



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 (“The Act”)

Chamber Ref: FTS/HPC/PR/23/3617

Re: Property at 7 Lytton Street, Dundee, DD2 1EU (“the Property”)

Parties:

Mr Miles Boylan, 3/6 New Cut Rigg, Edinburgh, Scotland, EH6 4QR (“the Applicant”)

Mrs Iman Al-Saffer, 22 eastern point, 399F Edgware Road, London, NW9 0FJ (“the Respondent”)

Tribunal Members:

Mr A. McLaughlin (Legal Member) and Mr A. Lamont (Ordinary Member)

Decision

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) makes a Wrongful Termination Order under Section 59 of the Act in terms of which the Respondent must pay the Applicant the sum of £6,798.00 with interest on that sum accruing at the rate of 5 per cent per year from the date of this decision, being 30 August 2024 until payment.

Background

[2] The Applicant seeks an Order under Section 58 of the Act for a Wrongful Termination Order under Section 59 of the Act. The Applicant alleges that he was misled by the Respondent into ending a tenancy and leaving the Property. The Respondent had served a Notice to Leave on the Applicant on the basis that the Respondent wished to move into the Property and that she wished to move into the Property to alleviate financial hardship in terms of ground 4 and 4A of schedule 3 of the Act. The Applicant

claims that the Respondent failed to follow through on this and then re-let the Property to a new tenant for a higher rent.

[3] The Application had called for a Case Management Discussion and then been continued to an evidential Hearing for evidence to be heard and a final decision made. Case Management Orders had been made regarding the production of evidence and the intimation of any witnesses. An Arabic interpreter was arranged for the Respondent at her own request.

The Hearing

[4] The Application called for a Hearing by video call at 10 am on 14 August 2024. The Applicant was personally present. The Respondent was personally present together with her son, Mr Al-Saffar, who indicated that he wished to represent his mother and also give evidence. Neither party had any preliminary matters to raise. There was an Arabic interpreter who interpreted everything that was said from English into Arabic and vice versa. The Tribunal began by ensuring that everyone understood the format of the Hearing and that everyone was familiar with the documentation which had been submitted to the Tribunal.

[5] Thereafter, the Tribunal began hearing evidence. After each party or witness gave evidence the other had the right to cross-examine the other. Following on from the conclusion of evidence, each party had the opportunity to make closing submissions specifically addressing any source of law or suggesting any approach which parties said the Tribunal ought to take to the case.

[6] The Tribunal comments on the evidence heard as follows.

Mr Miles Boylan

[7] Mr Boylan gave evidence in a straightforward manner. The issues involved were straightforward to understand. He and his wife moved into the Property at the end of August 2018. They lived there happily and intended to remain living there for the long term with their young child. The contractual monthly rent at the start of the tenancy was £1,000.00 per calendar month. As of July 2023, the contractual monthly rent had increased to £1,133.00 per calendar month. The Applicant explained that the Respondent had made various attempts towards the end of the Applicant's occupation of the Property to increase the rent further. He explained that there was a dialogue whereby the Respondent regularly attempted to increase the rent and this was resisted by the Applicant as being unlawful and excessive. The Applicant described these attempts as going beyond what might be considered normal by a landlord.

[8] The Applicant then explained that he received a notice to leave on 16 July 2023. The grounds relied on in the notice were ground 4 and 4A and it was said that the

Respondent intended to live in the Property and to do so to alleviate financial hardship. The Applicant and his family were very disappointed as they had no plans to leave the Property and were settled in the area. They vacated the Property at the very end of September 2023.

[9] The Applicant then became aware that the Property was being marketed for rent from 27 October 2023 for the sum of £1,800.00 per calendar month. The Applicant felt that he and his family had been deceived by the Respondent who simply wished to obtain a higher rent for the Property than that which could be achieved during the currency of the tenancy. Mr Boylan referred the Tribunal to email correspondence between the parties and also to the online listing of the Property being marketed for rent on *Your Move* at the higher price after the Applicant's family had relocated.

[10] The Tribunal found no reason not to take the Applicant's evidence at face value. It was also fully corroborated by the relevant emails which were before the Tribunal. The Applicant's evidence appeared entirely credible and reliable.

Ms Iman Al-Saffar and Mr Al-Saffar

[11] It was clear from the beginning that Mr Al-Saffar was not following the Tribunal's instructions regarding the functioning of the Hearing. He repeatedly tried to undermine the role of the interpreter at the Hearing by often trying to assume that role himself and speaking in both Arabic and English and trying to converse with the interpreter and his mother. He also repeatedly failed to follow the Tribunal's instructions to speak slowly and pause after a few sentences to allow for the interpreter to perform her duties.

[12] The Tribunal repeatedly had to intervene to ensure progress was made and the source of the difficulty appeared very clearly to be Mr Al-Saffar's involvement. He also interrupted others at times when they were speaking which again was not helpful, especially when the Hearing was being conducted with the assistance of an interpreter. It was the Respondent herself who had specifically requested an interpreter. The Tribunal was grateful for the interpreter's assistance in what was no doubt a challenging assignment. Mr Al-Saffar appeared determined to speak on his mother's behalf and even appeared at times to consider himself as chairing the Hearing by giving instructions to the interpreter and also appearing to decide which questions were relevant and which were not. The Tribunal had to make it clear to him that he was not involved in the management of the Hearing.

[13] The evidence that eventually came from the Respondent and her son was as follows. The Respondent served the notice to leave. Then when the Applicant and his family vacated the Property, they considered that the Applicant had "*voluntarily*" left the Property. The evidence that came from the Respondent's side then appeared to suggest

that they considered this to nullify the notice to leave meaning that it was no longer a requirement that the Respondent move into the Property.

[14] The Respondent's evidence was disjointed and inconsistent. Despite appearing to suggest that she had proceeded on the basis that the Applicant had voluntarily vacated the Property, she then suggested that the Respondent herself intended to live in the Property but left after a few days because of "*security concerns*". The Respondent's evidence was that she moved into the Property but there were security issues with the door and other repairing matters that needed addressed to the point that the Respondent then simply immediately returned to living in London from whence she had come.

[15] The Respondent and her son pointed to quotes submitted to the Tribunal for work said to be needed to bring the Property up to standard. It was said that the Respondent couldn't afford these works which were never instructed but that they did settle some invoices for lower value work. These invoices were before the Tribunal.

[16] The Tribunal identified significant difficulties in accepting the Respondent's evidence. The Respondent was described both by herself and her son as surviving financially solely on her rental income from the Property. This was actually emphasised by the Respondent on more than one occasion during her evidence. No explanation was given as to how this could be reconciled with the Respondent then wishing to live in the Property that was said to be her sole source of income. The Tribunal actually directly asked this question. The Respondent and her son both appeared to hear the question after it had been interpreted, before ignoring it and attempting to make some other point.

[17] The Respondent also appeared to be living in London, wish to move to Dundee, move to Dundee, find the Property not to her satisfaction and then immediately move back to London. That seemed odd. The Property was also unfurnished when the Respondent allegedly moved in. She said she had to "*borrow a bed*" from a relative in the area. Again it seemed very odd that some one would make a genuine effort to move into the Property without making provision for basic home furnishings in advance. What was clear though was that the Property ended up back on the market for rent at a higher sum than before by 23 October 2023. The Tribunal noted that the notice to leave had been served by means of an email that had actually also said that the Respondent would be moving into the Property on 20 October 2023. By 23 October 2023, the Property was publically available for rent.

[18] The Tribunal found the evidence of the Respondent and her son to be incredible and unreliable. It was full of inconsistencies and appeared frankly to be odd. The Tribunal also noted with some surprise that the Respondent appeared genuinely to accuse the Applicant of "*misleading*" her. This left the Tribunal with the impression that the Respondent's attitude to this whole matter was somewhat perverse. There appeared no

understanding or sympathy at all for the Applicant and his family. Her attitude to the notice to leave appeared casual and that the Applicant and his family having to relocate appeared to be of zero importance or concern to her or her son. They asked the Tribunal to consider that, because the Applicant and his family subsequently moved to Edinburgh, this meant that they were somehow being disingenuous. The reasons provided as to why the Property subsequently ended up back on the rental market were similarly vague and unconvincing.

[19] Having heard from parties, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The parties entered into a tenancy agreement whereby the Respondent let the Property to the Applicant by virtue of a tenancy agreement dated 7 August 2018.*
- II. *The contractual monthly rent was initially £1,000.00 per calendar month. When the tenancy agreement ended, the rent was £1,133.00 per calendar month.*
- III. *On 16 July 2023, The Respondent served a Notice to Leave on the Applicant in terms of grounds 4 and 4A of Schedule 3 of the Act on the basis that the Respondent wished to live in the Property and to live in the Property to alleviate financial hardship.*
- IV. *The Notice to Leave was accompanied by an email stating that the Respondent would be moving into the Property on 20 October 2023.*
- V. *The Applicant and his family vacated the Property at the end of September 2023.*
- VI. *The Respondent may not have ever actually moved into the Property and certainly did not make any genuine effort to live in the Property, nor do so for any reasonable period of time.*
- VII. *The Respondent had attempted to increase the Applicant's rent during the currency of the tenancy which was resisted by the Applicant as being unlawful and unreasonable.*
- VIII. *When the Applicant and his family moved out of the Property at the end of September 2023, the Respondent then listed the Property for re-letting at a higher contractual monthly rent of £1,800.00 per calendar month. The listing went live no later than three days after the date that the Respondent said she would be moving into the Property.*

- IX. *The Respondent deceived the Applicant and his family into ending the tenancy and vacating the Property.*

Decision

[20] Having made the above findings in fact, the Tribunal had to determine what decision ought to be made under Section 58 of the Act. This Section is in the following terms:

Section 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

[21] The Tribunal considered that the test set out in Section 58 (3) was met in that the Applicant was misled into ceasing to occupy the Property by the Respondent. The Tribunal considered that given the facts of the situation, it ought to make a wrongful termination order in terms of Section 59 of the Act. Section 59 is in the following terms:

59 Wrongful-termination order

(1) In this section and in sections 57, 58 and 60, “a wrongful-termination order” means an order requiring the person who was the landlord under the tenancy immediately before it ended to pay the person who made the application for the wrongful-termination order an amount not exceeding six months’ rent.

(2) Subsection (3) applies where—

(a) the First-tier Tribunal intends to make a wrongful-termination order under section 57 or 58, and

(b) two or more persons jointly were the landlord under the tenancy in question immediately before it was brought to an end.

(3) The Tribunal may make a wrongful-termination order—

(a) against all, some, or only one of the former joint landlords,

(b) stating that each person against whom the order is made is liable to pay a specified amount, but the cumulative total of each of the specified amounts must not exceed six months' rent,

(c) stating that each person against whom the order is made is jointly and severally liable for the whole amount to be paid.

(4) In subsections (1) and (3)(b), "rent" means—

(a) the amount that was payable in rent under the tenancy immediately before it ended, or

(b) in a case where two or more persons jointly were the tenant under the tenancy immediately before it ended, the amount mentioned in paragraph (a) divided by the number of persons who were at that time joint tenants under the tenancy.

[22] The Tribunal then proceeded to consider what award, if any, ought to be made in terms of the powers open to the Tribunal under Section 59 (3) (b).

[23] The Tribunal considered that there was no real mitigation before the Tribunal. If anything, the position adopted by the Respondent appeared to aggravate matters as she appeared to claim that the Applicant had somehow deceived her. That was wholly without foundation. The Respondent appeared to show no regard for the consequences of her actions and the Tribunal found her evidence and that of her son to be incredible and unreliable.

[24] Considering the whole facts and circumstances of the case, the Tribunal decided to impose the maximum award open to the Tribunal and order that the Respondent must pay the Applicant a sum equivalent to six times the value of the rent, which at the end of the tenancy was £1,133.00 per month, being the total sum of £6,798.00. The Tribunal will also order that interest should run on that sum at the rate of 5 per cent per year from the date of the judgement, being 30 August 2024, until payment.

Right of Appeal

[25] 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.

Andrew McLaughlin

Legal Member/Chair

30 August 2024

Date