

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 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/22/1240

Re: Property at 13 Haremosse Drive, Portlethen, Aberdeen, AB12 4UX (“the Property”)

Parties:

Mr Angelo Van Wyk, 16 Schoolhill Drive, Portlethen, Aberdeen, AB12 4PN (“the Applicant”)

Ms Pei Hon Tan, 5 Kirk Brae Court, Cults, Aberdeen, AB15 9QE (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application is refused as the Applicant had not been misled to leave the Property. No order was granted.

Background

1. An application was received by the Housing and Property Chamber dated 29th April 2022. The application was submitted under Rule 110 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Applicants being wrongfully evicted from the Property by the Respondent.
2. A Case Management Discussion (“CMD”) was held on 27th June 2022 at 10am by teleconferencing. The Applicant was present and represented himself. The Respondent was present and represented herself. The Tribunal had noted that the following required to be addressed:

- a. Why was it that the Respondent decided to sell the Property and were those reasons still valid?
 - b. What was the difference in the final valuation that had caused the Respondent to stop the selling process?
 - c. Was the Applicant misled into leaving the Property?
 - d. Has the Property been valued and/or put on the market since the valuation in February 2022? If not why has this not been considered?
3. Both parties lodged submissions prior to the hearing.
4. This case had been conjoined with PR/22/1059 however the Tribunal heard evidence regarding the cases separately. PR/22/1059 was decided on the first part of the day before the evidence for this case was heard. A decision was given on PR/22/1059 and it ceased to be conjoined with this case.

The hearing

5. A hearing was held on 5th September 2022 at 10am by teleconferencing. The Applicant was present and represented himself. The Respondent was present and represented herself.
6. The Tribunal noted that section 58(3) of the Private Housing (Tenancies) (Scotland) Act 2016 states that "*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.*" The Tribunal noted that the central issue was whether the Applicant had been misled into leaving the Property.
7. The Applicant said that he received a Notice to Leave dated 26th July 2021 (erroneously dated 26th January 2021 but accepted by both parties that it was in fact dated 26th July 2021). The Notice to Leave was based upon ground 1 namely that the Respondent intended to sell the Property. The Notice to Leave arrived when he was in South Africa on holiday. When he returned to the UK he started searching for an alternative property. He required to remain in close proximity to his children's schools. He took the first property that was available. He left the Property as he believed that he had to leave under the Notice to Leave. He had rent arrears at that point. He noted that he had his bank account hacked in June or July 2021. He had no access to his bank account at this time. This caused arrears to accrue. A case was brought to the Housing and Property Chamber tribunal (under a different constitution of Tribunal) to decide outstanding monies owed. An order was granted by that Tribunal. The full outstanding amount due was paid partly through the deposit. He left the Property on 29th January 2022 because he believed that he had to leave at that point.
8. The Respondent disputed that she issued a Notice to Leave because of rent arrears. She noted that the Applicant had stopped paying in May and June 2021.

9. The Respondent had not sold the Property. She told the Tribunal that she had instructed a estate agent. She had also instructed a single survey and an energy efficiency survey. She then changed her mind and decided not to proceed when she received the report due to the uncertainty in the market. She felt it was too much to risk to sell in terms of the valuation being low. The Property was surveyed on 11th February 2022. She decided to sell but at the beginning of the year the Covid pandemic started to ease off and it was clearer the effects of the pandemic. In addition the effect of the increased cost of living partially resulting from the Ukraine war caused the Respondent concern about selling. The increases in the Bank of England base rate and there was a concern that this would increase any future mortgage payments. She told the Tribunal she would need to pay £230 per month extra for a £300 000 mortgage. Her energy bill would be £60 per month more expensive and the cost of living had risen by 10%. She considered that spending money on solicitor fees and those involved with selling were considerable. She wanted to see what will happen in the future. She did not want to make a rash decision into selling the Property. She wanted to keep herself and her family secure.
10. The Respondent told the Tribunal she wanted to sell the Property as she has two sons who are 6 and 8 years old. They are growing and need their own rooms. The flat that they were all living in was 65 metres squared. She wanted to combine the profits of both her flat and the Property to buy a bigger property. The Respondent said that she made the decision to sell in between when she got the home report and the price valuation for the Property. This was after the Applicant had left.
11. The Respondent then told the Tribunal that she had decided not to sell at the beginning of 2022. The Tribunal asked why she had not revoked the Notice to Leave to allow the Applicant to remain in the Property. The Respondent had seen that the Applicant had contacted a letting agent and was looking for a reference.
12. The Tribunal asked what had happened since the Applicant left the Property. The Respondent said that she had engaged an estate agent and their services but with the uncertainty in price the decision to sell was changed. The Respondent decided to move into the Property with her family as it is a bigger space with more room for her family. The Respondent then said that she had moved into the Property in the week prior to the hearing. Her children were continuing to attend school in Cults. She said that she was now paying council tax with a single person discount. She said that her husband was paying council tax as a single person discount in Cults. The Tribunal asked why they had not moved. The Respondent said that they had moved to Cults for the schools so would continue at the school in Cults. She works from home so can work anywhere. She said that she has taken so long to move as she just has her own car to move her and had not instructed a movers company. The Respondent then said that she was living in the Property on her own while her husband and sons continued to live in Cults. The Respondent confirmed to the Tribunal that she was in fact calling the Tribunal from the Cults property. She was there for her children coming home from school even though the Tribunal

had started at 10am and could have lasted until 5pm. The Respondent said that she did not wish to let out the Property again as it was too much hassle.

13. The Applicant said that the Respondent had given a variety of answers. He noted that at one point the Respondent said she had made the decision before he had left the Property. This means that he could have stayed on in the Property.
14. The Tribunal was confused about the consistency of the Respondent's evidence. She had clearly said that she had made the decision to halt the sale process in January 2022 when the Applicant was still in the Property but then said she changed her mind after. The Respondent also said that she did not wish to make a quick decision about selling even though she had the 6 months of the Notice to Leave notice period. The Tribunal would have expected her to have reached that decision before issuing the Notice to Leave and causing the Applicant and his family to leave. It was unclear to the Tribunal if the Respondent was in the Property. The Tribunal continued the hearing to allow for proof that the Respondent was living in it and had not let it out again. The Respondent was vague about this point. She had stated that she had made decisions based for financial reasons but did not let out the Property to assist with that. The Tribunal issued a direction to assist the Respondent.
15. The Tribunal will be looking to address the following questions;
 - a. At what exact point did the Respondent decide to sell the Property?
 - b. What steps were taken in July 2021, when the Applicant was in South Africa, in terms of estate agency instruction and valuation of the Property?
 - c. What date did the Respondent decide not to sell the Property? Could she have let the Applicant continue to live in the Property?
 - d. Was the Notice to Leave issued because of the rent arrears accrued by the Applicant?
 - e. As it was the Respondent's intention to use the proceeds from the sale of both the Property and her flat in Cults, what steps had she taken to sell the Cults property?
 - f. Has the Respondent given up her landlord registration? Has she contacted her mortgage company to advise that her mortgage needs changed? Has she contacted her insurance company to advise that it needs changed?
 - g. Does the Respondent live at the Property?
 - h. The Respondent said she moved to have a bigger space for her children. What steps since deciding not to sell has the Respondent taken to move her family to the Property?
 - i. Did the Respondent mislead the Applicant into leaving the Property?
 - j. It was noted that this was not an exhaustive or restrictive list of questions. The Tribunal noted that it did not consider what had been lodged already had suitable covered the extra requests of the direction.
16. The Tribunal issued a direction for the Respondent to comply with. The direction asked for the following information:

- a. Confirmation that she had informed her mortgage company that she is no longer letting the Property and that date that notification occurred;
- b. Confirmation that she no longer required renter insurance and that date that notification occurred;
- c. Confirmation of the date that she started paying council tax at the Property and notification to the local council;
- d. Evidence of the Property being classed as an unoccupied property by her local council in terms of council tax for the period from when the Applicant left to when the Respondent moved in;
- e. Confirmation of her registering for a doctor in proximity to the Property;
- f. Confirmation of the date that her children are due to start school in Portlethen;
- g. Evidence of the utility bills being in her name;
- h. Evidence of steps taken to sell her flat in Cults from July 2021 to August 2022;
- i. A timeline of all the actions/decisions taken by her in relation to the properties from when she initially decided to sell the Property to date;
- j. A list of all witnesses to be called to give evidence at the hearing;
- k. All legal cases, statutes and submissions to be relied upon at the hearing; and
- l. All documents to be relied upon at the hearing.

17. On 23rd November 2022, the Respondent lodged a submission to comply with the direction. The submission included a timeline of the events as the Respondent found them, confirmation of her living at the Property, redacted utility bills and other items asked for within the direction.

The continued hearing

18. A hearing was held on 7th December 2022 at 10am by teleconferencing. The Applicant was present and represented himself. The Respondent was present and represented herself. Ms Whui Cheng was present to interpret the proceedings for the Respondent.

19. The Applicant raised that he considered that the Respondent was changing what she had said in her previous evidence with her submission. He said that the Notice to Leave had stipulated that the Respondent wished to sell the Property to consolidate her finances. The Applicant noted that he did not find this consistent as he had not seen anything regarding the sale of the other property in Cults, which she was living in. He said that it was further inconsistent as she did not sell either property and had to pay two mortgages which meant that she was not reducing her outgoings. When he was living in the Property his rent payments would be paying towards the mortgage leaving her only responsible to fully pay the Cults property mortgage. The Respondent said that she was saving the costs of paying for selling the house. She also said she had planned to sell the Portlethen property first as it is a four bedroom house and would be harder to sell. Once it was sold she had planned to sell the Cults flat which is a two bedroomed property and would be easier to sell. She would need

the funds from both properties to allow her to purchase a larger property in Cults but needed to be sure that the larger property was sold first.

20. The Applicant was also not satisfied that the Respondent had redacted the usage in her electricity bills. He said that this did not fully show that she was using the Property. The Tribunal noted that this had meant that the Respondent had financial responsibility for outgoings of the Property since he left. The Applicant did not consider that he needed to pursue that point further if the Tribunal was satisfied with it.
21. The Applicant also wished to raise that he only asked for a reference from the Respondent for a new property because he had been served with the Notice to Leave.
22. The Respondent clarified that had she sold the Property she would have had legal cost plus had to pay tax of over £10 000. It was her intention to take out a bank loan to add to her funds from the sale of both her properties to allow her to buy a larger property. This would have come at a cost. In addition she had been over paying one of her mortgages for the last few years and her bank had contacted her to say that she could have a mortgage holiday.
23. The Respondent said that her husband remains living in the Cults property and she is living in the Portlethen one with her children. Her children still attend school in Cults. She pays both mortgages. Her relationship with her husband has changed since she had planned to sell both properties and consolidate to buy a bigger property in Cults. This occurred around March or April 2022. She has to return to her office three days a week. Her place of work is closer to the Portlethen property.
24. The Respondent wished it noted that she disagreed with the original hearing note from 5th September 2022 in that she did not change her mind in terms of selling the Property in January 2022 but that she was starting to feel financial pressures then. The main reason that she did not sell was because the home report valued the Property at £35000 less than it had been valued in July 2021. The Tribunal members consulted their own notes and both concurred with the hearing decision notice previously issued.

Facts and reasons for decision

25. A Private Rented Tenancy Agreement commenced on 1st December 2020.
26. The Respondent served a Notice to Leave upon the Applicant on 20th July 2021. This Notice to leave was issued under ground 1 which states that the Respondent intends to sell the Property. The Notice to Leave had a typographical error dating it as 20th January 2021. It was accepted by all parties that this was a typographical error and was not significant to the proceedings.

27. The Respondent was living in her two bedroomed flat in Cults with her children and husband during the whole of the notice period. The Respondent is now living in the Property with her children.
28. The Tribunal considered if the Applicant had been misled into leaving the Property. The Tribunal did not consider that the Applicant was misled into leaving the Property. The Tribunal was satisfied from the evidence that the Respondent had intended to sell the Property when the Notice to Leave was served and through to the point that the Applicant left the Property. The Tribunal noted that there had been changes to the Applicants circumstances. Most notably that the value of the Property had reduced significantly during the period of the Notice but that the Respondent had not been aware of this until the home report was done on 11th February 2022. This was after the end of the notice period and after the Applicant had left the Property. The Tribunal accepted that the Respondent may have had doubt about continuing with the sale of the Property in January 2022 but still pursued with the actions required to sell a property including instructing a home report. The Tribunal was satisfied, on balance, that the Respondent had not made her final decision not to sell in January 2022. In addition the Respondent had become aware of her personal financial pressures and no longer felt that she could sell the Property particularly at the lower valued price. The Respondent had responded fully to the direction issued which had satisfied the Tribunal with the points that it had wished to know. The Tribunal did not consider that, on the balance of probabilities, that the Applicant was misled to leave the Property as the Respondent had intended to sell the Property but had changed her mind after the Applicant had left the Property.
29. The Respondent had intended to consolidate both properties but due to the reduced value and change in personal circumstances she was no longer able to do that. The Respondent now lives in the Portlethen property. She has not let it out since the Applicant left and has relinquished her landlord registration.
30. Taking all of this into account the Tribunal did not consider that the Applicant had been misled into leaving the Property.

Decision

31. The application was refused. A Notice to Leave had been issued by the Respondent as she had wished to sell the Property. The Respondent had left the Property within the Notice period. The Respondent then changed her mind regarding selling the Property as it no longer became affordable to sell the Property. The Respondent had intended to sell the Property through the Notice of Leave notice period. The Applicant was not misled. As such section 58 of the 2016 Act does not apply in this case and thus the application is refused.

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.

G Miller

7th December 2022

Legal Member/Chair

Date