



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 58 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/23/4022

Re: Property at 90 Queens Crescent, Kepplestone, Aberdeen, AB15 4BE (“the Property”)

Parties:

Miss Heather Davis, 47M Kings Gate, Aberdeen, AB15 4EL (“the Applicant”)

Mr Muhammad Ali Qureshi, PO BOX 1340 Saudi Aramco Oil CO, Najma Housing Complex, Ras Tanura 31311, Saudi Arabia (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing, granted the application under Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 and made an Wrongful-termination Order requiring the Respondent to pay to the Applicant of the sum of £3,000.

Background

1. By application dated 9 November 2023, the Applicant sought a Wrongful Termination Order under Sections 58 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant believed she had been misled into ending her tenancy.
2. The Applicant stated that she had moved into the Property on 5 August 2021, having relocated to Aberdeen for work. She had been very happy with the Property and had planned to live there for the foreseeable future, having secured a permanent teaching post with Aberdeenshire Council.
3. On 1 March 2023, the letting agents advised the Applicant that the Respondent needed to change the Council Tax back to his own name, the

reason given being that “he needs it in his name for his sons(sic) university application.” The Applicant refused this request.

4. On 8 June 2023, the letting agents emailed the Applicant to say that the Respondent “needs to move back into the Property” and attached a Notice to Leave by 3 September 2023.
5. The 12 weeks’ notice period included 6 weeks of school summer holidays, during which time the Applicant had a number of trips booked. It was important to her to sort out her accommodation and she secured another flat, albeit at a considerably higher rent. She then told the letting agents that she would like to move out on 24 July 2023.
6. The only reason she chose to end the tenancy earlier than the date set in the Notice to Leave was that it had left her with no choice. She needed to find a new property before the start of the new school term and there were very few flats available.
7. On 24 September 2023, the Applicant discovered that the Property was being advertised by the same letting agents as being immediately available at a rent of £950 per month. The rent she had been paying was £800. The advertisement on Rightmove had been added on 20 September, so it was clear that the Respondent had not lived in the Property for a 3-month period.
8. The Applicant believes she was misled into moving out.
9. Having queried the situation, the Applicant’s mother received an email from the letting agents on 3 October 2023. They said that the Respondent had advised them earlier in the year that his family were moving back to Aberdeen, as his eldest son was going to be attending Aberdeen University. He had instructed the letting agents to issue a Notice to Leave.
10. On 16 October 2023, the Respondent emailed the Applicant’s mother directly. He said he had told the letting agents to issue the Notice to Leave because they intended to move back to the Property at the start of October, because his eldest son was going to start university and his young son required special support at school. They wanted to move back so that the Respondent’s wife and elder son could explore schools in the area. They were coming to Aberdeen in the following week.
11. The Applicant provided the Tribunal with an energy bill showing usage of £141.33 between 25 July and 24 September 2023. She stated that the Property is a two-bedroom flat and questioned whether it would comfortably accommodate two adults, a young adult/teenager and a young child with special needs.
12. On 6 November 2023, the Applicant’s mother received a further email from the letting agents to say that the Respondent’s circumstances had changed after the Notice to Leave was issued. His son had been involved in a

motorbike accident over the summer and also needed to upgrade one of his school exam results for entry to university. This meant that he would not be starting there until January 2024, so would not be living in the Property until then. The Property had been empty from 25 July until 29 September 2023, before being rented on a short-term basis. The Applicant stated that this did not tie in with the Property having been advertised as a long-term let. The email from the letting agents said that the Property was empty again and would remain so until the Respondent and his family returned early in 2024.

13. The view of the Applicant was that the Respondent wished to re-let at a rent higher than that which, with Scottish Government restrictions, he could have sought from the Applicant from September 2023.
14. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 5 August 2021 at a rent of £750 per month, an email of 1 March 2023 from the letting agents to the Applicant asking her to agree to change the council tax back to the Respondent, another email of 8 June 2023 telling the Applicant that the Respondent “needs to move back into the property”, a Notice to Leave stating that “the Landlord intends to live in the Let Property”, a screenshot taken on 24 September 2023 of an advertisement on Rightmove stating that the Property was available now to rent on a “Long term” basis at a rent of £950 per month, various emails between the Applicant’s mother and the letting agents querying the situation and seeking information, and the emails of 16 October and 6 November 2023 referred to in the application. The papers also included a screen shot of a message from the Respondent to the letting agents on 5 June 2023, stating “my family is planning to move back to Aberdeen for my son’s education.” It was attached to the email of 16 October 2023 from the Respondent to the Applicant and her mother.
15. On 25 April 2024, 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 16 May 2024. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

16. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 5 June 2023. The Applicant was represented by her mother, Mrs Fiona Davis. The Respondent was not present or represented.
17. The Applicant’s representative told the Tribunal that she had no knowledge of whether the Respondent and his family were presently living in the Property. She stressed that she had tried in many emails to elicit information that would support the Respondent’s position, but no evidence had been provided that the Respondent or his family had intended to move back in when the Notice to Leave expired. It was only when she let the letting agents know that she had seen the Rightmove advertisement that the emails regarding an alleged change in circumstances appeared.

Reasons for Decision

18. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides 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 sufficient information and documentation to decide the application without a Hearing.
19. Section 58 of the 2026 Act applies where, as in the present case, a private residential tenancy has been brought to an end without an Eviction Order. It 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 landlord.
20. The Tribunal noted that the Notice to Leave stated that the Landlord intended to live in the Property, but the correspondence from the letting agents appeared to indicate that it was the Respondent's wife and two of their children who would be living there. It appeared to the Tribunal that the Notice to Leave gave the incorrect reason for Notice being given.
21. The Tribunal noted that the advertisement on Rightmove which appeared on 20 September 2023 clearly stated that the Property was available "Long term". This was at odds with the explanation given by the Respondent's letting agents in their email of 6 November 2023 that the Property was let out on a short-term basis. That tenancy would have been a Private Residential Tenancy Agreement and landlords cannot impose an end date in such an agreement. The email had explained that the Respondent's circumstances had changed, in that his eldest son had been involved in a serious motorbike accident in the summer and also had to upgrade one of his school exam results for entry to university. The email from the Respondent to the Applicant and her mother on 16 October 2023, however, made no mention of the motorbike accident as a change of circumstances and, whilst it stated that his eldest son would be starting university "next year", it added a second reason, namely that his youngest son required special support at school and that his wife and eldest son would be moving into the Property to explore schools in the area that might provide that support. There was no indication in that email that the Respondent himself intended to live in the Property.
22. The Tribunal found the Respondent's arguments unconvincing and inconsistent and regarded as very significant the fact that the Property had been advertised for a "Long term" let in September 2023. The Respondent had made no written representations to the Tribunal and had decided not to attend or be represented at the Case Management Discussion. He had not provided any evidence for the Tribunal to consider in support of his original stated intention or any change of circumstances that had frustrated that intention.
23. The Tribunal could not make a finding that the Respondent wanted to be able to re-let at a higher rent than he would be permitted to charge the Applicant when the rent could be next increased, but was not satisfied that the Respondent intended to live in the Property as his only or principal home for

at least 3 months. The evidence suggested that it would be his family who would be living there, and this was stated in terms by the Respondent in his message to the letting agents of 5 June 2023, but the Notice to Leave did not give that as the reason for requiring the Applicant to leave. The Respondent could have given Notice to Leave stating that a member of his family, namely his son, intended to live in the Property to pursue his course of study, but he did not do so

24. Having considered all the evidence, written and oral, before it, the Tribunal decided, on the balance of probabilities, that the Applicant had been misled into leaving the Property. The fact that she then left before the date specified in the Notice to Leave was irrelevant. She took the Notice to Leave at face value and responded perfectly reasonably by seeking alternative accommodation. The Tribunal was satisfied that, but for the Notice to Leave, the Applicant would have remained in the Property. The Tribunal decided to make a Wrongful-termination Order against the Respondent.
25. Having made a determination under Section 58 of the 2016 Act, the Tribunal then considered the amount it would require the Respondent to pay to the Applicant. The Tribunal noted that the rent could only have been increased by 3% (to £824 per month) when it was next reviewed and that the Applicant's rent for the new property was £295 per month higher than the amount she had been paying. The Tribunal could not regard this as actual loss, as it could not speculate as to whether the tenancy might have continued to the present day or whether the Applicant might have been able, in time, to find somewhere less expensive, but the loss of opportunity to have her rent restricted to £824 per month was a relevant factor when considering the amount the Respondent should be required to pay.
26. Whilst the Tribunal did not regard the Respondent's action as being at the most egregious end of the spectrum, it was serious and had significant repercussions for the Applicant, who had been misled into leaving a flat in which she was very settled, having lived there for nearly two years. She had incurred van hire charges in connection with her removal and the considerable inconvenience and upheaval of having to look for another flat with the school holidays only a few weeks away. The Respondent had openly advertised the Property in September 2023 and had not provided the Tribunal with a credible explanation for his actions by providing any written submissions or participating in the Case Management Discussion.
27. Having taken into account all the facts and circumstances of the case presented to it, the Tribunal decided that an Order requiring the Respondent to pay to the Applicant the sum of £3,000 was proportionate, reasonable and fair.

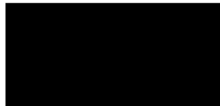
Right of Appeal

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



George Clark

Legal Member/Chair

5 June 2024
Date