceed with the application.
- 5** By Notice of Acceptance of Application a Legal Member with delegated powers from the Chamber President determined that there were no grounds upon which to reject the application. However a Direction was issued to the Applicants requiring them to provide evidence that the sale of the property was not a sale for market value together with written representations outlining why they considered the Notice to Leave stated a ground for eviction that misled them into vacating the property.
- 6** The Applicants responded to the Direction on 18 December 2023 referring back to previous correspondence and stating that they did know how to prove that the property had not been a sale for market value.
- 7** A Case Management Discussion was assigned and Sheriff Officers attempted to serve the application paperwork upon the Respondent at the address provided

however he was no longer in occupation at the address and attempts to obtain a forwarding address from Martin and Co proved unsuccessful. The paperwork together with notification of the Case Management Discussion was thereafter served by advertisement on the Tribunal's website.

The Case Management Discussion

- 8** The Applicants were both present at the Case Management Discussion. The Respondent was not in attendance. The Tribunal noted that service had been effected upon him by service by advertisement and therefore determined to proceed in his absence.
- 9** The Tribunal explained the purpose of the Case Management Discussion and asked the Applicants to address it on the application. Dr Antonopolous confirmed that he would speak on behalf of both Applicants. For the avoidance of doubt the following is a summary of the relevant submissions from the parties and does not constitute a verbatim account of what was discussed.
- 10** Dr Antonopolous outlined the timeline of events that had led to the Applicants' removal from the property. In summer 2022 they had been served with a rent increase notice. At that point they had been long term tenants for around 2 years. The Applicants felt the rent increase was excessive during a cost of living crisis, raising the rent by nearly £100 per month. This had been fed back to the Respondent via Martin and Co and the Applicants had implied that they would be prepared to apply for a rent determination. Dr Antonopolous was a PHD student at the time, working under a short term contract at Glasgow University and Dr Olave was between jobs. The rent increase wasn't affordable and would have caused them significant financial difficulties. The Applicants had offered to enter into constructive dialogue with the Respondent but did not hear anything back from him. There was subsequently an issue with a leak that occurred from the ceiling. There had been delays in getting this addressed and a surveyor had been sent round without warning. Dr Olave was in the property at the time however she was in a work meeting and couldn't allow access. The Applicants were accused of denying access. Shortly after they were served with a Notice to Leave.
- 11** Dr Antonopolous explained that the reason given for the Notice to Leave was that the landlord intended to sell the property. The Applicants didn't think this was reasonable as it would be possible to sell a tenanted property. On top of that the Applicants did not believe the property was sold in such a manner as would have required their removal. Martin and Co had suggested that if the Applicants were cooperative with allowing access the Respondent may consider withdrawing the Notice to Leave. Martin and Co had also misled them regarding the cost of living legislation, stating that it didn't apply to the Applicants. They believed this was in fact false. The Applicants had vacated the property on or around 7 November 2022. They subsequently discovered that the property had been sold.
- 12** Dr Antonopolous stated that Martin and Co had mentioned to him that the property was being sold to the Respondent's son. Martin and Co were acting on

behalf of the Respondent and would not have taken any decision without his authority to do so. Dr Antonopolous explained that the Applicants had incurred debt as a result of having to move out of the property. It had long term financial consequences and caused significant stress and strain. Dr Olave was employed under temporary contracts which did not pay much and it was difficult to find suitable alternative accommodation. Both Applicants were also finishing degrees. All of this was communicated to Martin and Co however they were quite rude and it was emotionally consuming. The Applicants had eventually obtained alternative accommodation, both moving into separate properties elsewhere in Glasgow.

- 13** Dr Antonopolous confirmed that the Applicants sought the maximum award of six months rent, however he understood that this was ultimately a matter for the Tribunal. This reflected the stress and strain that had been caused as a result of the Respondent's actions, as well as the emotional and financial damage. The maximum amount was justified in that context. Dr Antonopolous explained that he felt the Respondent wanted to get revenge on the Applicants in some way following an issue at the commencement of the tenancy in relation to external scaffolding. The Applicants had not been informed about this prior to moving in and had said that they would have not accepted the tenancy if they knew there were going to be long term building works. They had negotiated a rent reduction on that basis and believed that had played into some of the Respondent's decisions, having prejudiced him against the Applicants.
- 14** The Case Management Discussion concluded and the Tribunal determined to issue its decision in writing.

Relevant Legislation

- 15** The relevant legislation is section 58 of the 2016 Act:-

“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 (“the 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.”

Findings in Fact


- 16** The Applicants and the Respondent entered into a private residential tenancy agreement which commenced on 27th July 2020.
- 17** On 24th August 2022 the Respondent served the Applicants with a Notice to Leave citing ground 1 of schedule 3 of the 2016 Act, namely the landlord's intention to sell the let property.
- 18** The Applicants left the property on or around 7 November 2022.
- 19** The property was sold by the Respondent on 18 November 2022.
- 20** The Applicants were not misled into ceasing to occupy the property.

Reasons for Decision

- 21** The Tribunal considered that it had sufficient information in order to reach a decision on the application following the Case Management Discussion. There were no issues to be resolved that would require a hearing to be fixed.
- 22** The Tribunal had some sympathy with the Applicants' position, however ultimately it was not persuaded that the Applicants had been misled into ceasing to occupy the property. A Notice to Leave had been served on them on the ground that the landlord intended to sell the property. The conversations that had taken place between the Applicants and Martin and Co supported the Respondent's position in that respect, with reference to a sale to the Respondent's son. The Tribunal accepted that there may have been some disagreement between the parties around the question of access to the property however it did not accept that this prevented the Respondent from relying upon the Notice to Leave when it appeared his intention to sell the property was genuine. The offer to withdraw the Notice to Leave appeared to be relevant to the question of whether the property would be sold as tenanted, not whether it would in fact be sold at all, which had been the subject of discussions between the Respondent and his son according to the information provided by Martin and Co. That did not negate the fact that a sale of the property was the Respondent's intention and that was the ground stated in the Notice to Leave. It was a valid ground that the Respondent was entitled to rely upon. There was no evidence before the Tribunal to suggest that the property had been sold for less than market value therefore the Tribunal could not make any finding that this had been the case.
- 23** Accordingly based on its findings in fact the Tribunal was not satisfied that section 58(3) of the 2016 Act had been established in this case and therefore determined not to make a wrongful termination order.

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.



Ruth O'Hare

Legal Member/Chair

3 March 2024

Date