



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/21/1460

Re: Property at 24B Polnoon Street, Eaglesham, G76 0BH (“the Property”)

Parties:

Ms Susan Collins, 82 Alyth Crescent, Stamperland, Glasgow, G76 8PB (“the Applicant”)

Mr Scott Smith, 17 Polnoon Street, Eaglesham, G76 0BH (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr G Darroch (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 8th June 2021, 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 1st June 2019. The tenancy ended on 16th March 2021. The rent was £650 per month. The Applicant is seeking an award of £3900, which is six times the monthly rent. The Applicant lodged a copy of the tenancy agreement, Notice to Leave, and copy correspondence between the parties.
2. By email dated 28th September 2021, the Respondent submitted written representations.
3. By email dated 6th October 2021, the Applicant submitted written representations.

4. A Case Management Discussion (“CMD”) took place by telephone conference on 6th October 2021. Both parties were in attendance. The case was continued to a hearing to take place on 22nd November 2021 by telephone conference.
5. By email dated 16th November 2021, the Applicant lodged a witness list and productions.

The Hearing – 22nd November 2021

6. Before the hearing convened on 22nd November 2021, the Respondent’s father, Mr Gary Smith, called in to the conference line to say that his son was unwell and unable to participate in the hearing. The Respondent then submitted an email to the Housing and Property Chamber indicating that he wished Mr Gary Smith to be his representative for the purposes of the hearing.
7. The hearing took place by telephone conference. The Applicant was in attendance. Mr Gary Smith was in attendance. The Tribunal discussed whether Mr Smith intended to request a postponement of the hearing, given his son’s ill-health and his late appointment as representative. Mr Smith indicated that he would prefer to proceed with the hearing.
8. The Tribunal asked the Applicant why her productions and witness list had been lodged late. The Applicant said she had been suffering from ill-health and had overlooked the deadline for lodging the items. The Tribunal decided to allow the items to be lodged late.

The Applicant’s position

9. The Applicant said she was concerned about the timeline in this case. She had been told by the Respondent that he was selling the Property and that he had a buyer. Reference was made to text messages from the Respondent to the Applicant dated 1st December 2020, whereby the Respondent had stated that the prospective buyer’s viewing was delayed due to Covid-19 rules, and that she was looking to view the Property after 11th December. A further two messages from the Respondent on 3rd December mentioned a home report being carried out, and that the letting agent would get the paperwork to the Applicant as soon as possible. On 4th December 2020, the Applicant received an email from the letting agent that stated *‘the landlord is looking to serve a 3 month notice that will be issued next week as he is going to move into the property himself.’*
10. The Applicant was then served with a Notice to Leave dated 7th December 2020. The Notice stated that the Respondent was intending to live in the Property. The date by which the Applicant was asked to leave was 12th March 2021. The Applicant left the Property on 16th March 2021. It was her position that the Respondent did not move into the Property. The Applicant referred to discussions she had with others who did not wish to be witnesses in the case to the effect that someone was ‘in and out’ of the Property, and perhaps he was

a workman. One person told her that the Respondent did move into the Property, and two others told her no one was living there.

11. The Applicant had lodged a copy of a Title Sheet for a property at 21 Polnoon Street, Eaglesham. It showed that the Respondent's sister had purchased the property in October 2020. The Applicant noted that the Respondent had indicated at the CMD that his sister was to live with him in the Property, and pay the mortgage, but that had not worked out. It was her position that this was strange, given that the sister had bought her own property. The Applicant believed the Respondent was living at 21 Polnoon Street after she vacated the Property. Approximately one month later, the Property was put on the market.

Witness – Mr Andrew Daniel Colville

12. The Tribunal heard from Andrew Daniel Colville, the brother of the Applicant. He is a semi-retired accountant and private landlord.
13. Mr Colville said he had been considering moving to Eaglesham. He was aware that the Property may be going on the market and he considered buying it. The Respondent had arranged through the Applicant for Mr Colville to have a telephone discussion with Mr Gary Smith. Mr Smith had said things were not working out for his son in relation to the Property. He was concerned that if his son sold the Property, he would not get a mortgage for another property. He was not entirely convinced that selling was the best idea. Mr Colville said it struck him that the best situation was probably having someone in the Property paying the rent.
14. During the conversation, Mr Colville mentioned the timescales for serving notice to terminate the lease. He mentioned that it would be a six month notice period for selling the Property. It was Mr Colville's position that Mr Smith seemed surprised by this. His tone, which had been light, became frosty. Mr Colville said tenants have rights, and Mr Smith had said '*we have rights too.*' The conversation ended with Mr Colville saying he would think about purchasing, and Mr Smith saying they would make a decision on whether or not to sell. About two weeks later, Mr Colville decided the market was not right for purchasing. Mr Colville said he remembered some discussion with Mr Smith about having worked hard to ensure his daughter could secure a mortgage for another property, which she had recently done.
15. There was no cross-examination of Mr Colville.
16. The Applicant said she had another property lined up, which would become available in December 2020, but it fell through. She had sought alternative accommodation having been told by the Respondent that he would be selling the Property. At a visit to the Property by the Respondent and Mr Gary Smith in early December, she claimed the Respondent's father was aggressive. She said he questioned her as to whether anyone else was living at the Property and why her rent was in arrears. Both she and her daughter felt uncomfortable

at his behaviour. When she told Mr Gary Smith that her new property had fallen through, he was very upset about it.

17. The Applicant said the property market was very difficult. She was listed with all the letting agents. There was a huge number of people going for every property. She was then on benefits, and some landlords would not accept a tenant on benefits. Although she was keen to remain in the catchment area for her child's school, she did look at other areas.
18. The Applicant began to suspect she had been misled into terminating the tenancy, when the real intention was to sell the Property. The notice period for selling the Property would have been six months, and she believed a different ground had been used with the intention of getting her out of the Property sooner. She said the extra three months would have helped her in finding a suitable property and made matters easier for her.
19. Referring to the allegation that she was in rent arrears and this had led to problems for the Respondent paying his mortgage, the Applicant said she had been £150 short with the rent in November 2019. She was relying on child maintenance which stopped because her ex-husband became ill and could not work. This resulted in non-payment of rent in or around September 2020. The Respondent had reduced the rent by £75 per month as a result of the Covid-19 pandemic from February to April 2020, and he had allowed her a three month rent holiday from May to July 2020. She claimed Universal Credit after the maintenance payments stopped, and this took some weeks to come through. Responding to claims that she was always late with her rent payments, the Applicant said this was discussed with the Respondent when her pay date changed to four-weekly, rather than monthly. The Respondent was agreeable to her being late with her payments. Responding to questions from the Tribunal as to whether she could have afforded to stay in the Property, the Applicant said she could have done so when her benefits were in place. The rent for her current property is £200 per month more than the Property.
20. Responding to questions from the Tribunal concerning the Title Sheet for the Property lodged by the Applicant, the Applicant said she did not understand it, as it indicated that the owner of the Property on 12th March 2021, the date on which she was due to move out, was Mr Gary Smith, so the Property had clearly changed hands. She had not been aware of this before seeing the Title Sheet.
21. The Applicant said she considered the Respondent to have been a fantastic landlord.
22. The Applicant said although she had mentioned a payment equivalent to six months' rent in her application as an award if a wrongful termination order was granted, she would accept three months' rent.

The Respondent's position

23. Mr Smith said the Applicant had never paid the rent on time and this affected the Respondent's ability to pay his mortgage. The Respondent reduced the rent, and gave the Applicant a three month rent holiday. This put him under pressure.
24. Mr Smith said he had tried hard to help the Applicant. He was concerned because she had a child, and he had impressed upon the Respondent that it was not the child's fault that her mother could not pay the rent. He was upset that he had been described as aggressive. He had discussed with his wife whether they could give the Applicant a flat but the situation escalated and went downhill. The Applicant said she was moving out.
25. Mr Smith said the situation probably 'didn't go 100% the legal way it should have.' The Respondent was very undecided about what to do with the Property. The Applicant was getting later in paying the rent. She refused to answer the Respondent's calls. Even after the three month rent holiday, the Applicant did not pay her rent the following month.
26. Mr Smith said the Respondent always meant to move into the Property. He was going to live there with his sister. That didn't work out and he lived there for three weeks at most. He was working abroad and missing mortgage payments. He was borrowing from his parents. Responding to questions from the Tribunal as to why the Respondent had said on 1st and 3rd December that a home report was being carried out and there was a prospective purchaser, then on 4th December the letting agent said he was moving into the Property, Mr Smith said the Respondent probably didn't know the right move to make and probably operated wrongly, but was under pressure. Mr Smith said he could not lie and say they were unaware of the correct rules for notices to leave. The Respondent was considering a home report whether or not he sold the Property.
27. Asked by the Tribunal whether the Respondent was wholly dependent on the rental income for the Property, Mr Smith said no, but when the Respondent decided to rent out the Property, he then expected the rent to be paid to help pay the mortgage. Mr Smith said the mortgage payment holiday did not have to be passed on to the tenant. That was a decision made by the Respondent, as he felt it was the morally right thing to do during Covid-19.
28. Responding to questions from the Tribunal as to the situation in relation to Mr Gary Smith buying the Property from the Respondent, Mr Smith said he was trying to help his son out as he was struggling with his mortgage. The decision was made in the new year, and the date of entry was 12th March 2021. The Property was then sold on to a third party in July 2021. Mr Smith said he lets commercial properties. Asked why he had said earlier that he had asked his wife about letting a flat to the Applicant, Mr Smith said he had been referring to an annex at his own property.

29. Mr Smith said he was sorry it had come to this. The Applicant was due to move out in mid-December anyway, so it was unfair to seek a financial penalty now. He did not feel it would be right to award a penalty when the Respondent had tried hard to help the Applicant.

Findings in fact and law

30.

- (i) The parties entered into a tenancy agreement in respect of the Property which commenced on 1st June 2019 at a monthly rent of £650.
- (ii) The Respondent informed the Applicant that he was planning to sell the Property. This was reiterated in text messages from the Respondent to the Applicant on 1st and 3rd December 2020.
- (iii) On 4th December 2020, a letting agent appointed by the Respondent informed the Applicant that the Respondent intended living in the Property.
- (iv) Notice to Leave dated 7th December 2020 was served upon the Applicant using the ground that the Respondent intended to live in the Property.
- (v) The Applicant left the Property on 16th March 2021.
- (vi) Ownership of the Property passed from the Respondent to Mr Gary Smith on 19th March 2021, with a date of entry of 12th March 2021.
- (vii) The Property was marketed for sale thereafter, and sold to a third party in or around July 2021.
- (viii) The Applicant was misled by the Respondent into ceasing to occupy the Property.

Reasons for Decision

31. The Tribunal was not persuaded that it was the Respondent's intention to live in the Property as his only or principal home for at least three months at the time of serving the Notice to Leave on 7th December 2020, as required by ground 5 of Schedule 3 of the Act. The Tribunal took into account the messages from the Respondent to the Applicant on 1st and 3rd December 2020 which clearly indicated his intention to sell. No compelling reason was put forward on behalf of the Respondent as to his apparent change of heart between 3rd and 4th December. The Tribunal took into account the fact that the Respondent took the decision to sell the Property to Mr Gary Smith after serving the notice to leave, with ownership passing three days after the Applicant left the Property. In all the circumstances, and on the balance of

probabilities, the Tribunal found that the Respondent did not intend to live in the Property as his only or principal home for at least three months.

32. The Tribunal took a dim view of the fact that the Respondent did not provide an honest account of matters at the CMD. When asked about the eventual sale of the Property, the Respondent said it sold in or around July 2021. At no time did he mention that the Property had already sold in March 2021, to Mr Gary Smith.
33. The Tribunal considered that the Respondent was a good landlord and clearly tried hard to assist the Applicant when she experienced difficulties with paying her rent, including allowing a three month rent holiday. This, however, was not relevant to whether or not the Applicant was misled into leaving the Property.
34. The Tribunal considered that the Applicant and her witness were credible and reliable. The Tribunal accepted that the Applicant moved from the Property as a result of the notice to leave. The Tribunal accepted the Applicant's evidence that she would have been able to continue paying the rent in the Property.
35. The Tribunal found, in all the circumstances of the case, that the Applicant was misled by the Respondent into leaving the Property.
36. 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 in a shorter period than she ought to have been given.
37. The maximum penalty which can be imposed is six times the monthly rental. The monthly rental for this property was £650. In assessing the quantum of the wrongful-termination order, the Tribunal took all the circumstances into account and decided that an order for four times the monthly rent was just and appropriate.

Decision

38. A wrongful-termination order is granted in favour of the Applicant in the sum of £2,600.

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.

H Forbes

Legal Member/Chair

22nd November 2021
Date