



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/23/0048

Re: Property at 34 Selvage Place, Rosyth, KY11 2QG (“the Property”)

Parties:

Miss Danielle Bishop, 35 Concorde Way, Inverkeithing, Fife, KY11 1PT (“the Applicant”)

Mrs Gloria Ochelli, Mr Michael Ochelli, 100 Calderbank Road, Airdrie, ML6 9QB (“the Respondents”)

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 decided without a Hearing and refused the application.

Background

1. By application dated 9 December 2022, the Applicant sought a Wrongful Termination Order against the Respondent under Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”).
2. The Applicant stated that she had vacated the Property after receiving a Notice to Leave citing Ground 1 of Schedule 3 to the Act, namely that the Respondent landlords intended to sell the Property, but that she had been misled by the Respondents. The Applicant and her family had been made homeless and had been forced to split up, with her partner having to live with his mother and the Applicant and her son living with her mother. The Applicant had then come across an advertisement for rent of the Property at a higher rent. The Property had never been sold and the Applicant was looking for compensation for the stress and ill-health this had caused her. Her son had also suffered severely as a result of the family having to split up.

3. The application was accompanied by screenshots of on-line advertisements of the Property for rent at £750 per month, available from 13 December 2022.
4. On 23 March 2023, 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 13 April 2023.
5. On 7 April 2023, the Respondents provided their written representations to the Tribunal. They said that in May 2022, they had approached their letting agents to inform them that they intended to sell the Property as they wished to pay off their mortgage and reduce their overall debt. Notice to Leave had been served on the tenants on the Ground that the Respondents intended to sell the Property. The Applicant and her partner (the tenants) moved out on 25 September 2022. The Respondents then began renovating the Property, but due to limited funds and the high cost of materials, they were unable to complete the work, involving a full renovation of the bathroom and kitchen as well as a cosmetic makeover, within the planned two-month period. Disappointingly, they had felt that they would not be able to achieve a good market value if they put the Property in its current condition up for sale in the open market, so they had made the uncomfortable decision to sell it to their company (Planplex Limited). They decided to put the Property up for rent during the sale process, as they were informed that the sale completion could take up to 3 to 4 months. They decided to list it at £750 per month due to the high increase in their mortgage payments, as their fixed-term mortgage was coming to an end in January 2023 and their monthly payments were increasing from £161.79 to £421.09 in February 2023 and £447.73 in March 2023.
6. On 20 December 2022, the Respondents received the mortgage offer in respect of their limited company, and the sale to Planplex Limited was completed on 8 March 2023 and their personal mortgage paid off.
7. The Respondents stated that they did not mislead the Applicant and her partner (the tenants) or wrongfully terminate the tenancy. Things had not gone as planned due to the current economic climate. They had genuinely intended to sell the Property and they did so in the end.
8. The Respondents provided, with their written representations, copies of an offer of loan to the limited company, a letter of engagement of 30 January 2023 from W&AS Bruce, solicitors, Dunfermline, regarding the sale of the Property, a further letter from them of 8 March 2023 enclosing their statement of account for the sale and a letter from TSB confirming that the Respondent and her partner's mortgage had been paid off. The offer of loan to the limited company provided for 24 monthly payments of £463.27, followed by 276 payments of £620.73. The amount of the loan was £99,450.
9. From its own investigations, the Tribunal ascertained that Planplex Limited was incorporated on 14 March 2016, the nature of its business being letting and operating of own and leased real properties, and that Registers of Scotland records showed an Advance Notice, valid from 9 March 2023 until

12 April 2023 of a transfer of title to Planplex Limited and of a Standard Security by that company. The records for the company lodged with Companies House state that the persons with significant control are the two Directors, namely the Respondents in this application. The Tribunal also ascertained that the Respondents are still shown as the landlords in the Landlord Registration system.

10. A Case Management Discussion was held on the afternoon of 4 May 2023. The Applicant and the Respondents were all present.
11. The Respondents advised the Tribunal that the Property had been re-let in December 2022 and that the sale price to the limited company was £130,000. They stressed that they simply wanted to sell the Property and, in serving Notice to Leave, had no intention of misleading the Applicant. They had given 84 days' notice and it had taken 3 months to renovate the Property. It was just the way things were. They knew they would not achieve the market rate, so they sold the Property to the limited company in the hope of being able to do other improvement works. The sale allowed them to take back their personal funds that they had invested in the Property. They had been very happy with the Applicant and her partner as tenants, but they had not had any contact with them, contact being between the tenants and the letting agents, so had no knowledge of the ongoing problems that losing the tenancy would involve for the tenants.
12. The Applicant was content that her complaint was covered by her written representations.
13. The Tribunal's view was that it could not determine the application without being provided with further documentation. It appeared that the Respondents had re-let the Property before concluding the sale to their limited company and they are still the registered landlords in respect of the Property. The Respondents had stated that the sale price was £130,000, but the Tribunal did not have evidence of that. The Tribunal had to be satisfied that this was not merely a "sham" sale. Accordingly, the Tribunal issued a Direction to the Respondents to provide certain additional documentation and information, for consideration at a further Case Management Discussion, the date and time of which would be intimated to the Parties in due course.
14. On 8 June 2023, the Respondents submitted further representations and documents to the Tribunal. They included an email of 10 May 2023 from W&AS Bruce, solicitors, Dunfermline stating that they had not regarded it as necessary to enter into missives for the sale, as the Respondents were the only two Directors and shareholders of Planplex Limited, and a copy Disposition in favour of the company dated 4 March 2023. The Disposition stated that the price was £130,000, of which £99,450 was paid in cash, the balance being a gift of equity by the Respondents. The Respondents also provided a copy of the new tenancy agreement, commencing on 12 December 2022 at a rent of £750 per month. Planplex Limited were stated in the lease to be the Landlords. They explained that each of them had thought

that the other had dealt with the change in landlord registration details to reflect the change of ownership, but that this had now been done. They emphasised how sad they were that their former tenant had not contacted them when she saw the Property listed online, as they would have been more than happy to re-let to her, as she was a really good tenant.

Second Case Management Discussion

15. A second Case Management Discussion was held by means of a telephone conference call on the morning of 25 July 2023. The Applicant and the Respondents were again all present. The Respondents stressed that a sale had actually gone ahead, so they had not misled the Applicant. It enabled the Respondents to repay their mortgage and recover the money they had invested in the Property. The Applicant referred to the Respondents' comments in their representations of 8 June 2023 that they would have been happy to re-let to her and advised that this had not been reflected in the matter of the return of the deposit, where the Respondents tried to retain all but £125 of the deposit, the sum eventually being returned to her being £320 of £450. The Respondents said that they had had no part in this process. It had been dealt with entirely by their letting agents.

Reasons for Decision

16. Rule 17 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 states 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 the information and documentation it required to decide the application without a Hearing.
17. Section 58 of the Act 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."
18. The Tribunal considered carefully all the evidence, written and oral, before it. There was clear evidence that a sale had actually gone ahead and the question for the Tribunal was whether it was a genuine or a "sham" transaction. The consideration had been stated to be £130,000, but of that, £99,450 was paid in cash, the balance being a gift of equity by the Respondents to the limited company of which that are the sole Directors and shareholders. The Tribunal accepted that this was an unusual arrangement but noted that the cash sum paid was the amount of the mortgage that the company had obtained. The Respondents explained that this enabled them to pay off their mortgage and recover the money they had invested in the Property. The Respondents had also provided a copy letter of engagement from their solicitors regarding the sale, that letter being dated 30 January 2023. The Tribunal noted in particular that the new lease, commencing on 12 December 2022, ran in the name of the limited company as Landlords and that the mortgage offer to the company was dated 20 December 2022, both prior to the date on which the Respondents would have become aware of the application to the Tribunal. The Tribunal intimated the application to them on

23 March 2023, by which date the sale had been completed and the Disposition in favour of the company registered in the Land Register.

19. The Tribunal was satisfied from the evidence provided, that, when the Notice to Leave was served on 30 June 2022, the intention of the Respondents was to sell the Property after carrying out renovation works, and accepted as reasonable their statement that, having carried out some of the works after the Applicant vacated the Property, they did not have the funds to do all that they had intended, that they might not achieve on the open market the price they would have hoped for had the work been completed and that selling the Property to their company, with that company taking out a mortgage, provided a solution whereby their personal financial position would be eased.
20. Having considered all the evidence, the Tribunal accepted, on the balance of probabilities, that the transaction was not a “sham”, that, when the Notice to Leave was served, the Respondents had intended selling the Property and that, accordingly, the Applicant had not been misled into ceasing to occupy the Property.

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

25 July 2023
Date