

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/23/0723

Property : 26 Seafield Drive East, Aberdeen AB15 7UX ("Property")

Parties:

Claire Ozsoydan, 6 Seafield Crescent, Aberdeen AB15 7XD ("Applicant")

Marcos Monteferrante, 52 Cairnlee Avenue East, Cults A15 9NH ("Respondent")

Stonehouse Lettings, Neo House, Riverside Drive, Aberdeen AB11 7LH("Respondent's Representative")

**Tribunal Members:
Joan Devine (Legal Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined not to make a wrongful termination order.

Background

The Applicant sought a wrongful termination order in terms of section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 ("2016 Act"). The Applicant had lodged Form G. The documents produced were : Notice to Leave under Section 50(1)(a) of the 2016 Act dated 3 October 2022 which stated that the ground for eviction was that the landlord intended to sell the Property ("Notice to Leave"); Copy sale quotation from Andersonbain LLP; Copy email from the Respondent to Marlene Leiper dated 3 October 2022 instructing service of the Notice to Leave; A rent increase notice dated 17 June 2022 regarding an increase in the rent for the Property from £995 per month to £1100 per month effective from 4 October 2022; and a copy Private Residential Tenancy Agreement dated 5 and 6 August 2020 between Eleazaida Monteferrante as landlord and Gokhan Ozsoydan and the Applicant as tenant.

A case management discussion ("CMD") was fixed for 4 August 2023. In advance of the CMD the Respondent lodged a written representation along with productions numbered 1 to 11.

Case Management Discussion

A CMD took place before the Tribunal on 4 August 2023 by teleconference. Both Parties were in attendance at the CMD. The Tribunal asked the Respondent why his name did not appear on the tenancy agreement. He said that the Property was owned jointly by himself and his wife. The Applicant said that the Respondent was the registered landlord. The Parties agreed that the Applicant vacated the Property on 3 December 2022.

The Tribunal noted that the application was made in terms of section 58 of the 2016 Act which applied where a private residential tenancy has been brought to an end and provided that an application for a wrongful termination order may be made by a person who was a tenant or a joint tenant immediately before the tenancy ended. Section 58 provides 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 key issue to be determined therefore was whether the Applicant was misled by the Respondent into ceasing to occupy the Property.

The Tribunal noted that in the Notice to Leave, eviction was sought on ground 1 which is that the landlord intends to sell the let property. The Tribunal noted that the submission from the Respondent and supporting documents indicated that the Respondent discovered a leak in the Property shortly after the Applicant vacated. The repairs required were substantial. Photographs had been lodged showing the ongoing works. An email from Sedgwick International dated 7 March 2023 had been lodged which stated that the insurer would issue a payment of £23,760.45 in respect of the insurance claim. An email from Andersonbain dated 29 May 2023 had been lodged in which they stated that the Property would now be placed on the market. The Tribunal asked the Applicant to comment on the submission lodged by the Respondent. She said that she had been shocked to read the submission. She said she had not been aware that repairs were required. She said that the Property is currently being marketed. The Tribunal asked the Applicant if she disputed anything said by the Respondent in the submission. She said that she did not. The Tribunal asked the Applicant if there was anything that required to be determined at an evidential hearing. She said that there was not. The Tribunal asked the Applicant if she was content for the Tribunal to proceed to make a decision. She said that she was content to proceed in that way.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement which commenced 4 September 2020 ("Tenancy Agreement").
2. The Respondent issued a Notice to Leave to the Applicant dated 3 October 2022 which stated that the ground for eviction was that the landlord intended to sell the Property.
3. At the date of issuing the Notice to Leave the Respondent intended to sell the Property once possession was obtained.
4. Repairs required to be carried out to the Property following the discovery of a leak after the Respondent obtained possession of the Property.
5. The Property is currently being marketed.

Findings in Fact and Law

1. The Respondent did not mislead the Applicant into ceasing to occupy the Property.

Reasons for the Decision

Section 58 of the 2016 Act states :

58. Wrongful termination without eviction order

- (1) This section applies where a private residential tenancy has been brought to an end in accordance with section 50..*
- (2) An application for a wrongful termination order may be made to the First-tier Tribunal by a person who was, immediately before the tenancy ended, either the tenant or a joint tenant under the tenancy.*
- (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.*
- (4) In a case where two or more persons jointly were the landlord under the tenancy immediately before it ended, the reference to the landlord in subsection (3) is to any one of those persons.*

The issue for the Tribunal to determine was whether the Respondent misled the Applicant into ceasing to occupy the Property. The Respondent relied on ground 1 when serving the Notice to Leave which is that the landlord intends to sell the let property. It was apparent to the Tribunal that the Respondent did intend to sell the Property at the date of service of the Notice to Leave but marketing was delayed as repair work required to be carried out. The evidence in support of this included photographs of ongoing work, an email from an insurance broker stating that the

insurer would pay £23,760.45 in respect of the claim and an email from Andersonbain confirming they would place the Property on the market. The Applicant acknowledged that the Property is currently being marketed.

Decision

The Tribunal refuses to grant a wrongful termination 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.

Joan Devine

**Joan Devine
Legal Member**

Date : 4 August 2023