

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 (Residential Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/23/4171

Re: Property at 17 Albury Garden, Albury Road, Aberdeen, AB11 6FL (“the Property”)

Parties:

Mr Matthew Carrol, 84 May Baird Wynd, Aberdeen, AB25 3RQ (“the Applicant”)

Jacqueline Sutherland, 2 Burnside Gardens, Aberdeen, AB25 2QW (“the Respondent”)

Tribunal Member:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be determined without a Hearing. The Tribunal refused the application.

Background

1. By application, dated 20 November 2023, the Applicant sought an Order under Sections 58 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) for a wrongful termination without eviction. He stated that he was evicted on the grounds that the Respondent was intending to live in the Property herself due to a change of personal circumstances. The reason she provided was that her husband had had back surgery and required to live in a ground floor property with no stairs. The Applicant collected mail from the Property two weeks after being evicted, to find it occupied by the Respondents’ nephew, who told him he needed the Property due to a recent split with a partner. Neither the Respondent nor her husband appeared to be living in the Property. As he was wrongfully evicted and has no fixed or permanent place to live, The Applicant was seeking the maximum compensation of six months’ rent (£4,200).

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 25 January 2023 at a rent of £700 per month, and a Notice to Leave, dated 18 August 2023, stating that the Respondent intended to live in the Property and that no application to the Tribunal would be made before 13 November 2023,
3. On 21 March 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 11 April 2024.
4. On 31 March 2024, the Respondent made written submissions to the Tribunal. She stated that she had instructed letting agents to give notice to the Applicant, as the Respondent and her husband would require to live in the Property on the grounds of personal use and due to personal circumstances. This reason was challenged by the Applicant and in response, she had provided highly confidential information regarding the reason for the Notice having been served.
5. The period of notice expired on 12 November 2023 and the Respondent was advised that the Applicant had vacated the Property on 31 October 2023. Her nephew has been staying at the Property as a lodger, having split up from his long-term girlfriend. The accusation in the application that the Respondent and her husband were not staying at the Property is completely false. The Applicant never asked to speak to them when he called to collect his mail.
6. Moving into the Property was the perfect solution as, being a ground floor flat, it has no stairs.
7. On 3 April 2024, the Applicant provided further written submissions to the Tribunal. He said that he had made repeated attempts to retrieve his mail on various times and dates and neither the Respondent nor her partner were ever present at the Property. Observations from outside the Property indicated no signs of occupancy, with furnishings left untouched since his departure. The Respondent's nephew had told him that he had separated from his girlfriend approximately three months before. He confirmed leasing the Property from his aunt. The Applicant questioned the practicality of three adults cohabiting in a small flat. Additionally, when he collected his mail, he heard barking coming from the Property, which contradicted the letting agent's stipulation to him against pets due to the Respondent's severe allergies. He also attached Instagram messages which indicated that the Respondent's nephew was involved in Council Tax matters, despite the Respondent portraying herself as the primary occupant. He suggested that the Respondent should provide documentary evidence, such as a Council Tax or utilities bill as evidence of her residency at the Property.

Case Management Discussion

8. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 2 May 2024. Both Parties were present.
9. The Respondent told the Tribunal that her husband moved into the Property on 7 November 2023. She had not moved in with him as her father had been very ill and had subsequently died. She had had to provide care and support for him and, after his death, for her mother. The intention had been that the Respondent and her husband would move into the Property together, but her caring duties for her parents meant that she was not in a position to move in. Her nephew had recently separated from his long-time partner and it had been decided that he would move into the Property, as he would be able to provide support and an overnight presence for her husband, as she could not be there. He did not pay any rent, but took on the Council Tax and utilities liabilities, with the Respondent's husband paying for food. The Respondent was frequently at the Property during the day. Her husband had recently moved back to their permanent home, having completed his treatment. Her nephew had also now moved out.
10. The Applicant told the Tribunal that he was at the Property several times after he moved out and the Respondent was never there. When he did meet the Respondent's nephew at the Property, the nephew had at no time mentioned that his aunt and uncle were staying there. The Applicant felt that the Respondent was changing her story and the changes in circumstances were never communicated to him. He wondered why the Council Tax and utilities accounts had not been left in the name of the Respondent, with her nephew reimbursing her the cost.
11. The Respondent said that she had no reason to lie about the situation. She accepted that the Notice to Leave said that she intended to live in the Property, but unforeseen circumstances completely outwith her control had meant that her husband moved in, to have the ability to live on the ground floor until his treatment was finished, but that she could not.

Findings of Fact

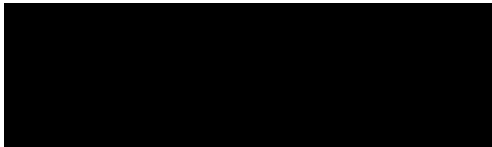
- i. The Applicant was served with a Notice to Leave dated 18 August 2023, advising him that the Respondent intended to apply for an Eviction Order on the Ground that she intended to live in the Property. The Notice stated that an application to the Tribunal would not be made before 13 November 2023.
- ii. The Applicant vacated the Property on 31 October 2023.
- iii. The Respondent has not lived in the Property since then.
- iv. The Respondent's husband lived in the Property from 7 November 2023 until recently.
- v. The Respondent's nephew lived in the Property from 11 November 2023 until recently.
- vi. Council Tax and utilities bills were, until recently, in the name of the Respondent's nephew.

Reasons for Decision

12. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation it required to enable it to decide the application without a Hearing.
13. Section 58 of the Act applies where a private residential tenancy has been brought to an end by service of a Notice to Leave, following which the tenant has vacated the property. 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 landlord.
14. Section 59 of the Act provides that a Wrongful-termination Order is an order requiring the landlord to pay the person who made the application an amount not exceeding six months' rent.
15. The Tribunal considered very carefully all the evidence before it and noted in particular that the Notice to Leave stated that the Respondent intended to live in the Property but that, in the event, that had not happened. The Respondent had provided the Applicant with evidence to explain the reason for her husband to live on the ground floor without having to cope with stairs. The Tribunal accepted that the Applicant was entitled to have asked for evidence to support the application and that he was not made aware of the change in the Respondent's circumstances. The Tribunal noted that the Respondent did not dispute the fact that she had not in fact lived in the Property, but the Tribunal's view was that, at the time the Notice to Leave was served, her intention had been for her to move there with her husband. Had it been her intention that her husband would move in without her, the Notice to Leave could simply have specified that a member of her family intended to live there. Her husband moved in shortly after the Applicant moved out. The Tribunal made no finding as to whether the Respondent's nephew was a tenant or a lodger, but held that he shared occupancy of the Property with the Respondent's husband.
16. The Tribunal found, on the balance of probabilities, that, at the time the Notice to Leave was served, the Respondent intended to move in with her husband. Events had, however, overtaken that intention, with the result that she did not join her husband. The view of the Tribunal was that the Respondent had not intended to mislead the Applicant and that, but for unforeseen circumstances that occurred after the Notice was served, she would have lived in the Property. The Tribunal was unable to hold that the reason for wanting the Applicant to vacate the Property was to allow the Respondent's nephew to replace him, rather than to allow the Respondent and her husband to live there. It is for Applicants to prove their case and the Applicant had failed to do so. Accordingly, the Tribunal refused the application.

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.Clark

Legal Member/Chair

2 May 2024
Date