



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 58 and 59 of the Housing (Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/20/2416

Re: Property at Flat 1/1, 46 Kempock Street, Gourock, PA19 1ND (“the Property”)

Parties:

Miss Charlotte Mills, C/o Legal Services Agency Ltd, Fleming House, 134 Renfrew Street, Glasgow, G3 6ST (“the Applicant”)

Mr Simon Boparai, 1 Mansion Avenue, Port Glasgow, PA14 6QP (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr G Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a wrongful-termination order should be granted against the Respondent

Background

1. This is an application dated 17th November 2020, made in terms of Rule 110 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The Applicant is seeking a wrongful-termination order under section 59 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). Parties entered into a private rented tenancy agreement in respect of the Property on 18th September 2020. The rent was £500 per month. The Applicant is seeking an order in the sum of £3000.
2. Case Management Discussions (“CMD”) took place by telephone conference on 14th December 2020, 5th February 2021 and 2nd March 2021.
3. By emails dated 8th and 29th March 2021, the Applicant lodged productions.

4. By emails dated 10th March and 2nd April 2021, the Respondent lodged written representations and productions. A witness list was lodged by the Respondent on 2nd April 2021.

The Hearing

5. A hearing took place by telephone conference on 9th April 2021. Both parties were in attendance. The Applicant was represented by Mr Ben Christman, Solicitor. At 15.35, the Applicant was joined by Mrs Mills as a Supporter.

Preliminary Issues

6. The Respondent agreed that the advert lodged by the Applicant was the correct advert advertising the Property for rent. The Respondent said it was placed on WhatsApp on or around 3rd October 2020, as claimed by the Applicant.
7. There was discussion regarding arrangements for the witness, Ms Kaur, to give evidence.
8. Mr Christman objected to the leading of Mr Lamb as a witness, as no notice had been given that he would give evidence until the email of 2nd April 2021, and no notice had been given of the matters to which he would speak, which constituted a lack of fair notice. Mr Christman also raised a query as to the physical arrangements for Mr Lamb to give evidence. The Respondent said he was in Mr Lamb's offices, in a different room to Mr Lamb, who would come through to give evidence when required.
9. The Tribunal adjourned to consider matters. The Tribunal decided that the Respondent had given the notice required by Rule 22. The matters in dispute are fairly narrow. The Tribunal was satisfied as to the physical arrangements for giving evidence.

Submission on behalf of the Applicant

10. Mr Christman set out his submission on behalf of the Applicant.
11. The Notice to Leave is dated 1st July 2020 and states that a family member will be moving into the Property. The Notice expired on 3rd October 2020. No family member moved into the Property. The Property was quickly readvertised on Gumtree and the Applicant saw the advert on 10th October 2020. The Property was available from 12th October 2020.
12. The Respondent had claimed that the family member could not move in, due to the state of the Property. In a connected action for a payment order against the Applicant by the Respondent the Tribunal found that the Applicant had incurred damages in the sum of £893 and that the cleaning costs claimed by the Respondent were lower than claimed. The damaged items could have

been replaced relatively quickly and not impeded the relative's intention to move in by Christmas.

13. The fact that the Property was re-let shortly after the Applicant moved out undermines the Respondent's explanation. The Tribunal should consider why the Property was suitable to re-let 9 days after the Applicant left, but was not suitable for a family member. This suggested that the Respondent never intended to let to a family member. The Respondent was motivated by two factors. Firstly, that the Applicant was in rent arrears and it was hoped a new tenant would pay their rent on time. This is borne out by the WhatsApp conversation between the parties. Secondly, the Applicant had asked the Respondent to comply with his repairing duties. The Applicant was misled into leaving the Property.
14. Mr Christman submitted that a wrongful-termination order should be granted and that the maximum award of six times the rent should be granted for four reasons:
 - (i) The Respondent contrived to create a situation where the Applicant had to leave. It was an intentional act and there was no change of circumstances. If the Respondent had tried to remove the Applicant using the ground of rent arrears, he would have had to give her six months' notice rather than the three months required on the ground of a family member moving in.
 - (ii) The Respondent's actions caused significant inconvenience and disruption. The Respondent has had to move to less desirable accommodation. She did not want to leave. She had to clean the Property, remove, and find a new tenancy.
 - (iii) The actions of the Respondent were particularly serious during the Covid-19 pandemic. There were additional difficulties and risks in viewing and finding accommodation and in moving.
 - (iv) The Respondent has shown no remorse. He has not been truthful in refusing to admit his actions.

Evidence of the Applicant

15. The Applicant gave evidence that she had been shocked when she received the Notice to Leave. She assumed she had to leave the Property. She would have preferred to stay. She left the Property on 3rd October 2020 as required by the Notice.
16. The Applicant described her new accommodation as 'emergency' accommodation in the worst part of Greenock. She is surrounded by drug addicts and has encountered anti-English sentiment from an upstairs neighbour. Her mental health is worse than it has ever been. She is trying to move again as she does not feel safe as a single female in a violent area. It

was the only flat available at the time. The Respondent said she had been made redundant. She now has no money. This has had a big effect on her. She is forced to use a food bank.

17. Responding to questions from the Tribunal as to her statement that she was in emergency accommodation, the Applicant said she has a full Scottish Secure Tenancy from a housing association. She was allocated the property because she was considered to be homeless.
18. Under cross-examination, the Applicant said she lost her job in June 2020, and only had a three-week temporary cleaning job thereafter. She said her mother helped manage her financial affairs.
19. The Applicant said she only left the Property because of the Notice to Leave. She would have stayed if she thought she could. She had told the Respondent that she was getting a loan to pay off the rent arrears.
20. The Applicant said she had previously lived in Largs and her rent was £300 per month. Her current rent was £245 per month. Challenged by the Respondent as to whether she could afford to live in the Property, the Applicant said she could not afford it at the time, but she could have found the funds from family members to stay there. She is currently receiving benefit assistance to pay her rent. The Applicant was challenged by the Respondent as to whether the real motivation for leaving the Property was because she could not afford to stay there. Responding to questions from the Tribunal, the Applicant said she left the Property because she was served with the Notice to Leave.
21. Asked when she had notified the Respondent that she was leaving the Property, the Applicant said her father had notified the Respondent and there had been a telephone call between the parties regarding this.
22. Under re-examination, the Applicant said she left the Property because she was served with the Notice to Leave.

Evidence for the Respondent

Mr James Lamb

23. Mr Lamb acts as solicitor for the Respondent. He said the Respondent owns the house in which his sister, Ms Kaur, currently lives. The Respondent acts as her unofficial carer. A Power of Attorney for Ms Kaur is in process, but it is not yet complete. Ms Kaur pays monthly rent to the Respondent. She lives in a large three bedroomed property that is now too large for her needs. She wishes to relocate in order to downsize to a smaller and more affordable property.

Ms Jaswinder Kaur

24. Ms Kaur is the sister of the Respondent. She is a part-time activity co-ordinator at a private day care centre.
25. Ms Kaur lives in a property owned by the Respondent. It is a detached property with three bedrooms. Her circumstances changed dramatically and the property is now too big for her needs. She wishes to move to a smaller property where she feels more secure. She has been concerned about her running costs for a while and that is why she actively wants to move. She began to consider moving in 2019, and considered moving to the Property in the summer of 2020.
26. Ms Kaur viewed the Property in 2019 and it was more or less brand new. It 'ticked all the boxes' and was immaculate. It was close to the water front, like her current property.
27. Ms Kaur viewed the Property again in October 2020 after the Applicant had moved out. It was not like the property she had viewed the previous year and she changed her mind about living there. There was a lot of damage and extreme wear and tear. She was concerned about a smell in the Property, the disrepair in the bathroom, cigarette burns and stains on the carpet, and the presence of drug paraphernalia. She did not feel confident that she could live there, due to certain medical conditions. It was not for her, given the amount of work that was required. It was not clean. It was the opposite of her own property, which is tidy and clean.
28. Asked why she could not wait for the repairs to be carried out, Ms Kaur said she did not want to wait. She is still looking to move to a smaller property in a similar area.
29. Under cross-examination, and asked why she had written '45' in her written statement to the Tribunal, rather than '46', which is the correct address of the Property, Ms Kaur said it was an error. Asked why she gave evidence that she wanted to move immediately, when her statement said she wanted to move by Christmas, Ms Kaur said it depends how you view Christmas. Ms Kaur said she had not met the Applicant and conceded that she could not say the Applicant had caused thousands of pounds worth of damage, as claimed in her statement, but she had seen the Property before and after the Applicant lived there and could see the distinction. A tenant had caused the damage. The damage looked as if it would cost thousands of pounds to put right.
30. Under re-examination, Ms Kaur said she was aware of the location of the Property. She said the Property would have been available by Christmas if the work had been carried out. Although she had mentioned moving immediately, that would not be possible due to the pandemic. Plans for moving would have to have been made.

31. Responding to questions from the Tribunal, Ms Kaur said she did not move into the Property in 2019 because the Respondent had already arranged for the Applicant to move in, and the Applicant had made an advance payment. Asked whether the Respondent had offered to bring the Property up to standard in October 2020, Ms Kaur said he had, but it would have taken several months or more. She had been under the impression that the Property would not be repaired until the rent arrears had been paid. She was not surprised that a new tenant had moved in, stating that the Respondent is running a business.

Cross-examination of the Respondent

32. The Respondent said he was not particularly happy about the Applicant's rent arrears but that is part of letting. It happens frequently these days. Referring to page 14 of the Applicant's productions, which comprised WhatsApp messages between the parties, the Respondent agreed that he had stated in an undated message '*You will have your notice within the week*' and that he would have papers served the following week, adding '*Better you leave ASAP*'. Referred to page 17 of productions, a WhatsApp message dated 26th June 2020, which was five days before the Notice to Leave was served, the Respondent agreed that he had stated '*I'll start proceedings for rent arrears ASAP*.' Asked whether he had referred to a family member living in the Property, the Respondent said he was not obliged to mention that. The Notice to Leave made the situation absolutely clear. The Respondent said the messages had been going on for weeks and the ones referred to were taken out of context. There were two separate issues going on, namely the rent arrears and the family member's intention to move into the Property.

Summing up for the Applicant

33. Mr Christman referred the Tribunal to his previous submissions. He said the WhatsApp messages spoke for themselves. The Respondent told the Applicant he would start proceedings for rent arrears and that she would get notice. It was difficult to see how his intentions could have been made any clearer. There was no convincing reason why the Property was suitable for a new tenant and not a family member.

34. Mr Christman referred to Ms Kaur's evidence, stating that he could accept the minor error in the address of the Property but there were other more material mistakes, particularly the glaring inconsistency in her position in evidence that she wanted to move in immediately, compared to her position in writing that she wanted to move in by Christmas. Ms Kaur could not substantiate her claim that the Applicant had damaged the Property as they had never met. She had exaggerated the scale of the damage.

Summing up by the Respondent

35. The Respondent said that the Applicant's representative had cherry-picked messages from a longer chain of messages. It was already abundantly clear that the Applicant could not afford to live at the Property. The issues of rent arrears and recovery of the Property were separate.
36. Asked by the Tribunal why he had not tried to recover the Property on the ground of rent arrears, the Respondent said he knew the Applicant was leaving by then.
37. Ms Kaur's circumstances had changed and she needed a smaller property. Her current property is in band F for council tax, compared to band A for the Property. Her current property is like a show house and she could not be expected to move into the Property given its condition. The condition of the Property was not good enough for that particular family member. It was irrelevant that Ms Kaur had not met the Applicant. This was not in dispute. Nor had she exaggerated the condition of the Property. The Respondent said that Ms Kaur had to change her work to part-time work and this was not connected to the Covid-19 pandemic.
38. The Respondent thought he would recover the rent arrears as the Applicant had said a loan had been approved. He referred to an attempt by the Applicant's father to get him to pay £1000, after which the Applicant would leave, stating that he knew then he would not get his arrears.
39. The Respondent said he had to reduce the rent for the Property by £100 per month due to the condition in which it was left. It was going to cost thousands to put it back to its original condition notwithstanding the decision of the Tribunal in the rent arrears case. Responding to questions from the Tribunal as to when he realised he would have to reduce the rent, the Respondent said many people have been struggling over the past 12 months and there have been lots of missed rent payments. Asked why the Property was advertised on Gumtree at £500 per month, the Respondent said someone else put the advert up for him. Although the advert stated the Property was ready from 12th October 2020, he expected to recover the rent arrears and have the Property ready in December 2020. Ms Kaur viewed the Property a day or two after the Applicant left.
40. The Applicant did not have to leave the Property, despite the terms of the Notice to Leave. The Applicant did not tell the Respondent when she was leaving. The Respondent spoke to a neighbour, who told him there were signs that the Applicant was leaving. The Respondent messaged the Applicant's father, who said they were cleaning the Property. The keys were returned on 5th October 2020.
41. The Applicant could not afford to stay after losing her job. If she had remained, she would only have got £260 per month in housing assistance.

She had to move and was moving anyway. The fact that she ended up in a poor area was due to her own financial circumstances. Her life was not adversely affected by the Notice to Leave. It was affected because she is on benefits, she has lost her job and had no other housing options. The Respondent cannot be blamed for these matters.

42. The Respondent submitted that the credibility of the Applicant was in question. She had done a 'U-turn' when questioned about why she had left the Property. This suggested dishonesty. The evidence was clear and the condition of the property was taken out of the correct context. Up to 2019, the Property and Ms Kaur's property were the highest specification properties owned by the Respondent. The Property was not the same after the Applicant's tenancy. There was blatant drug taking, burns on the carpets and holes in the décor.
43. Responding to questions from the Tribunal regarding the amount of any award, if an order was granted, the Respondent submitted that an order was not appropriate and certainly should not be more than one month's rent.
44. Responding to questions from the Tribunal as to why the Notice to Leave stated that the family member was moving in 'as the property they occupy has to be sold', the Respondent said it was his intention to sell the property to fund other projects, but he would not be pushing his sister to move.

Response on behalf of the Applicant

45. Mr Christman said that the Respondent's response as to why the Property had been advertised at £500 per month, after the Applicant left, was unconvincing. Other difficulties could have caused the lowered rent including the recession and difficulties in reletting.
46. There were inaccuracies in the Respondent's evidence. It was not true to say the WhatsApp messages occurred weeks and months apart. The Notice to Leave was served just a few days after the message of 26th June 2020. A number of the messages referred to rent arrears.

Response by the Respondent

47. The Respondent said there had been messages discussing rent arrears since the end of May 2020, and these had not been referred to. The Applicant was made clear as to the Respondent's options. The Respondent waited three months before taking action.
48. The Respondent said he did not place the advert for re-letting, but authorised its placement. He submitted that the details of the advert meant nothing and did not prove anything.

Findings in Fact and Law

49.

- (i) At some time prior to 16th September 2019, the Respondent's sister, Ms Kaur, viewed the Property.
- (ii) The parties entered into a private residential tenancy agreement commencing on 16th September 2019 at a monthly rent of £500.
- (iii) During the tenancy, the Applicant fell into rent arrears.
- (iv) Parties exchanged messages regarding the rent arrears, culminating in the Respondent stating by message on 26th June 2020 that he would start proceedings to recover the Property for rent arrears.
- (v) Notice to Leave was served on the Applicant dated 1st July 2020 requiring her to remove from the Property by 3rd October 2020, on the ground that a family member required to live in the Property.
- (vi) The tenancy ended on 3rd October 2020 in accordance with section 50 of the Act.
- (vii) At the end of the tenancy, the Applicant was in rent arrears.
- (viii) The Respondent recovered the keys to the Property on or around 5th October 2020.
- (ix) Ms Kaur viewed the Property shortly after the tenancy ended.
- (x) The Property was advertised on Gumtree on or around 10th October 2020 at a monthly rent of £500.
- (xi) The Respondent let the Property to another tenant for £400 per month.
- (xii) Ms Kaur is a qualifying relative of the Respondent.
- (xiii) The Applicant was misled by the Respondent into ceasing to occupy the Property.

Reasons for Decision

50. The Tribunal considered Ms Kaur to be a credible and reliable witness on the whole, although there was some discrepancy in her verbal evidence that she wished to move into the Property immediately, compared to her written statement that mentioned Christmas. The Tribunal accepted that there were justifiable reasons why Ms Kaur may wish to move. The Tribunal accepted that Ms Kaur liked the Property when it was viewed in 2019. The Tribunal

accepted that she was concerned by the condition of the Property on viewing it again in October 2020 and that she then decided it was not the property for her.

51. The Tribunal was not persuaded that it was Ms Kaur's settled intention to live in the Property at the time of serving the Notice to Leave in July 2020, as required by ground 5 of Schedule 3 of the Act. It would appear that discussions were had at some time in the summer of 2020 and that Ms Kaur then decided she might like to live in the Property. She had not viewed the Property since the Applicant's tenancy commenced, and had no idea of its condition. Furthermore, although Ms Kaur said she was desperate to move, and had made the decision to do so in 2019, she has not done so, therefore, the urgency of her situation is somewhat undermined.
52. In reaching its decision, the Tribunal took into account the wording of the Notice to Leave. In stating the particulars as to how the ground had arisen, the Respondent stated '*A family member in a larger property will move into the smaller property as the property they occupy has to be sold.*' This was not borne out by the evidence. At no time before the Tribunal questioned the Respondent in this regard was a requirement to sell Ms Kaur's abode mentioned. It was not mentioned by Ms Kaur as a reason to have to leave her abode. There was no evidence put before the Tribunal that the property had to be sold. When questioned, the Respondent said he hoped to sell Ms Kaur's home. The Tribunal considered this to be a fundamental defect that undermined the Respondent's case and his credibility. There was no good reason given as to why his case rested on a different proposition that could have been spelled out in the Notice to Leave, namely that his family member had to downsize due to personal issues.
53. The Act provides at section 5(7) of Schedule 3 that evidence tending to show that a member of the landlord's family has the intention to occupy the let property as their only or principal home for at least three months includes (for example) an affidavit stating that the person has that intention. No such evidence was provided to the Applicant at the time of serving the Notice to Leave. Indeed, it was stated in the Notice to Leave, under the section that requires evidence to support the eviction action, '*My plans for the property have changed due to unforeseen circumstances, some of which occurred as a direct result of Covid 19 pandemic.*' Again, no evidence was provided to the Tribunal to justify this statement. The Respondent gave evidence that his sister's change in employment to part time was not a result of the Covid-19 pandemic.
54. The Tribunal considered that the WhatsApp messages provided compelling evidence that the Respondent was considering pursuing recovery of the Property on the grounds of rent arrears, in particular, the messages stating '*You will have your notice within the week*', that he would have papers served the following week, and '*I'll start proceedings for rent arrears ASAP.*' This evidence, together with the discrepancies between the wording of the Notice to Leave and the evidence lodged and heard, was considered by the Tribunal

to be sufficient evidence on the balance of probabilities to indicate that the Respondent wished to recover the Property because of the Applicant's rent arrears. The Tribunal considered it likely that, if the Applicant had not been in rent arrears, no notice would have been served, and the opportunity for Ms Kaur to have resided there would not have arisen.

55. The Tribunal was not persuaded by the Respondent's evidence that he took no part in decisions regarding advertising the Property for let at £500 per month. The Respondent had given evidence that the Property was so badly damaged that he had to reduce the rent. The Tribunal took the view that other factors led to the eventual reduction in rent, most likely the current financial climate.
56. The Tribunal considered that the Applicant was a credible and reliable witness. The Tribunal accepted that the Applicant moved from the Property as a result of the Notice to Leave. The Tribunal did not accept the Respondent's submission that the Applicant did a 'U-turn' in her evidence that affected her credibility. Given the robust and repetitive manner in which she was cross-examined, it was not surprising that she may have become confused. When asked directly by the Tribunal, and by her representative, for the reason that she left the Property, the Applicant confirmed that she left because of the Notice to Leave. The Tribunal accepted that evidence, notwithstanding the considerable evidence to suggest that she could no longer afford to stay in the Property.
57. The Tribunal found, in all the circumstances of the case, that the Applicant was misled by the Respondent into leaving the Property.
58. In considering the amount to be paid by the Respondent to the Applicant, the Tribunal took into consideration that the actions of the Respondent caused significant inconvenience and disruption to the Applicant, in that she had to move from the Property and find further accommodation.
59. The Tribunal took the view that the reason the Applicant has ended up in unsatisfactory accommodation is a direct result of her own financial situation, which deteriorated before the Notice to Leave was served. It is difficult to see how she could have afforded a better property at the time of moving. The Tribunal was not persuaded that the Applicant's current property was the only property available. It would appear to have been the only property that suited the Applicant's particular circumstances at that time. If her circumstances had been different, it is likely that she would have found a comparable property to the Property.
60. The maximum penalty which can be imposed is six times the monthly rental. The monthly rental for this property was £500. In assessing the quantum of the wrongful-termination order, the Tribunal took all the circumstances into account and decided that an order for three times the monthly rent was just and appropriate.

Decision

61. A wrongful-termination order is granted in favour of the Applicant in the sum of £1500.

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/Chair

13th April 2021
Date