



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/23/2759

Re: Property at Stucscardan, Glen Shira, Inverary, PA32 8XH (“the Property”)

Parties:

Ms Monica Shaw, Mr Mark Washer, Old Schoolhouse, Culkein, Lochinver, Lairg, Sutherland, IV27 4JG (“the Applicant”)

Ms Hannah Soulsby, Ferry Orchard House, 3 North Street, Cambuskenneth, Stirling, FK9 5NB (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that section 58 of the Private Housing Tenancies (Scotland) Act 2016 had not been met. The Tribunal therefore declined to make a wrongful termination order and dismissed the application

Background

- 1** By application to the Tribunal dated 14th August 2023 the Applicants sought a wrongful-termination order against the Respondent in the sum of £9026 plus any further emotional damages “*in the amount deemed fit by the Tribunal*”. In support of the application the Applicants provided an inventory of documents consisting of correspondence with the Respondent, screenshots of text messages, photographs and a document headed “Reason for making the application”.
- 2** By Notice of Acceptance of Application a Legal Member with delegated powers from the Chamber President determined that there were no grounds upon which to reject the application. A Case Management Discussion was assigned and the application paperwork was served upon the Respondent by Sheriff Officers.

- 3 On 29 January 2024 the Respondent submitted via email her written representations in response to the application. In support of her representations the Respondent provided an inventory of documents consisting of website excerpts, emails and information regarding the Applicant's food business registration, correspondence with the Applicants and a property inspection report.

The Case Management Discussion

- 4 The Case Management Discussion took place by teleconference. The Applicants were both present at the Case Management Discussion. The Respondent was also in attendance and accompanied by her partner.
- 5 The Tribunal explained the purpose of the Case Management Discussion and invited the parties to address it on their respective positions. For the avoidance of doubt the following is a summary of the relevant submissions from the parties and does not constitute a verbatim account of what was discussed.
- 6 The Applicants explained that they had been served with a notice to leave by the Respondent. At first they did not believe they required to leave the property. The notice to leave appeared unlawful and in violation of the eviction ban that was in place at the time. However as a result of their ongoing discourse with the Respondent it became impossible to stay. The Respondent had indicated that she intended on selling the property. The Applicants then decided to leave and subsequently found the Respondent had reposted the property on Facebook for let.
- 7 The Applicants advised that they had paid the rent for the property. They had fulfilled their tenancy obligations however the Respondent had not. The Respondent had levelled allegations at them which were wholly unfounded. The Applicants made reference to the documents submitted with the application and summarised their response to those allegations. They highlighted the stress that had been caused to them throughout the tenancy as a result of the Respondent's conduct and the costs to them, both during the tenancy, and as a result of them having to move from the property. The Respondent was unreasonable and did not take a humane approach. The only course of action was to leave. The Tribunal asked the Applicants to clarify their position regarding the notice to leave, explaining that for the legal test to be met they must have been misled into ceasing to occupy the property by the service of the notice. The Applicants explicitly stated that they had not left the property because of service of the notice to leave, the Respondent had made it impossible for them to stay there by virtue of her unreasonable approach.
- 8 The Respondent addressed the Tribunal. She advised that she had instructed her agents to serve notice to leave after experiencing a number of issues with the Applicants, such as advertising the property online as part of their business. They were not paying rent and asking for things that were not justified. The Respondent had outlined the issues in the notice to leave that had been served. The Respondent had however been advised that the notice to leave was invalid as it did not contain an effective date. Accordingly it had not been served in

accordance with the relevant provisions of the 2016 Act and the Applicants application for a wrongful termination order could not succeed. The Respondent stressed that she had not done anything to mislead the Applicants into ceasing to occupy the property. She would have proceeded with an application to the Tribunal if that had been required. The notice to leave was not the basis for the Applicants' ceasing to occupy the property as had been stated by them.

Relevant Legislation

9 The relevant legislation is sections 49, 50, 58 and 62 of the 2016 Act:-

49 Requirements for notice to be given by tenant

(1) A notice fulfils the requirements referred to in section 48(1) if—

(a) it is given—

(i) freely and without coercion of any kind,

(ii) after the tenant begins occupying the let property,

(b) it is in writing, and

(c) it states as the day on which the tenancy is to end a day that is after the last day of the minimum notice period.

(2) A notice is to be regarded as fulfilling the requirements referred to in section 48(1), despite its not complying with the requirement described by subsection (1)(c), if the landlord agrees in writing to the tenancy ending on the day stated in the notice.

(3) In subsection (1)(c), “the minimum notice period” means a period which—

(a) begins on the day the notice is received by the landlord, and

(b) ends on the day falling—

(i) such number of days after it begins as the landlord and tenant have validly agreed between them, or

(ii) if there is no such valid agreement, 28 days after it begins.

(4) An agreement as to the number of days after which a minimum notice period ends is invalid for the purpose of subsection (3)(b)(i) if the agreement—

(a) is not in writing, or

(b) was entered into before the tenancy became a private residential tenancy.

(5) In a case where two or more persons jointly are the landlord under the tenancy, references in this section to the landlord are to any one of those persons.

50 Termination by notice to leave and tenant leaving

(1) A tenancy which is a private residential tenancy comes to an end if—

(a) the tenant has received a notice to leave from the landlord, and

(b) the tenant has ceased to occupy the let property.

(2) A tenancy comes to an end under subsection (1) on the later of—

*(a) the day specified in the notice to leave in accordance with section 62(1)(b),
or*

(b) the day on which the tenant ceases to occupy the let property.

(3) For the avoidance of doubt, a tenancy which is to come to an end under subsection (1) may be brought to an end earlier in accordance with section 48.

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.

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

Findings in Fact

- 10** The Applicants and the Respondent entered into a private residential tenancy agreement in respect of the property.
- 11** On 20 January 2023 the Applicants were served with a notice to leave by the Respondent's agent Robb Residential. The notice to leave was sent by email.
- 12** The notice to leave did not specify the day on which the landlord expected to become entitled to make an application for an eviction order to the First-tier Tribunal.
- 13** The Applicants gave notice to leave to the Respondent's agent Robb Residential. The Applicants left the property on 28th February 2023.
- 14** The tenancy between the parties terminated on 28th February 2023.

Reasons for Decision

- 15** The Tribunal gave careful consideration to whether there were issues to be resolved that would require a hearing in this case, however ultimately the Tribunal was satisfied that it had sufficient information in order to reach a decision on the application following the Case Management Discussion for the reasons outlined below.
- 16** Section 58 of the 2016 Act applies where a private residential tenancy has been brought to an end in accordance with Section 50, that is by the tenant ceasing to occupy the property following the service of a notice to leave. Section 62 outlines the statutory requirements that the notice must fulfil in order to be considered a notice to leave in terms of the 2016 Act. In this case the notice does not comply with Section 62. It does not state the effective date upon which proceedings made be raised and cannot therefore be a notice to leave for the purposes of the 2016 Act. The Applicants ultimately gave notice to leave themselves which they are entitled to do under section 49 of the 2016 Act, and consensus was reached on the termination date of 28th February 2023.

- 17** The Tribunal therefore concluded that the tenancy had not been brought to an end in accordance with Section 50, but had in fact been brought to an end under section 49 of the 2016 Act by virtue of the Applicants' notice to leave.
- 18** If the notice to leave had been compliant with Section 62, the Tribunal would have found it difficult to conclude that the Applicants had been misled into ceasing to occupy the property. They had explicitly stated at the Case Management Discussion that they did not leave as a result of having been served the notice to leave. Instead this appeared to be a case where the relationship between the parties had broken down to such an extent that it was beyond repair, leading to the Applicants feeling they had no choice but to move from the property.
- 19** The Tribunal accepted that the Applicants disputed the various breaches of tenancy that had been relied upon by the Respondent in her notice to leave, however they would have been entitled to challenge this had the notice to leave been valid and an application made to the Tribunal in future. The Tribunal noted that the Applicants were aware of their rights in this regard, having made reference to potential Tribunal proceedings in their correspondence with the Respondent's agent. In order to meet the statutory test for a wrongful termination order the Applicants would have required to establish some form of deception on the Respondent's part. She had however been upfront in terms of her reasons for serving the notice, outlining the various breaches of the tenancy agreement and the supporting evidence for these. The Tribunal noted the Applicants' reference to her intention to sell the property, however this was not the ground stated in the notice to leave and could not therefore be said to be a basis for wrongful termination.
- 20** The Tribunal therefore determined that the provisions for a wrongful termination order under section 58 of the 2016 Act had not been met in this case and dismissed 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.

R O'Hare

Legal Member/Chair

10 August 2024
Date