



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/23/2436

Re: Property at 8/2 Ferry Road Grove, Edinburgh, EH4 4BG (“the Property”)

Parties:

Mr William Rutherford, 17/2 Granton Medway, Edinburgh, EH5 1HH (“the Applicant”)

Li Lin, whose current whereabouts are unknown (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a wrongful-termination order should be granted against the Respondent in terms of Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and has decided to make an order for payment in the sum of TWO THOUSAND THREE HUNDRED AND TWENTY FIVE POUNDS (£2325) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

1. This is an application for a wrongful termination order under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The Application was accompanied by a Private Residential Tenancy Agreement between the Applicant, his partner Tracey Melvin and the Respondent dated 11 June 2021, a Notice to Leave dated 17 March 2023 on the basis the Respondent intended to live in the Property and which expired

on 10 June 2023, an advertisement for the Property showing it was available for let on 18 June 2023 at a rent of £1295 per month and an extract from Landlord Registration showing the Respondent's address of 61 Bridge Street, Kington, HR5 3DJ.

3. The Tribunal originally assigned an earlier Case Management Discussion ("CMD") under Rule 17 of the Regulations. Process servers were unable to serve the application on the Respondent as the address on the extract from Landlord Registration was a commercial premises occupied by Ghost Mail. The CMD was accordingly discharged. A new CMD was assigned for 8 April 2024. The Application was served on the Respondent by way of Service by Advertisement in terms of Rule 6A of the Regulations. A copy of the Execution of Service was received by the Tribunal.

Case Management Discussion

4. The Tribunal proceeded with the CMD on 8 April 2024 by way of teleconference. Ms Reynolds from Low Income Families Together ("LIFT") appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
5. The Tribunal had before it the Private Residential Tenancy Agreement between the Applicant, his partner Tracey Melvin and the Respondent dated 11 June 2021, the Notice to Leave dated 17 March 2023 which expired on 10 June 2023, the advertisement for the Property showing it was available for let on 18 June 2023 and the extract from Landlord Registration showing the Respondent's address of 61 Bridge Street, Kington, HR5 3DJ. The Tribunal considered these documents.
6. Ms Reynolds explained that the Applicant was the sole Applicant. Ms Melvin was a joint tenant, but she had a disability which required her to use crutches all the time and wanted to focus caring for her children. She explained that the Applicant had lived in the Property with Ms Melvin and their four children aged 5, 7, 10 and 14. Two of the children had autism. Ms Melvin wanted to make sure their children were as settled as possible. The Property was on the ground floor which made it easier for her to access.
7. She went on to explain that the Applicant had complained to the Respondent about the need for repairs as the Property was in a state of disrepair. The Respondent told the Applicant she wanted to move into the Property. At that stage the Respondent's letting agent ELC served the Notice to Leave. The Tribunal noted that the Notice to Leave dated 17 March 2023 contained an email from the Respondent which stated she intended to move into the Property in 12 weeks time due to changing circumstances. The Notice to Leave proceeded on the basis that the Respondent intended to live in the

Property with reliance on Ground 4 of Schedule 3 of the 2016 Act. The Notice to Leave gave the Applicant and Ms Melvin until 10 June 2023 to leave the Property.

8. As a result of the service of the Notice to Leave, Ms Reynolds explained the Applicant and Ms Melvin felt they had no choice but to present as homeless to Edinburgh City Council as the Respondent wanted to move in. They obtained advice and assistance from Edinburgh City Council and were able to secure temporary accommodation through the Private Sector Leasing scheme. They had taken the decision that they needed some security for their children and after taking advice they decided to present as homeless straight away rather than having the stress of facing an eviction action in the Housing Tribunal. They therefore vacated the Property and moved into temporary accommodation.
9. Thereafter Ms Reynolds explained it came to the Applicant's attention that the Property was advertised for rent, available from 18 June 2023 at a vastly increased rent of £1295. The Tribunal noted the content of the advertisement. The Tribunal also noted the terms of the Private Residential Tenancy Agreement in terms of which the rent was stated in Clause 8 of £775 per month.
10. Ms Reynolds explained that the family had to move out of temporary accommodation due to black mould. They are now in their third temporary property. It is not on the ground floor and Ms Melvin struggles to access it. The whole experience of the family having to move three times in less than a year has been unsettling and stressful especially as two of their children are autistic. The family just want to get on with their life and feel settled.

Findings in Fact and in Law

11. The Applicant, his partner Ms Melvin and their four children aged 5, 7, 10 and 14 lived in the Property from 11 June 2021. The Applicant, his partner Ms Melvin and the Respondent entered into a Private Residential Tenancy Agreement from 11 June 2021 in relation to the Property. In terms of Clause 8 they agreed the Applicant and Ms Melvin would pay the Respondent a monthly rent of £775.
12. The Applicant complained to the Respondent that the Property was in a state of disrepair.
13. On 17 March 2023, ELC, letting agents, served a Notice to Leave on the Applicant and Ms Melvin in terms of Section 50 of the 2016 Act which stated the reason for the Notice was that the Respondent wanted to live in the Property by reliance on Schedule 3, paragraph 4 of the 2016 Act. The Notice required the Applicant and Ms Melvin to leave the Property by 10 June 2023.

14. As a result of the Notice to Leave the Applicant and Ms Melvin presented as homeless with Edinburgh City Council to search for alternative accommodation. They managed to secure temporary accommodation and vacated the Property. The family have had to move three times since about June 2023.
15. The Applicant and his family moved from the Property into temporary accommodation as he had been led to believe the Respondent was moving into the Property.
16. After the Applicant and his family moved from the Property, the Property was advertised for let from 18 June 2023 by at an increased rent from £775 to £1295 per month.
17. The Respondent is registered as a Landlord of the Property with Edinburgh City Council.
18. The Applicant and his family have found the experience of living in temporary accommodation unsettling and stressful. They currently live in temporary accommodation which is not on the ground floor although Ms Melvin has mobility issues and requires to use crutches.
19. The Applicant was misled by the Respondent into ceasing to occupy the Property in terms of Section 58(3) of the 2016 Act.
20. The Respondent wrongfully terminated the tenancy.

Reasons for Decision

21. The Tribunal considered the Application together with all documents lodged and the oral submissions from Ms Reynolds. The Applicant and Ms Melvin were the tenants immediately before the tenancy ended in terms of Section 58(1) of the 2016 Act. The Tribunal accepted that the Property had been the Applicant's home since June 2021 and had it not been for the Notice to Leave the Applicant and his family would not have moved from the Property. In reaching its decision, the Tribunal took into account the wording of the Notice to Leave which stated that "*Your Landlord intends to live in the let Property*". The Tribunal accepted that the documents lodged showed this was not the Respondent's true reason for wishing to terminate the tenancy. The Tribunal considered that the Respondent considered she could obtain substantially more rent if she terminated the Applicant's tenancy of the Property and let it to a new tenant. It appeared to the Tribunal that the Respondent had no intention to live in the Property but used this as a reason to terminate the tenancy. The Tribunal considered that as the Property was advertised for let at a higher rent as being available from 18 June 2023, only 8 days after the

expiry of the Notice to Leave expired, it was reasonable to conclude the Respondent did not intend to live in the Property. The Respondent was still registered as a Landlord for the Property. The Tribunal accepted that as a result of the Notice to Leave the Applicant and his family, who suffered from disabilities, had moved from the Property having been misled by the Respondent into leaving the Property and that the tenancy had been brought to an end in terms of Section 58(1) of the 2016 Act.

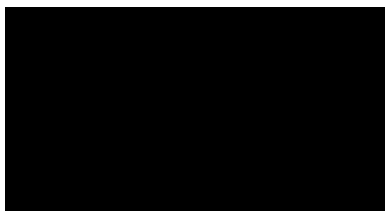
22. In considering the amount to be paid by the Respondent to the Applicant, the Tribunal took into consideration that the actions of the Respondent had caused significant inconvenience, stress and disruption to the Applicant and his family. They had had to move three times since vacating the Property. The maximum penalty which can be imposed by the Tribunal in terms of Section 59(1) of the 2016 Act is six times the monthly rental. In terms of Section 59(4)(a) of the 2016 Act "rent" means the amount payable in rent under the tenancy before it terminated. Further in terms of Section 59(4)(b) of the 2016 Act in a case where there are two or more joint tenants immediately before the tenancy ended, the amount of rent is to be divided by the number of joint tenants. The monthly rental for the Property was £775 immediately before the tenancy was terminated. As there were two joint tenants this is divided by two bringing a figure of £387.50. In assessing the quantum of the wrongful-termination order, the Tribunal took all the circumstances into account and decided that an order for six times the divided rent was just and appropriate in the circumstances considering the amount of stress and inconvenience the Applicant and his family had suffered and were continuing to suffer by living in temporary accommodation.

Decision

23. The Tribunal made a wrongful termination order for £2325.

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.



Legal Member

8 April 2024

Date

