

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 58(2) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PR/21/0863

Re: Property at 2/9 Baltic Street, Edinburgh, EH6 7BW (“the Property”)

Parties:

Aimee Holt, residing at 61/8, Brunswick Street, Edinburgh EH7 5HT (“the Applicant”)

Caroline Kirkpatrick having an address at OTS Dental Laboratory, 1, Meadowbank Avenue, Edinburgh EH8 7AP (“the Respondent”) per her representative Ms. Rachel McQueen of Robb Residential, 150, St. Vincent Street, Glasgow, G2 5NE (“the Respondent’s Representative”)

Tribunal Members:

Karen Moore (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application be refused.

Background

1. By application received between 9 and 22 April 2021 (“the Application”), the Applicant made an application in terms of Section 59 of the Act to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for an Order in terms of Section 59 of the Act arising from a private residential tenancy agreement between the Parties. The Application comprised an application form, copy private residential tenancy agreement between the Parties, copy Notice to Leave citing Ground 4 (landlord intends to reside in the property), copy packaging from Virgin Media showing the addressee as “Adam Devine”, copy correspondence from the Applicant to the Respondent’s letting agent showing that the Applicant had been advised that Adam Devine and another

person by the name of "Dylan" were tenants at the Property. The Application sought the equivalent of three months' rent being £2,175.00 in compensation as a remedy.

2. On 27 April 2021, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion ("CMD") was fixed for 9 June 2021 at 14.00 by telephone conference call. The Application was intimated to the Respondent. The CMD was intimated to both Parties.
3. Prior to the CMD, the Respondent lodged the following documents which were copied to the Applicant:
 - i) Copy correspondence with the Respondent's letting agent and the Respondent indicating that the Respondent required to return to the Property for financial reasons;
 - ii) Copy correspondence with the Respondent's letting agent and the Applicant regarding the Notice to Leave and the Applicant's subsequent intimation and notice that she intended to vacate the Property;
 - iii) Letter from the Respondent explaining the role of Adam Devine as her relative in setting up broadband for her at the Property;
 - iv) Copy Council Tax Notice of Payment for the Property in the name of the Respondent;
 - v) Copy bank account in the name of the Respondent showing her address to be that of the Property and
 - vi) TV licence for the Property in the name of the Respondent.
4. Prior to the CMD and in response to the above, the Applicant lodged the following documents which were copied to the Respondent:
 - i) Copy correspondence with the Respondent's letting agent regarding the Applicant's date of leaving the Property and
 - ii) Email indicating that she was suspicious of the Respondent's explanation.
5. The outcome of the CMD was that a Hearing was fixed for Thursday 15 July 2021 at 10.00 am by telephone conference. The Parties were advised to lodge any further documents and a witness list by 8 July 2021. Neither did so.

Hearing

6. The Hearing took place on Thursday 15 July 2021 at 10.00 am by telephone conference. The Applicant and the Respondent both attended the CMD. The Respondent was represented by Ms. Rachel McQueen, the Respondent's Representative. The Tribunal outlined the procedure for the Hearing.

Applicant's Evidence

7. The Applicant advised the Tribunal that she had tenanted the Property for some time and in December 2020 she received a request from the Respondent's Representative for a video of the Property. She then received the Notice to Leave. She, having found another property to rent, gave notice to vacate the Property. She explained that she then received a phone call from her internet provider advising that a new tenant had requested internet services. The Applicant advised that she left the Property around 1 February 2021 but returned later that week to collect some belongings and found that

a gentleman named Adam Devine was within the Property and that, lying outside the Property front door was a package from Virgin Media addressed to Mr Devine at the Property. She entered the Property to collect her belongings.

8. The Applicant advised the Tribunal that she reported this to the Respondent's Representative as a complaint. but did not hear further. She further advised that she had received a rent increase request in June 2020 but had not been able to pay more rent and agreed that she had heard nothing further.
9. In answer to questions from both the Respondent's Representative and the Tribunal, the Applicant advised that she did not ask Mr Devine if he was a tenant, and that she did not make further visits to the property. She accepted that the Respondent had lodged a bank statement showing her address as the property but stated that correspondence addressed to the Respondent had been sent to the Property during the tenancy.

Respondent's Evidence

10. Both the Respondent and the Respondent's Representative gave evidence. The Respondent's Representative explained that the request for a video of the property had been the letting agents' approach to dealing with inspections during Covid restrictions and that it was co-incidental that this took place around the time of the Notice to Leave. She explained that the Notice to Leave instruction was taken in good faith and that when the Applicant raised concerns, enquiries were made with the Respondent who explained that her stepson occupied the property for a short time before she took up residence. Respondent's Representative stated that having made enquiries and received the Council Tax notice dated 4 February 2021, the TV licence and bank statements all showing the Respondent as resident at the Property, the letting agents were satisfied that the correct procedure had been followed and that she reported this to the Applicant. The Respondent's Representative advised the Tribunal that the Respondent had been fair in her dealings with the Applicant, had returned the full deposit and returned part of the deposit ahead of the Applicant leaving to allow her to finance the new property.
11. The Respondent advised the Tribunal that she had been residing with another person and had required the Property returned to her to reside in it. She confirmed that her stepson had resided in the property for a short time whilst works were carried out and that he had ordered the Virgin Media apparatus at this time. She explained that she had not expected to be able to return to the Property until the expiry of the Notice to Leave in March and remained in her previous residence for a short time until repair works caused by a flood had been carried out and that she moved into the Property whilst her stepson was still in occupation.
12. In answer to questions from both the Applicant and the Tribunal, she confirmed that the Property is her current residence and that she did receive correspondence to the Property during the tenancy but that this was largely "junk" mail.

13. The Tribunal invited the Parties to address it on the terms of any Order which the Tribunal might make. The Applicant stated that she sought three months' rent as noted in the Application. The Respondent's Representative stated that no compensation should be awarded as there had been minimum impact on the Applicant.

Findings in Fact

14. From the Application, the documents lodged by the parties and the Hearing, the Tribunal made the following findings in fact:
- i) There had been a private residential tenancy between the Parties in respect of the Property;
 - ii) The Respondent instructed her letting agents to serve Notice to Leave in respect of Ground 4 of Schedule 3 to the Act in or around December 2020;
 - iii) The letting agents served notice on that basis;
 - iv) The Applicant found another property to rent and served intimation that she would vacate the Property on 1 February 2021;
 - v) Prior to 1 February 2021, the Applicant received a call from Virgin Media that a new tenant had ordered apparatus for the property;
 - vi) The Applicant vacated the Property on 1 February 2021;
 - vii) The Applicant returned to the Property within a week of vacating and found a package from Virgin Media addressed to Adam Devine at the Property and found Adam Devine to be within the Property;
 - viii) The Respondent is registered for Council Tax purposes at the Property and has been since 4 February 2021;
 - ix) The Respondent has a TV licence for the Property and uses the Property address for banking purposes;

Decision and Reasons for Decision

15. The issue for the Tribunal was the application of the terms of Section 58 (3) of the Act to the facts. Section 58 (3) of the Act follows on from Ground 4 of Schedule 3 to the Act which states: "*Ground 4 (1) It is an eviction ground that the landlord intends to live in the let property. (2) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if the landlord intends to occupy the use property as the landlord's only or principal home for at least 3 months*" Section 58 (3) of the Act states: "*(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.*" Therefore, in terms of the evidence and the findings in fact, was the Applicant misled into vacating the Property?
16. The Tribunal's decision was based on all of the information before it and the test of the evidence was the balance of probabilities. The Tribunal found that all of the parties who gave evidence were truthful and credible. The differences between them lay in their perceptions of what had occurred.
17. The Tribunal accepted that the Applicant had received a call from Virgin Media telling her that a new tenant had ordered apparatus for the property, accepted that she had found a package from Virgin Media addressed to Adam Devine at the Property and

accepted that she had found Adam Devine to be within the Property when she visited in the days following her vacating the Property. However, the Tribunal did not accept that this was sufficient to show that the Respondent did not intend to live in the Property as her only or principal home for at least 3 months. The Tribunal accepted the Respondent's explanation as to why Mr Devine was present in the Property. The Tribunal did not hear any evidence that the Respondent resides elsewhere or that any person other than the Respondent resides exclusively in the Property. The fact that Mr. Devine had been occupying the Property does not prove that the Respondent did not also reside there or did not intend to reside there on a permanent basis. On the evidence before it, the Tribunal accepted that the Respondent currently resides in the Property and so accepted that the terms of Ground 4 were satisfied. Accordingly, the Tribunal found that the Applicant had not been misled into ceasing to occupy the Property.

18. This decision is unanimous.

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.

Karen Moore

15 July 2021

Legal Member/Chair

Date