



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/23/1170

Re: Property at 32 Spylaw Road, Edinburgh, EH10 5BL (“the Property”)

Parties:

Ms Miriam Reynolds, 15 Napier Road, Edinburgh, EH10 5AZ (“the Applicant”)

Mr Gordon Henry, Mrs Jane Patricia Henry, 6 Cluny Gardens, Edinburgh, EH10 6BJ (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

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

- **Background**

1. An application was submitted to the Tribunal under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) seeking a Wrongful Termination Order under section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) on the basis that the Applicant was misled into ceasing to occupy the Property by the Respondents.
2. A Case Management Discussion (“CMD”) took place on 3 July 2023 by way of conference call. The Applicant was personally present and represented herself. The Respondents were personally present and were represented by their son, Mr David Henry.
3. The Applicant moved for a Wrongful Termination Order to be granted. The Applicant submitted that she had been misled into ceasing to occupy the let Property by virtue of the Respondents serving her with a notice to leave. The

Applicant submitted that she had lodged a number of documents purporting to show the behaviour of the Respondents during the course of her tenancy. The Applicant referred to an incident involving a requirement to instruct pest control and the Respondents refusing to accept responsibility for the costs of same. Thereafter she was served with a rent increase notice and shortly thereafter a notice to leave, which was based on the Respondents' reliance on ground 1 of Schedule 3 to the said 2016 Act, being the landlords' intention to sell the Property. The Applicant stated that whilst the Property was indeed marketed for sale, the Respondents had no intention of selling the Property nor accepting any offers made, and they then re-let the Property at an increased rent thereafter. The Applicant submitted that she did not accept the Respondents' position that their change of heart in relation to selling the Property was due to a change in capital gains tax rules.

4. The Respondent's representative submitted that it was the Respondents' intention to sell the Property at the point that the notice to leave was served on the Applicant. The Respondents had instructed a solicitor to handle the sale, they paid for a home report and a premium listing on Rightmove, all at a cost of £1664. Following the Applicant moving out of the Property, there required to be works done to bring the Property back up to an acceptable standard which resulted in the Respondents having to move into the Property to supervise the works and conduct the viewings themselves. Mr Henry submitted that there were a number of reasons why the Respondents intended to sell the Property, the first of which was speculation in the media regarding changes to the capital gains tax rules. Mr Henry submitted that the Respondents are in their 70s and considered that letting out the Property was causing a lot of hassle. They had planned to carry out certain works to the Property in which they reside and the proceeds of sale would be able to pay for those works. However, following the Applicant removing from the Property, the Respondents received payments from their respective late mothers' executries which would allow them to pay for the works required on their own Property. They had not known how much payment they would receive from these executries prior to service of the notice to leave on the Applicant. The Government also had a change of direction as regards the capital gains tax regime, which satisfied their concerns. The Respondents were satisfied that the Edinburgh Property market was buoyant at that point, and they did not see any reason why that would change in the future. Mr Henry submitted that the Property in question is used as security for a loan which is subject to a variable rate of interest. Mr Henry submitted that the Respondents' intention to sell the Property only changed at the point that they received the three offers. It was only at that point that they had the information necessary to make such a decision. The Respondents position is that they did not mislead the Applicant into ceasing to occupy the Property and did indeed intend to sell the Property.
5. The CMD was adjourned and a Hearing fixed for evidence to be heard as to whether or not the Applicant was misled into ceasing to occupy the Property by the Respondents. The tribunal was satisfied on the basis of the documentation before it and on the basis of the submissions made by both parties, that the requirements of s1(2)(a) and (b) of the eviction ground had been met, namely that the landlord is entitled to sell the let Property and that the landlord has put

it up for sale within three months of the tenant ceasing to occupy. The question remained as to whether or not the tenant had been misled into ceasing to occupy the Property in terms of section 58 of the said 2016 act.

- **The Hearing**

6. A Hearing took place on 30 October 2023 by way of conference call. The Applicant was personally present and represented herself. The Respondents were personally present and were represented by their son, Mr David Henry. The Applicant had two witnesses, Julie Tinton and Alison Scott.

- **The Applicant's evidence**

7. The Applicant submitted that she had doubt as to the truth of the grounds on which the notice to leave was served. She had a lack of trust in anything which came from the Respondent and which started early on in the tenancy. The Applicant had been told that the garden was something that the Respondent cared for very much and had been asked if she would provide her mobile number to the Respondent (being Mr Gordon Henry) so that he could contact her to arrange upkeep of the garden. The Applicant stated that she received unsolicited text messages from the Respondent which resulted in her blocking him. She received approximately 19 texts which she considered to be intrusive, oppressive and "creepy behaviour".
8. The Applicant referred to an e-mail sent to the letting agents, Rettie, on 10 September 2022 following the notice to leave having been issued in which she referred to the Respondent having made a "veiled threat" to remove her from her home.
9. The Applicant submitted that she had sustained a pest infestation within the Property. She had spotted mice droppings and had called Rentokil and paid approximately £300-£400 for their services but the mice returned again. This culminated in electrical problems as wires had been chewed, which had been identified by an electrician who came out to have a look. It was at that point that the Applicant realised that the pest infestation was not her responsibility but was in fact the landlords'. The Applicant submitted that the lease contains no obligation to report a pest infestation. The Applicant stated that once she realised the truth of where responsibility lay, which was in March 2021, she advised Rettie that she would withhold £980 from her rent to cover the costs she had incurred in dealing with the pest infestation. The Applicant submitted that the Respondent was "clearly raging" about that. The Respondent made an offer of £140 which was not acceptable. The Applicant submitted that the carpets had been chewed to bits and that was not just a case of a few mouse droppings. After three months, the landlord threatened that if she did not pay the £980, then the landlord would have grounds to serve notice on the basis of rent arrears.
10. The Applicant submitted that 11 days later when the Applicant rejected this offer, she was issued with a notice of rent increase. The Applicant stated that

this was “vengeful, vindictive and greedy tactics” on behalf of the Respondent. The Applicant submitted that this was just one of many examples of the Respondent’s persistent attempts to recoup any expenditure they could from her as the tenant.

11. The Applicant submitted that the Respondent was vexed with her as tenant and that they were exasperated at their lack of ability to simply turn up to the Property whenever they wished. The Applicant submitted that the Respondent (Mr Gordon Henry) had arrived at the Property unannounced on one occasion when she was on a work call. It was submitted that his attitude towards her was so severe that she threatened to call the police. It was submitted that the Respondent (Mr Gordon Henry) was verbally abusive towards her and he said that she was not professional and “not much of a solicitor”. The Applicant stated that the Respondent said that if access dates could not be agreed then they would have to take further action. The Applicant submitted that there had been agreement with Rettie to allow reasonable access and that she had agreed that he could visit on 24 July but he failed to attend. The Applicant submitted that in the end she was not blocking dates but had simply agreed that there should be prior arrangements on visits.
12. The Applicant submitted that she moved out of the Property on the evening of 3 March 2022. She had been served with a notice to leave based on ground 1, in that the landlord intended to sell the Property. However, following her departure the Applicant submitted that the landlord made a number of purchases of items which would be required for a tenanted property, such as a new fridge freezer and ironing board, a bin and a kettle. It was submitted that the Respondent raised proceedings against the Applicant seeking payment in the sum of £7290 approximately one year after the tenancy ended. The Applicant was very shocked to receive service of the papers and had to take time off work and spend days going through her evidence which she then submitted to the tribunal. Thereafter the Respondent withdrew their claim. The Applicant submitted that this showed the Respondents’ cavalier attitude and wish to waste her time and the tribunal's time.
13. The Applicant submitted that the Respondent had a propensity to mislead people during the course of the tenancy. It was submitted that the Applicant had been misled from the outset. The lease that she had been provided suggested that each of the Respondents had two separate landlord registration numbers but they were in fact both the same. When the Respondent came to let the Property again, she noted that Mrs Henry’s registration number was pending. The Applicant submitted that she had been told that the Respondent was a keen gardener but this was not in fact the case.
14. It was submitted that following receipt of the notice to leave, the Applicant commenced looking for alternative accommodation. She had looked at 12 properties and received a call from Clyde Property advising that an application for one of their properties had been successful. However thereafter she received an e-mail on 2 February saying that due to the landlord’s reference they were no longer in a position to offer her the property and they withdrew their offer.

15. The Applicant submitted that the Respondent had stated at the CMD that everything was dealt with promptly and that they were very responsive during the tenancy. The Applicant submitted that she disagreed with this and gave an example that in October 2021 she was contacted by Rettie to say that the electrician had notified them that a new kettle was required and that the landlords would replace this, however they never did and only after she left did they purchase a new kettle and try to claim back the costs from her as part of their tribunal claim.
16. The Applicant submitted that the Respondents had stated to the tribunal that one of the reasons for selling was that they intended to carry out work on their own principal home and that they required the funds from the sale to do that. They then said that whilst both of their mothers had died, they did not know how much they would get from their respective estates and when this would be paid. The Applicant submitted that Mr Gordon Henry was the executor to his late mother's estate and on that basis, he would be aware of what was contained within the estate and what his proposed inheritance would be. The Applicant submitted that his mother died in March 2020 and confirmation to the estate was obtained in April 2021. The Respondent had stated that they only received the funds from Mr Henry's late mother's estate after the Applicant had left the Property. However, the evidence submitted by the Respondent only shows evidence of payments made after March 2022 and the Applicant submitted that it appeared that several pages of transactions were missing.
17. The Applicant submitted that the Respondents had misled the tribunal in putting forward a position that as they were in their 70s, they considered that letting out the Property was causing them a hassle. The Applicant submitted that both the Respondents are directors of a property management company and that one of them is noted as being an employee of that company. The Applicant submitted that this was not indicative of a couple in their 70s who find renting a hassle and want an easier life.
18. The Applicant turned to the question of why the Respondents would go through the hassle of putting the Property on the market and paying £1664 costs if they had no intention of selling it. The Applicant submitted that the Respondents incurred no costs for photography and that they took the photographs themselves as they appeared to be of poor quality. The Applicant also submitted that there was no evidence of payment of the £1664 and it was simply an invoice. The Applicant submitted that even if this had been paid, this only reflected a minor cost in relation to the overall costs of their house renovations which were in the region of £82,000. The Applicant submitted that the Respondents intended to move back into the Property whilst their own house renovations were being carried out and use the Property as a base, as they would not have a kitchen in their own home during the renovations. The Applicant submitted that the Respondents had tried to coincide her removal from the Property with their renovation in their family home so that they could move into it themselves. The Applicant submitted that the building contract

lodged by the Respondents was dated 12 November 2021, which was two months before she received her notice to leave.

19. The Applicant submitted that it had been a “living hell” when she lived in the Property. The Applicant referred to the Respondents “vindictive actions” in providing a negative reference so that she had her offer of a property withdrawn by Clyde Property. The Applicants submitted that in the end she was able to obtain alternative accommodation through a connection. The Applicant stated that there had been constant goading and harassment from the Respondent.
20. The Applicant submitted that once she had obtained the alternative accommodation via her acquaintance, it was not ready for a period of five weeks. She then had to put some of her items into temporary storage, some items into permanent storage and pack other items to take with her as she moved around for that five-week period. The Applicant submitted that upon leaving the Property she agreed to release her £1600 deposit to be paid directly to the landlord, as she did not want any more dealings with them.
21. The tribunal heard evidence from Julie Tinton who is an acquaintance of the Applicant. Ms Tinton stated that she had viewed the Property when it went up for sale. Ms Tinton stated that she had called the estate agent and left a message and it was five days or so before she had a call back and eventually got an appointment. She attended at 6pm in the evening on a wet day. Ms Tinton stated that she thought that the viewing was strange and that there was a strong smell of cooking which she found unusual from somebody wishing to sell a property. She found this very odd and off-putting. Ms Tinton stated that she wanted to see the garden but Mrs Henry did not appear keen for her to go into the garden as it was wet. She was however permitted to go into the garden. Ms Tinton described the viewing as being “haphazard” and as if the owner was not bothered whether she was looking around or not.
22. The tribunal heard evidence from Alison Scott, a former colleague of the Applicant. Ms Scott stated that she had viewed the property when it went up for sale. Ms Scott stated that she was met by Mr Gordon Henry at the Property who was very polite and friendly. Ms Scott asked questions regarding the roof as she'd had a bad experience previously and was told by Mr Henry what the respective shares of each owner are and their respective roof liability. Ms Scott stated that she asked if there had been any issues with the roof and the owner had stated that he wasn't aware of anything in particular but that the odd tile had been replaced. Ms Scott stated that she viewed the garden which was very overgrown and that the owner had stated that he was not much of a gardener. Ms Scott stated that she was surprised that the garden was not in a better condition. Ms Scott stated that the rear garden was not done as nicely as the front had been. Ms Scott confirmed that Mr Gordon Henry did seem keen to sell the Property. However, this viewing related to the second marketing of the Property.

- **The Respondents' evidence**

23. The Respondent, Mr Gordon Henry, stated that he wished to sell the Property for a number of reasons. Firstly, he stated that it was widely known from the media that the government was considering a change to capital gains tax to match income tax and that this would be very significant. It was stated that the Property was giving them a lot of trouble and that they were both in their 70s and could do without it. The Edinburgh market was buoyant and they thought it was a good time to sell. The Property was security for a floating blank bank loan and interest rates were rising. It was thought it would be a good time to sell and repay the loan.
24. The Respondent stated that he owns shares in a limited company which owns one flatted property. The Respondent stated that they were not intending to take steps to sell that property as the same issues did not apply. Any gain liable to corporation tax is less than that of capital gains tax and it is also much easier to run that property as it is a fully factored development. The Respondent stated that they had no issues with the tenants in that property paying the rent on time.
25. The Respondent submitted that there is no factor to the Property and that he has acted as an unofficial factor because none of the other owners really bothered. Annually he would get a roofer to inspect the roof and replace any tiles that were required and the bills were split between the owners.
26. The Respondent confirmed that each of Mr and Mrs Henry have their own landlord registration number but they differ by only one digit.
27. The Respondent stated that they use Rettie as managing agents but the arrangement has always been that he would do minor maintenance to minimise costs. He had an arrangement with the elderly lady at number 30 that she would get the grass cut and that he would prune, sweep leaves and weed the drive etc and this has been going on for 20 years. Mr Henry stated that originally, he was going to maintain both the rear and front gardens but that the Applicant was not happy with this and therefore they agreed that a gardener could be employed by the Applicant to maintain the rear garden. The agreement was that Mr Henry would continue to look after the front communal area.
28. Mr Henry stated that he received offers on the Property after it had been put up for sale. They did not accept any of the offers as their circumstances had changed in the interim. The government did not go ahead with the proposed changes to capital gains tax. They had just received payments from each of their late mothers' estates. They were renovating their own house and the Edinburgh market continued to be buoyant and the Property was increasing in value and therefore they were no longer in any immediate rush to sell. They wanted to take a bit more time to think through what they should do with the £500k proceeds.

29. Mr Henry stated that he was an executor of his late mother's estate alongside his brother. He was also a beneficiary. He only knew very late in the day what he would receive from the estate. This was complicated because his brother had lived with his late mother for 13 years and after she went into care he continued to live there. His brother then got sepsis and was very ill in hospital and was close to death. He did recover but he could not return to work. The estate was to be split 50/50 in terms of the will and the biggest asset was her house. Mr Henry had envisaged that he would be in a position where he would have a 50% interest in the house but he would not be able to realise it. However, his mother had set up a small discretionary trust for his brother and his brother withdrew from that to buy him out of his share of the house. Mr Henry stated that he agreed a reduced value to give his brother a discount in order to reduce how much he had to remove from his trust. It was late in the day before his brother came up with that proposal. Mr Henry stated that he used part of the money from his mother's estate towards their house renovation and they no longer needed the money from the Property anymore. The house renovation cost approximately £82k. Some of this came from his late mother's estate and the rest came from Mrs Henry's late mother's estate, as well as their own cash and investments.
30. Mr Henry stated that following the Applicant vacating the Property, they were horrified at the state of the house. The Property had just been refurbished prior to her moving in, with a new kitchen and two new bathrooms. Following the Applicant's removal from the Property, there were chips out of the edges of worktops, and a big ring on the surface of a worktop from a hot pan. Worktops were only three years old and they all needed replaced. Doors were chipped and damaged, a Karndean floor was covered in scrapes. There were stains on the carpets throughout and a burn mark on the mantelpiece, there was a scorch mark up the wall above the fireplace which appeared to be from a candle. In the front bedroom one of the bedside cabinets was ruined by something placed on top of it which had lifted the veneer. A chest of drawers had a mark on it and the blinds were hanging off. In the rear bedroom there was a purple patch on the carpet. They had to call their insurer who had to decide whether or not this was malicious or accidental damage. The insurers did eventually pay out for a lot of the damage. The Property was left in a very poor state. A lot of work needed to be done and he did a lot himself. He had a quote for redecoration which was £3000.
31. When they decided to put the Property on the market they got in touch with Sneddon Morrison and instructed them to proceed with the sale. They arranged for the home report on the advertising and they paid £1664 for this. They understood that Sneddon Morrison sent someone out to do the photographs, and they did not do these themselves. The Property was marketed on Rightmove, On the Market and Sneddon Morrison's own website. They paid more for a premium listing. They had 20 requests for viewings, 19 of which went ahead.
32. Mr Henry stated that once they had got the Property work done, they decided to re-let it again whilst they decided what to do in the longer term. When the new tenant moved in on 19 August 2022 the rent was £1695 per month and

with a normal deposit. This was £95 per month more than the Applicant had paid in rent. There were 5 and a half months between the Applicant leaving and the new tenant moving in.

33. Mr Henry stated that they had every intention of selling the Property when it was put on the market but their circumstances changed and they changed their mind. Mr Henry stated that they could have issued a notice to leave on the basis of rent arrears but chose not to do so.
34. Mr Henry stated that his insurer paid £450 on 12 May 2022, £1100 on 15 June 2022, and £2492.77 on 12 May 2022. The tribunal application which had been raised against the Applicant was raised following them making an insurance claim for legal assistance. Mr Henry stated that it was his decision to withdraw the claim as firstly they had thereafter received insurance money and secondly there were errors in the claim which had been raised by the insurer's agents. Mr Henry gave an example that the Applicant had paid a £1600 deposit which was not shown on the claim.
35. Mr Henry stated that they had made purchases of items such as mattress covers, ironing board, bin and kettle because they wanted to present the Property as well as they could and make it look like it was lived in.
36. Mr Henry stated the renovation works in their own house had not started at the point that the notice to leave was served. The building contract was signed on 4 March 2022. Mr Henry could not recall when they commissioned the contractor to do the specification of the works and quote.
37. Mr Henry stated that it became apparent that the capital gains tax rates would not be changing in late 2021, around the time of the autumn statement. When asked why he still proceeded to put the house on the market in March 2022 when it was clear by that point that the changes would not happen, Mr Henry stated that the notice had already been served by then and he was unaware that he could revoke it.
38. Mr Henry stated that the highest offer received for the Property was around 19% over valuation and which was ultimately refused.

- **Findings in Fact**

39. The Tribunal made the following findings in fact:

- (i) The parties entered into a private residential tenancy agreement which commenced 27 July 2018;
- (ii) The Applicant moved out of the Property on 3 March 2023;
- (iii) The Respondent served a Notice to leave on the Applicant on the basis of ground 1 of Schedule 3 to the said 2016 Act;
- (iv) The Respondent was entitled to rely on ground 1 of Schedule 3 to the said 2016 Act;

- (v) The Applicant vacated the Property following service of the Notice to Leave;
- (vi) The Applicant was not misled into ceasing to occupy the Property.

- **Reasons for Decision**

40. The tribunal had regard to the application in full, and to the submissions made at the CMD and Hearing, whether referred to in full in this decision or not, in establishing the facts of the matter and that on the balance of probabilities.

41. The application is raised in terms of section 58 of the said 2016 Act and which states as follows:

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.

42. The tribunal had regard to the specific terms of the ground upon which the Respondents sought to rely in the Notice to Leave served on the Applicant. This ground is set out below:

Landlord intends to sell

(1) It is an eviction ground that the landlord intends to sell the let property.

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

(a) is entitled to sell the let property, ...

(b)intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(3) Evidence tending to show that the landlord has the intention mentioned in subparagraph (2)(b) includes (for example)—

(a)a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b)a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

43. The tribunal was satisfied that the Respondents were entitled to sell the Property under part 1(a) of the Ground. This was not in dispute. The tribunal considered the wording of part 1(b) and which states “*intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it.*” The use of the word “*or*” is important. The wording of this section is such that the landlords must have the intention to sell for market value or the intention to at least put it up for sale. The tribunal considers that whether or not there is any disagreement as to the intention or otherwise of the Respondent to sell the Property for market value, there was no disagreement that the Property was indeed put up for sale. The tribunal considered that on the basis of this wording, just having the intention of putting the Property up for sale was sufficient to establish the Ground. Whilst the tribunal does not find this position to be an entirely satisfactory one for a tenant, it considers this to be the correct interpretation of the wording of this part of the ground.
44. The tribunal must therefore find that the Respondents have complied with the provisions of ground 1 of schedule 3 to the said 2016 act. It is against that background and on that interpretation of the wording of ground one, that the tribunal finds that the application must be refused.
45. The tribunal would however wish to note that it was not satisfied, on the basis of the evidence before it, that the Respondents had any intention of going through with a sale of the Property. The tribunal was satisfied that it appeared that the Respondents sought removal of the Applicant in order that they could move into the Property and occupy it pending the renovations in their own house. Taking into account the disagreements between the parties during the lease, and the timings of the building contract arrangements, the tribunal was satisfied that the situation was contrived for the benefit of the Respondents. Even if the tribunal accepted the evidence of the Respondents that their concerns about changes to capital gains tax rates led them to wish to sell the Property (and which the tribunal was not persuaded by in any event), the tribunal was not persuaded by the evidence of the Respondents that they were

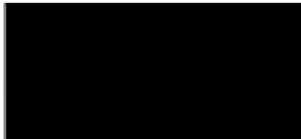
not aware that they could have revoked the Notice to Leave and allow the Applicant to remain in the Property after all. The tribunal was satisfied that expending the sum of £1664 in marketing fees would likely still have saved the Respondents money by avoiding market rental costs in moving into another property elsewhere for a period of time pending completion of their home renovations.

- **Decision**

46. The tribunal accordingly refuses 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.



Legal Member/Chair:

Date: 17 November 2023