



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/20/0013

Re: Property at The Manse, Bowhouse Road, Grangemouth, FK3 0EX (“the Property”)

Parties:

Mr Mory Marcel Sangare, Mrs Sandrine Zelda Mozez, 60 Glentyre Drive, Tullibody, FK10 2UR; 60 Glentyre Drive, Tullibody, FK10 2UR (“the Applicants”)

The Church of Scotland General Trustees, 121 George Street, Edinburgh, EH2 4YN (“the Respondent”)

Tribunal Member:

Helen Forbes (Legal Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were not misled by the Respondent into ceasing to occupy the Property and the order is refused.

Background

1. This is an application received in the period from 6th January to 15th June 2020, made in terms of Rule 110 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) and section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Applicants are seeking a wrongful-termination order. The Applicants lodged copy correspondence between the parties, copy text message from the daughter of the Applicants, and a USB stick containing audio files and pictures.
2. By email dated 8th August 2020, the representative for the Respondent lodged written representations and documentation, including copy tenancy agreement, copy notices to leave dated 12th August 2020, copy email correspondence to the Applicants and to the letting agent, Belvoir, and copy Presbytery letter dated 12th August 2020.

3. A Case Management Discussion (“CMD”) took place by telephone conference on 20th August 2020. It was agreed at that time that the tenancy had been brought to an end by the section 50 notice.
4. The Applicant, Mr Sangare, outlined the Applicants’ case, namely that at the end of June 2019, two ladies from the Church of Scotland had come to the Property and asked if a prospective minister could view the Property. A hand-written note from a member of the Kirk of the Holyrood was left at the Property, asking the Applicants to contact the writer and stating that this was not notice to leave. The Applicants did not agree to the viewing. They contacted the letting agents the following day to express their displeasure. It was their position that viewings could only take place after a notice to leave had been served. The Applicants were asked again twice, in early and late July to allow the minister to view the Property. They felt frustrated and angry and felt they were being harassed, and that the correct process was not being followed. Thereafter, the Applicants were asked again, and they were told the minister was viewing the Property to see if he liked the area. They reluctantly allowed the viewing in early August. Three working days later, they received notice to leave.
5. Mr Sangare said on 8th August 2019, there was an incident whereby two ladies from the Church of Scotland came to the house concerned about ‘a strange young girl’ who had been seen entering the house. This was the Applicants’ daughter. This had a significant effect upon their daughter, who felt frightened and did not want to leave her parents.
6. Mr Sangare felt that the above incidents were tactics designed to try and push them out of the Property. He believed the Respondents had used violence and hypocrisy.
7. Ms Killean said the Respondents accepted, and had been quite open about, the fact that the members of the Kirk ought not to have approached the Applicants in the way they did. The church had been actively seeking a minister for three and a half years. The tenancy agreement clearly states on page 20: *“The tenant is asked to note the Property is held for a person engaged in the work of a religious denomination as a residence from which the duties of such person are to be performed and has previously been used for that purpose”*. The notice to leave was served on the basis that the manse was required for a minister. The minister moved into the manse in November 2019 and he is still there.
8. Ms Killean’s position was that, under section 58 of the Act, the Applicants would have to show that they had been misled into ceasing to occupy the Property. In this case, the notice to leave was in the statutory form. The Notice clearly states the reason for seeking eviction, namely: *“The Let Property is held for a person engaged in the work of a religious denomination (Church of Scotland) as a residence from which the duties of such a person are to be performed; the Let Property has previously been used for a residence of a Minister of the Church of Scotland; and the Let*

Property is now required for that purpose.” No other purpose was suggested. The Respondent did not mislead the Applicants. The Applicants were entitled to say no to the viewing.

9. The Tribunal set out the legal test for the Applicants. The Applicants did not accept the comments made by the Tribunal, stating that the Respondent had misled the Applicants by giving the wrong impression and saying there was no risk they would have to leave the Property if they allowed the viewing. One had to look at the interpretation of ‘mislead’ and the meaning of the word should not be restricted to assist the Respondent. The Applicant, Mrs Mozez said the Tribunal was ignoring the context of the complaints and not trying to understand. She said a business such as the Respondent ought to be acting properly and they had not done so.
10. The Tribunal considered that it would not be appropriate to fix an evidential hearing in this case. The CMD was adjourned to a further CMD to allow the Applicants to take advice from a solicitor or an appropriate advice agency on the merits of their case.

Case Management Discussion

11. A Case Management Discussion (“CMD”) took place by telephone conference on 2nd October 2020. The Applicants were in attendance. The Respondent was represented by Ms Susan Killean, Solicitor.

Applicants representations

12. The Applicants indicated that they continued to believe their case to have merit. They said the definition of to mislead was to cause someone to have the wrong impression. They believed they had been misled into leaving the Property by being given the wrong idea or impression.
13. The notice to leave of 12th August 2020 relied upon ground 7 of Schedule 3 of the Act, which is that the property is required for religious purposes. However, no minister had been appointed at the time that the notice was served. The minister had only visited their property on 7th August and the notice was served on 12th August 2020. The procedure ought to have been treated like a recruitment process, and the notice should not have been served until a minister had been appointed.
14. It was written in the handwritten note from the kirk session that the Applicants were not being asked to leave and that a minister wished to view the Property to consider the area. This was clearly an effort to mislead the Applicants.
15. Although the notice to leave was legal in formulation, it was illegal in terms of due process. The correct procedure would have been to have served the notice to leave and then have the minister visit the Property. The Respondent did things the wrong way round, therefore, there was no legal value to the notice. The Applicants left the Property on the ground of constant harassment.

Respondent's representations

16. Ms Killean said that a minister is not employed in the normal way. They are called to the ministry. Before a call is made, a manse must be available. The church is made up of a number of courts and the Presbytery's function is to see that the minister called has somewhere to live. The notice to leave was served on the basis that the congregation was actively looking for a minister. They had a couple of candidates and hoped that one would take the call. The notice to leave was issued to solidify the interest into a call.
17. Upon taking up the lease, the Applicants were in no doubt that they were living in a manse and that it may be required for occupation by a minister.
18. The wording of ground 7 of Schedule 3 of the Act allows the Respondent to get the property back when required, which is as soon as the congregation wishes to call a minister. The fact that the minister was not identified at the time of serving the notice to leave is not crucial.
19. The actions taken by the Respondent were well within the legislation. The notice to leave was correctly served. The Applicants were not misled.
20. Ms Killean moved that the application be dismissed.

Response of Applicants

21. Mr Sangare said the Applicants knew they were living in a manse that might be required if a minister was appointed, but no minister had been appointed when the notice to leave was served on 12th August 2020.
22. Other eviction grounds, such as selling a property or the landlord intending to live in the property, have to be evidenced with certain documentation. That did not happen in this case. The notice to leave should have been served when they knew the intention of the prospective minister. The behaviour of the Respondent was horrendous.
23. Mrs Mozez said they believed they had a commercial agreement and the same rights as other private residential tenants. It was not made clear to them that they would be treated differently by the church. The communication was not clear. The closing date for ministers interested in being called was 31st August 2020, which was after the date of service of the notice to leave.
24. Mr Sangare said the application should not be dismissed as there is enough to demonstrate the Respondent's intention to mislead. There are hours of telephone conversations with the letting agent available to evidence the Applicants' case.

Findings in Fact

- 25.
- (i) The parties entered into a private residential tenancy agreement in respect of the Property which commenced on 27th February 2019.
 - (ii) The Applicants were, immediately before the tenancy ended, joint tenants under the tenancy agreement.
 - (iii) The Respondent was the landlord of the Property immediately before the tenancy agreement was brought to an end.
 - (iv) The Property is a church manse held by the Parish of Grangemouth Kirk of the Holy Rood.
 - (v) The tenancy agreement set out at clause 20 that the Property is a manse held for a person engaged in the work of a religious denomination as a residence from which the duties of such person are to be performed and has previously been used for that purpose.
 - (vi) In early July 2019, members of the Kirk Session of the Parish of Grangemouth Kirk of the Holy Rood left a hand-written note at the Property requesting that a prospective minister be allowed to view the Property. Thereafter, further requests for a viewing were made and these requests were turned down by the Applicants.
 - (vii) In early August 2019, the Applicants agreed to allow the prospective minister to view the Property, believing that he wished to see whether he liked the area in which the Property is situated.
 - (viii) On 12th August 2019, the Respondent served notices to leave on the Applicants on the ground that the Property was required for a religious purpose.
 - (ix) By letter dated 31st August 2019, the Applicants wrote to the Respondent stating that they were giving notice of their intention to leave the Property as a result of numerous violations of the law and a terror campaign against the Applicant, Mrs Moez and the daughter of the Applicants by representatives of the Respondent.
 - (x) The Applicants vacated the Property on 28th September 2019.
 - (xi) A minister took up the call from the congregation and moved into the manse in November 2019. He continues to reside there.
 - (xii) The Respondent was entitled to serve notice to leave on the basis that the Property was required for a religious purpose. It was not necessary to

name the minister or have a firm acceptance of the call before serving notice to leave.

- (xiii) The notices to leave were valid and the correct procedure followed in terms of the Act. The tenancy was brought to an end in accordance with section 50 of the Act.
- (xiv) The Applicants were not misled into ceasing to occupy the Property by the Respondent.

Reasons for Decision

26. In terms of Rule 17(4) the Tribunal may do anything at a case management decision which it may do at a hearing, including making a decision.

27. Section 58 of the Act states:

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) ...

28. Ground 7 of Schedule 3 of the Act states:

Property required for religious purpose

7(1) It is an eviction ground that the let property is required for use in connection with the purposes of a religion.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) the let property is held for the purpose of being available for occupation by a person engaged in the work of a religious denomination as a residence from which the duties of such a person are to be performed,

(b) the property has previously been occupied by a person engaged in the work of a religious denomination as a residence from which that person's duties were performed, and

(c) the property is required for the purpose mentioned in paragraph (a).

(3) In sub-paragraph (2), reference to a person engaged in the work of a religious denomination includes an imam, a lay missionary, minister, monk, nun, priest and rabbi.

29. The Applicants claimed to have been misled by the members of the Kirk Session into allowing a viewing of the Property by the prospective minister, citing the information contained within the handwritten note left at the Property. This took place before the notice to leave was served as provided for in section 50 of the Act.
30. The Tribunal's starting point in determining whether or not the Applicants were misled into ceasing to occupy the Property is the notice to leave, provided for in section 50, and the reason given for seeking eviction. In this case, a valid notice to leave was served, citing ground 7 of Schedule 3 of the Act as a reason for seeking eviction.
31. The Property was required by the Respondent for the purpose of being available for occupation by a person engaged in the work of a religious denomination as a residence from which the duties of such a person are to be performed. There is nothing in the wording of the legislation to support the Applicants' contention that the minister must be identified and/or appointed prior to the notice to leave being served.
32. The tenancy agreement specifically refers at clause 20 to the Property being held for a person engaged in the work of a religious denomination.
33. Following the termination of the tenancy agreement between the parties, the Property was used for occupation by a person engaged in the work of a religious denomination. It continues to be so used. No evidence to the contrary was put forward.
34. The Applicants accept the notice to leave as being valid. Their contention was that it was illegal in terms of due process. The Tribunal did not find that to be the case. The correct procedure was carried out in terms of the Act.
35. The Tribunal did not find that the Applicants were misled into ceasing to occupy the Property by the Respondent.

Decision

36. Given that the Applicants were not misled into ceasing to occupy the Property by the Respondent, the test for a wrongful-termination order is not met and the order is 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.

H Forbes

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Legal Member

2nd October 2020
Date