



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/20/1833

Re: Property at 3/1 29 Braeside Street, Glasgow, G20 6QU (“the Property”)

Parties:

Miss Monica Inmaculada Morcillo Aparicio, Mr Damian Dabrowski, Abades numero 4 bajo b, Jaen, CP 23002, Spain, Spain; Bialaszewo, UL M KOPERNIKA 1, 19-200 GRAJEWO, Poland (“the Applicants”)

Elisabeth Rigol, Mr Samuel Jones, C/ Francesc Macia no 39, Sant Vincenc Dels Horts, Barcelona, 08620, Spain (“the Respondents”)

Tribunal Members:

Nairn Young (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background
1. This is an application for a wrongful-termination order in relation to the termination of the Applicants’ private residential tenancy (‘PRT’) at the Property, in terms of which the Respondents were the landlords. It called for a hearing at 10am on 20 January 2021 by teleconference. The Applicants called in to the teleconference in person and indicated that the second named Applicant would speak for them both. The Respondents also both called in in person and indicated that the second named Respondent would speak on their behalf.

2. In the course of the hearing, the first named Applicant left the call. The Tribunal considered that it could continue the hearing on the basis that the second named Applicant was speaking on behalf of both Applicants. The second named Applicant agreed with that course of action.
- Findings in Fact
3. The Applicants occupied the Property, with the exception of one bedroom, from 1 July 2019 until 16 January 2020.
 4. The basis of their occupation was originally understood by both parties to be a short assured tenancy agreement. However, after taking legal advice, the Applicants requested that they be given written terms corresponding to a PRT. An agreement in that form was executed by the parties on 17 December 2019, but backdated in effect to 1 July 2019.
 5. On the same day that the written terms of the PRT were sent to the Applicants for agreement (16 December 2019), a notice to leave was sent to them by the Respondents' agents.
 6. The ground identified in the notice to leave was, "Your landlord intends to live in the Let Property." This was given the further detail on Part 3 of notice, "Your Landlord is returning to Glasgow from Spain and requires vacant possession of the Let Property to occupy as their principal home."
 7. On the basis of the information provided in the notice to leave, the Applicants left the Property on 16 January 2020, thus bringing the PRT to an end in terms of s.50 of the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act').
 8. The second named Respondent moved into the Property on 17 January 2020.

9. He continued to occupy the Property as his principal home until at least 16 June 2020.

10. The Applicants were not misled into ceasing to occupy the Property by the Respondents.

- Relevant Law

11. Since the Applicant's tenancy was terminated in terms of s.50 of the Act, the relevant provision in regard to an application for a wrongful-termination order is s.58, which reads:

“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 (“the former tenant”).

(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.”

12. It is also relevant to note the terms of the ground for eviction relied on in the notice to leave, as set out in the Act. These are found at paragraph 4 of Schedule 3 and read (so far as is relevant):

“4 Landlord intends to live in property

(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 subparagraph (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....”

- **Reasons for Decision**

13. Despite there being some irregularity in relation to the form of the lease used initially in this case, it was not in dispute that the Applicants are former tenants under a private residential tenancy, and thus entitled to make the application. The principal issue that required to be determined by the Tribunal was therefore whether or not the Applicants were misled into ceasing to occupy the Property by the Respondents.

14. The Applicants contend that they were misled by the notice to leave into leaving the Property, because the Respondents did not intend to occupy it as their only or principal home. At the hearing, they observed that the notice to leave was served on them at the same time as the correct form of tenancy agreement, against a background where the original tenancy agreement had purported to have a term ending in September 2020. They suggested that that shows that the reason for serving the notice to leave was to remove them as tenants, due to their insistence that they had a PRT, not to take up occupation of the Property.

15. Further, they contend that neither landlord actually did live in the Property on that basis following termination of the PRT. In relation to this latter point, they relied particularly on a letter from sheriff officers dated 15 July 2020, reporting an inability to serve papers in relation to a different matter on the second named Respondent at the Property. That letter states, “We spoke with 2 neighbours who both confirmed Mr Samuel Jones is known to be the owner/ landlord of the flat at the given address... but that he does not and has never resided at this address.... Neighbours stated “new tenants” moved into the flat at the given address a few months ago, but no other details are known.” The Applicants also referred to the flat having been listed on a property website for let in August 2020.
16. The Respondents’ position is that the notice to leave was not misleading. They state that the second-named Respondent did in fact occupy the Property as his only or principal home from 17 January 2020 to 12 September 2020. Following that time, he moved out and the Property was re-let.
17. In support of that position, they produced council tax bills sent to the second named Respondent at the Property dated 18 and 29 February 2020, covering the periods 17 January to 31 March 2020 and 1 April 2020 to 31 March 2021, respectively. In addition, they produced a P45 form submitted by an employer to HMRC showing that the second named Respondent finished the employment it relates to on 16 June 2020, with the Property as his private address for tax purposes.
18. The Tribunal considered that, in the face of the contrary evidence provided by the Respondents, the Applicants had failed to prove their case. The information regarding occupation of the Property that came from the sheriff officers’ letter cannot carry much weight, being only a report of something that neighbours told those officers. It can only speak to what those (unidentified) neighbours said and does not give any information as to what their statement was based on. As against that, taken together, the official documents produced by the Respondent support his position that he took up occupation

of the Property as his principal home on 17 January 2020 and was residing there, at least until 16 June 2020. That is sufficient to satisfy the ground that the Respondents relied on in the notice to leave, which only requires a landlord to intend to occupy a property for 3 months. The evidence from the website listing cannot undermine that conclusion, dating, as it does, from August 2020.

19. The circumstances surrounding the issuing of the notice to leave may cast doubt on why the second named Respondent intended to occupy the Property, but do not themselves undermine the evidence that he did have that intention. In the course of the hearing, the second named Respondent admitted that what he described as a, “communications breakdown,” between himself and the Applicants fed into his decision to move into the Property, among other factors. The legislation does not require a landlord to show that he or she had any particular motive for wanting to move to a let property: only that they did in fact intend to make such a move. This element of the Applicants’ evidence is not therefore relevant to the Tribunal’s decision.

- Decision

Application refused.

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.

Nairn Young

20 January 2021

Legal Member/Chair

Date