



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

Chamber Ref: FTS/HPC/PR/21/0301

Re: Property at 1-2 557 Alexandra Parade, Dennistoun, Glasgow, G31 3DB (“the Property”)

Parties:

Lesley Michelle Munro and Grant Charles McNicoll, residing at 0/1 30 McLennan Street, Mount Florida, Glasgow, G42 9DQ (“the Applicants”)

David Ross, residing c/o 3 Berry Cottages, Kippen Road, Fintry, Glasgow G63 0LW (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Wrongful-Termination Order should be made against the respondent

Background

1. The respondent was heritable proprietor of the property at 1-2 557 Alexandra Parade, Dennistoun, Glasgow, G31 3DB (“the property”) until he sold it on 30 March 2021. On 6 February 2018 the respondent leased the property to the applicants at a rental of £800 per month. On 3 December 2020 the respondent served a notice to leave on the applicants. That notice to leave said that the respondent relied on ground 4 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 18 December 2020 the applicants served their own notice to terminate the lease. The lease came to an end on 13 January 2021, when the applicants vacated the property and the respondent moved into the property.

3. On 2 February 2021 the respondent instructed estate agents to market the property for sale.
4. On 8 February 2021 the applicants submitted an application for a wrongful-termination order to the Tribunal.

The Hearing

5. An evidential hearing took place before the Tribunal by telephone conference at 10.00am on 14 September 2021. All parties were present, but unrepresented, Tribunal members asked questions of both Mr McNicoll (who spoke for both applicants) and the respondent.
6. At the end of the hearing we reserved our decision. We found the following facts to be admitted or proved.

Findings in Fact

7. The respondent was heritable proprietor of the property at 1-2 557 Alexandra Parade, Dennistoun, Glasgow, G31 3DB (“the property”) until he sold it on 30 March 2021. On 6 February 2018 the respondent leased the property to the applicants at a rental of £800 per month. On 3 December 2020 the respondent served a notice to leave on the applicants. That notice to leave said that the respondent relied on ground 4 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.
8. On 18 December 2020 the applicants served their own notice to terminate the lease. The lease came to an end on 13 January 2021, when the applicants vacated the property and the respondent moved into the property.
9. On 2 February 2021 the respondent instructed estate agents to market the property for sale. The property was marketed for sale on 5 February 2021 and a closing date was fixed for offers on 11 February 2021. The respondent accepted an offer with a date of entry of 30 March 2021. On 30 March 2021 the sale of the property completed.
10. The respondent has not bought another property since selling the property which is the subject of this application.
11. Ground 4 of schedule 3 to the 2016 Act says
 - 4(1) It is an eviction ground that the landlord intends to live in the let property.
 - (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord intends to occupy the let property as the landlord’s only or principal home for at least 3 months.
 - (3) References to the landlord in this paragraph—
 - (a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in subparagraph (2) includes (for example) an affidavit stating that the landlord has that intention.

12. The applicants were happy with the tenancy of the property and would have remained in the property if they had not received the notice to leave from the respondent. They reacted with surprise to the notice to leave, but, when their emotions settled, they immediately looked for alternative accommodation. The applicants served their own notice of termination of tenancy because they quickly found alternative accommodation - which they continue to live in today.

13. Between 3 December 2020 and 13 January 2021 the respondent maintained that he intended to live in the property as his own home. 19 days after moving into the property the respondent instructed estate agents to sell the property.

Reasons for Decision

14. There is no great dispute about the facts in this case. At the start of the hearing, the applicants and the respondent confirmed that the agreed facts are

(i) The respondent rented the property to the applicants on 8 February 2018.

(ii) On 3 December 2020, the respondent served a notice to leave, relying on ground 4 of schedule 3 to the 2016 act, saying that he intended to recover the property to use as his own home.

(iii) The tenancy ended on 13 January 2021 because, on 18 December 2020, the applicants served their own notice to terminate the tenancy because they had already found alternative accommodation.

(iv) The respondent instructed estate agents to sell the property on 2 February 2021. The property was marketed for sale on 5 February 2021. A closing date was fixed for offers on 11 February 2021. The sale of the property completed on 30 March 2021.

15. The applicants' position is that if they had not received the notice to leave dated 3 December 2020 they would still be living in the property. They say that they only sought alternative accommodation because the notice to leave gave them until 6 March 2021 to vacate the property.

16. We take account of the detailed written submissions supplied by all parties in this case. We asked the respondent to explain why he had such a significant change of heart between 13 January 2021 and 2 February 2021.

17. In just 19 days, the respondent's position changed from recovering possession of the property so that he could use it as his own home, to selling the property on the open market. That is such a significant change in intention that it is realistic to expect

the respondent to be able to explain what happened in 2 ½ weeks to create such a radical change in his intentions.

18. The problem for the respondent is that he cannot give a coherent explanation for such a significant change of heart. When asked a straightforward question, the respondent was evasive and prevaricated. The respondent blamed his financial difficulties; he then cited physical health problems, before finally blaming the Covid-19 pandemic.

19. There was a case management discussion place in this case on 9 July 2021. The legal member of the Housing and Property Chamber who chaired that case management discussion prepared and issued a comprehensive case management discussion note. At paragraph 18 of that case management discussion note, the respondent was given notice of the specific evidence he should offer today. Instead of providing the specified evidence, the respondent simply relies on oral evidence that he instructed a Homebuyers report on 2 February 2021 and his written submission, which touches on his attempts to reach an extrajudicial settlement with the applicants.

20. What we are left with is an unexplained change in the respondent's position. All parties agree that the respondent sought to terminate the tenancy agreement on the basis that he intended to live in the property. If the applicants had done nothing in response to the notice to leave, the respondent could have raised an application for repossession with this chamber of the First-tier Tribunal for Scotland. In any such application, the tribunal would look for evidence that the respondent intends to live in the property for at least three months.

21. The evidence we have is that the applicant lived in the property for 19 days before marketing it for sale. After considering each strand of evidence, we still do not have a reliable explanation for the respondent's decision that he no longer wanted to live in the property after just 19 days occupation.

22. On the facts as we find them to be, the applicants only brought the tenancy of the property to an end because they received the notice to leave stating that the applicant wants to recover possession of the property so that he can use it as his own home. On the facts as we find them to be, 19 days after recovering the property the applicant marketed it for sale.

23. The only realistic conclusion that we can reach is that the respondent misled the applicants, and, as a result of his misrepresentation, the applicants surrendered occupation of the property.

24. Because we reach that conclusion, we make a wrongful-termination order.

25. Section 58(3) of the private Housing (Tenancies) (Scotland) Act says

(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.

26. Section 59(1) of the private Housing (Tenancies) (Scotland) Act says

(1) In this section and in sections 57, 58 and 60, “a wrongful-termination order” means an order requiring the person who was the landlord under the tenancy immediately before it ended to pay the person who made the application for the wrongful-termination order an amount not exceeding six months’ rent.

27. The maximum penalty which can be imposed is six times the monthly rental. The monthly rental for this property was £800. In assessing the quantum of the wrongful termination order we take account of the impact of the respondent’s actions; we take account of the duration of the dishonesty; we take account of the respondent’s continued adherence to that dishonesty.

28. Against those aggravating factors, we balance the fact that the respondent has some health problems, and his financial situation has been better. An order for three times the monthly rental reflects the gravity of the respondent’s actions.

29. The appropriate level of wrongful termination order is £2,400.00

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of Two Thousand Four Hundred pounds (£2,400.00) within 14 days of service of this order.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

P Doyle

Legal Member

15 September 2021