



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/21/0469

Re: Property at 45 Avonbridge Drive, Hamilton, ML3 7EG (“the Property”)

Parties:

Mr James Travers, 87 The Paddock, Hamilton, ML3 0RF (“the Applicant”)

Ms Maria Gaeta, whose current whereabouts are unknown (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a wrongful-termination order should be granted against the Respondent in terms of Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and has decided to make an order for payment in the sum of THREE THOUSAND NINE HUNDRED POUNDS (£3900) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

1. By application dated 18 February 2021, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for a wrongful termination order under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. On 5 May 2021, the Tribunal accepted the application under Rule 9 of the Regulations.

3. The Tribunal originally assigned an earlier Case Management Discussion (“CMD”) under Rule 17 of the Regulations to proceed on 13 May 2021. Sheriff Officers were unable to serve the application on the Respondent at the Property as she was not resident at the Property which neighbours reported had been recently sold. The CMD was accordingly discharged. The Application was accordingly served by way of advertisement in terms of Rule 6A of the Regulations and a new CMD assigned for 21 July 2021. An Execution of Service dated 21 July 2012 was received by the Tribunal.

Case Management Discussion

4. The Tribunal proceeded with the Case Management Discussion on 21 July 2021 by way of teleconference. The Applicant was present and represented himself. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
5. The Tribunal had before it a Private Rented Tenancy Agreement between the parties, various email correspondence between the Applicant and the Respondent’s letting agents Rent Locally (“RL”), an email dated 4 January 2021 from the Respondent to RL, a Notice to Leave dated 6 January 2021, a copy letter dated 7 January 2021 from Slater Hogg and Howison Lettings, a copy sales schedule for the Property from Residence Estate Agents and excerpts from a Home Report for the Property prepared by Graham and Sibbald dated 10 February 2021.
6. Mr Travers explained to the Tribunal he had lived in the Property since November 2018 with his two teenage children who lived full time with him. The Property was a three bedroom flat which was scarce in the area. It was the family home. The children went to school locally.
7. On 26 June 2020 RL advised the Applicant that the Landlord had changed. He signed a new Private Residential Tenancy with the Respondent with a start date of 29 June 2020 at a rent of £650 per month. He believed the previous Landlord may have been an elderly relative of the Respondent.
8. On 6 January 2021 RL called him to advise they had been instructed to terminate the tenancy as the Respondent wanted to move into the Property. Later that day the Applicant received a Notice to Leave under Section 50 of the 2016 Act stating the ground of eviction as being the Landlord wanted to live in the Property with reliance on Ground 4 of Schedule 3 of the 2016 Act. The Notice to Leave gave the Applicant three months’ notice to leave.
9. He explained he was shocked as he had always thought he would be in the Property long term. He went into panic mode as 3 months did not give him

much time to find alternative decent accommodation that he could afford for him and his two children. He realised he would have to start looking for a new home straightaway as such accommodation was hard to come by in the area. He started searching on the internet and later that night he identified a potential flat and made contact with the letting agents, Slater Hogg and Howison first thing the following morning on 7 January 2021. The Applicant made reference to the letter received from Slater Hogg and Howison. As the landlord for the potential flat was anxious about it being left empty over winter he was able to arrange to move into the flat on 1 February. He advised RL and they were happy to agree with him that he would move out on 1 February 2021 which he did.

10. The Applicant explained that at that time his divorce had gone through and the matrimonial home had been put up for sale by Residence Estate Agents. On 17 February 2021 he checked the Residence web site and co-incidentally noticed the Property had been put up for sale. He was upset as he had been led to believe the Respondent was moving into the Property. He got a copy of the Home Report which was dated 10 February 2021. He also immediately called RL who emailed him later that day to advise they had been in contact with the Respondent and had explained to her that as she had given Notice to Leave on the basis she was moving into the Property she could not sell the Property. RL also stated the Respondent had advised them she would withdraw the Property from the market. However that did not happen. The last time the Applicant had looked at the Residence web site the Property was shown as "sold".
11. The Applicant was surprised at the blatant way the Respondent had acted. She had led him to believe she wanted to move into the Property at which point he found a new home for him and his family at a higher rent of £895 per month, being £245 per month more than he had been paying. He was aware that if her genuine reason for wanting to terminate the tenancy was that she wanted to sell that she would have to give him 6 months' notice. However only 3 months' notice was required if the reason stated was she wanted to live in the Property. He explained he had always paid his rent on time and was not in arrears. The rent immediately before he moved was still £650 per month. He had incurred losses including removal costs, the cost of a sofa, and increased rental which was ongoing.

Findings in Fact and in Law

12. The Applicant lived in the Property from November 2020 – 1 February 2021 with his two children. It was their family home. The children attended school locally.
13. In June 2020 the Applicant was advised by RL that the Property had a new owner, the Respondent. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement from 29 June 2020 in relation to the

Property. In terms of Clause 7 they agreed the Applicant would pay the Respondent a monthly rent of £650.

14. On 4 January 2021 the Respondent emailed RL to advise she wanted to move into the Property and to give three months' notice to terminate.
15. On 6 January 2021, RL served a Notice to Leave on the Applicant in terms of Section 50 of the 2016 Act which stated the reason for the Notice was that the Respondent wanted to move into the Property by reliance on Schedule 3, paragraph 4 of the 2016 Act. The Notice required the Applicant to leave the Property by 5 April 2021.
16. As a result the Applicant immediately started to search for alternative accommodation and secured alternative accommodation for him and his two children. He moved from the Property on 1 February 2021 into a new tenancy at a monthly rent of £895. The Applicant moved as he had been led to believe the Respondent was moving into the Property.
17. The tenancy ended on 1 February 2021 in accordance with section 50 of the 2016 Act.
18. On 10 February 2021 a Home Report was prepared for the Property.
19. By 17 February 2021 the Property was advertised for sale on the Residence web site.
20. On 17 February 2021 the Respondent contacted RL to ask why the Property was advertised for sale when the Notice to Leave had stated the Respondent wanted to live in the Property. The Respondent advised RL on 17 February 2021 she would withdraw the Property from the market. The Respondent did not do so.
21. The Applicant had never been in arrears of rent. He incurred and continues to incur losses by way of increased rental costs of £245 per month. He incurred further losses in moving from the Property including removal costs and the cost of a new sofa.
22. The Applicant was misled by the Respondent into ceasing to occupy the Property in terms of Section 58(3) of the 2016 Act.
23. The Respondent had wrongfully terminated the tenancy.

Reasons for Decision

24. The Tribunal considered the Application together with all documents lodged and the oral submissions from the Applicant. The Applicant was the tenant immediately before the tenancy ended in terms of Section 58(1) of the 2016 Act. The Tribunal accepted that the Applicant and his family were settled in their home at the Property until 6 January 2021 when the Respondent had served a Notice to Leave under Section 50 of the 2016 Act which stated she wanted to move into the Property. In reaching its decision, the Tribunal took into account the wording of the Notice to Leave which stated that “*Your Landlord intends to live in the Property*”. The Tribunal accepted that the documents lodged showed this was not the Respondent’s true reason for wishing to terminate the tenancy. The Tribunal considered that by instructing a Home Report which was prepared on 10 February 2021, so soon after the Applicant left the Property on 1 February 2021 was compelling to show the Respondent’s real intention was never to live at the Property but to sell it. The Tribunal further considered that it was advertised for sale by 17 February 2021 and that despite the Respondent stating she would withdraw the Property from the market she had not done so and the Property has since sold. This evidence was accepted by the Tribunal. It was clear on the documents lodged that the Respondent had never intended to move into the Property. The Tribunal accepted that as a result of the Notice to Leave the Applicant had moved from the Property having being misled by the Respondent into leaving the Property and that his tenancy had been brought to an end in terms of Section 58(1) of the 2016 Act..
25. In considering the amount to be paid by the Respondent to the Applicant, the Tribunal took into consideration that the actions of the Respondent had caused significant inconvenience and disruption to the Applicant, whose priority was providing his family with a stable home, in that he had to move from the Property and find other accommodation. The Tribunal accepted that 3 bedroomed flats were scarce in the area and that the Applicant now had to pay a higher rent of £895 per month when previously he had paid £650. It also took into account he had had to purchase a new sofa for the new accommodation, a sofa having been provided at the Property. The maximum penalty which can be imposed by the Tribunal in terms of Section 59(1) of the 2016 Act is six times the monthly rental. The monthly rental for this property was £650 immediately before the tenancy was terminated. In assessing the quantum of the wrongful-termination order, the Tribunal took all the circumstances into account and decided that an order for six times the monthly rent was just and appropriate in the circumstances considering the losses of the Applicant including ongoing increased rental costs of £245 per month.

Decision

26. The Tribunal made a wrongful termination order for £3900

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

21 July 2021

Date