



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/23/2498

Property : Flat 2, 30 New Mart Place, Edinburgh EH14 1TX (“Property”)

Parties:

Amy McIntosh and Craig Bonnyman, 15 The Nurseries, Glencarse, Perthshire PH2 7NX (“Applicant”)

Francis Chan, 36 Craigmount Brae, Edinburgh EH12 8XD (“Respondent”)

Letslet Property Management, 5 Clerk Street, Edinburgh EH8 9JH (“Respondent’s Representative”)

Tribunal Members:

Joan Devine (Legal Member)

Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined that a Wrongful Termination Order in the sum of £2,490 should be made against the Respondent.

Background

1. The Applicant sought a wrongful termination order in terms of section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”). The Applicant had lodged Form G along with supporting documents. Case Management Discussions (“CMDs”) took place before the Tribunal on 22 November 2023, 30 January 2024 and 16 May 2024. Reference is made to the notes of the CMDs. The Tribunal issued Directions to the Parties dated 22 November 2023, 30 January 2024 and 16 May 2024.
2. The Tribunal fixed a Hearing which was scheduled for 23 September 2024.

Documents

3. The documents lodged on behalf of the Applicant were :

- Tenancy agreement between the Applicant and the Respondent which commenced on 15 July 2022
- Notice to Leave dated 7 June 2023 (“Notice to Leave”)
- Emails between the Applicant and the Respondent’s Representative dated 7, 14, 17 and 20 June 2023
- Screenshots of text messages between the Applicant and the Respondent dated 17 and 20 June 2023
- Copy advert for a property at New Mart Place dated 17 July 2023
- Photographs of the Property
- Copy emails from the Applicant dated 7 and 8 June 2023 regarding enquiries for rental properties
- Copy bus reservation dated 28 July 2023
- Copy invoice from Enterprise
- Council tax statement addressed to the Applicant regarding closed account for the Property indicating account closed 13 July 2023
- Email from the Respondent’s Representative dated 17 July 2023 regarding check out
- Email from Glenearn Flooring dated 30 August 2024 attaching quotation

4. The documents lodged on behalf of the Respondent were :

- An invoice from the Respondent’s Representative addressed to the Respondent dated 3 August 2023 for £4062.30 for works specified in the invoice.
- A copy invoice from EM Plumber dated 10 August 2023 for £572
- A copy invoice from The LVT Company Ltd dated 8 March 2023 for £3118.50
- 15 photographs of the Property.

Hearing

5. A Hearing took place before the Tribunal on 23 September 2024 at George House, George Street, Edinburgh. The Applicant and the Respondent were both in attendance as were Shula Akinoshu and Shuang Pan from the Respondent’s

Representative

6. The Tribunal noted that from the CMD notes the following was agreed :
 - The Notice to Leave stated that the ground for seeking eviction was ground 3, landlord intends to refurbish the let property.
 - The Applicant removed from the Property on 14 July 2023.
 - After the Applicant removed from the Property new flooring was fitted throughout the Property with the exception of the main bathroom.
7. The Tribunal noted that from the CMD notes the issue in dispute was whether the works carried out were “refurbishment” works in terms of ground 3 in schedule 3 of the 2016 Act which states that for the ground to be established, subsection (2) (c) required to be established which is that it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord.
8. Mr Bonnyman told the Tribunal that the Property was a ground floor flat which was made up of two bedrooms (master with ensuite bathroom), a box room, a hall, a living /dining/kitchen area and a main bathroom. He said that the Applicant moved in on 15 March 2021 at which time the letting agent was Umega. He said that a new tenancy agreement was entered into when the letting agent changed. He said that the notice to leave dated 7 June 2023 was received out of the blue. He said that before receipt of the notice to leave he had been in touch with the Respondent regarding a leak from the flat above into the main bathroom. He said that the neighbour above had replaced their bathroom and there was a problem with the plumbing which caused the leak into the Property. The damage caused by the leak was such that the laminate flooring in the main bathroom had to be replaced. He said this was done in April 2023. He said that the bathroom was the only room impacted by the leak. He said that the bathroom flooring was replaced with vinyl by the property factor on the instruction of the Respondent.
9. Mr Bonnyman said that when the notice to leave was received he messaged the Respondent to ask if he was aware of the notice to leave. He said he then spoke with the Respondent and he seemed to be unaware of the notice to leave. He said he then received an email from the Respondent’s Representative in which they said he was to deal only with them. Mr Bonnyman told the Tribunal that he told the Respondent’s Representative that the Applicant wanted to stay in the Property. He said he did not ask about the nature of the proposed refurbishment works.
10. Ms McIntosh told the Tribunal that following receipt of the notice to leave she and Mr Bonnyman looked for somewhere else to rent in Edinburgh. She said they both worked in Edinburgh. She said that the market was such that they could not even get any viewings despite having made 10 property inquiries. She said that demand and prices were very high. She said that they then moved to live with her parents in Perth. She said that they moved quickly, before expiry of the notice to leave, as it was so expensive to rent in Edinburgh. She said the Applicant vacated the

Property on Friday 14 July 2023 but returned to clean and check-out. She said that the Respondent's Representative attended the Property to prepare a "check out" report.

11. Ms McIntosh told the Tribunal that the Applicant required to move their furniture out of the Property and hire a van to transport the furniture to Perth where it was stored in her parent's garage. Ms McIntosh said that she continued to look for rental properties in Edinburgh and that is when she saw the Property listed to rent. She said she saw the Property listed on 17 July 2023 at a rent of £1400. The listing said the Property was available "immediately". She said that the photographs were those taken at check out and did not indicate that any refurbishment had been carried out. She said that the rent the Applicant had been paying before they left the Property was £830 per month although an increase to £855 was due to be applied.
12. Ms McIntosh told the Tribunal that the Applicant stayed with Ms McIntosh's parents for 6 months and commuted to their jobs in Edinburgh. She said she commuted 5 days per week and Mr Bonnyman commuted 3 or 4 days per week. She said the commute cost around £20 per day. Ms McIntosh said the Applicant had to get the bus from Perth to Edinburgh at 6am. She said this was a "hassle" and additional commuting costs were incurred that would not have been incurred if the Applicant continued to live in the Property. She said that both Applicants cycled to work when they lived in the Property. She told the Tribunal that the Applicant moved back to Edinburgh in January 2024. She said that they moved into a property they had purchased with financial assistance from each of the Applicant's parents.
13. Mr Chan told the Tribunal that there had been a leak in the Property which made him decide to refurbish the Property. He said that flooring had to be replaced because of the leak. He said that was done in April 2023. Mr Chan said that the leak caused damage in both bedrooms and the main bathroom. The Tribunal asked Mr Chan if he had considered the Applicant remaining in the Property while the flooring was replaced. He said he did not speak to the Applicant and the Applicant never said they wanted to stay in the Property. The Tribunal asked Mr Chan if he recalled receiving the text messages dated 17 and 20 June 2023 a copy of which had been lodged. He said he did recall receiving them but he spoke with the Respondent's Representative about it. He said he assumed the Respondent's Representative would follow the law. He said he had no idea if the Applicant spoke to the Respondent's Representative.
14. Mr Akinoshu told the Tribunal that he inspected the Property just after the Respondent's Representative took over management of the Property. The Tribunal asked if he had the inspection report and he said he did not. He said he did not discuss with the Applicant the nature of the proposed refurbishment works as the Applicant said they did not want to deal with the Respondent's Representative but only with the Respondent. Mr Akinoshu said that Mr Bonnyman had an argument with his colleague Taghrid Safwat when she told him he had to deal with the Respondent's Representative. He said the argument took place by telephone. He said that the refurbishment works were finished around 8 August 2023 and had taken over 2 weeks. The Tribunal asked Mr Akinoshu if his files indicated the exact

dates on which work was carried out but he did not have that information available. He said that the Applicant moved out of their own volition. He said that they could not have stayed in the Property during the refurbishment works due to health and safety issues. The Tribunal asked Mr Akinoshu to direct them to the legislation or guidance that said that the replacement of carpets and laminate flooring raised a health and safety issue but he was unable to do so. Mr Akinoshu said the works may have resulted in asbestos being exposed. Given the age of the Property the Tribunal questioned Mr Akinoshu on what evidence he had for that being the case but he was unable to offer any.

15. Ms Pan told the Tribunal that she met with Mr Chan when he returned to Edinburgh from Hong Kong. She said she asked him what he wanted to do with the Property and he told her he wanted to “do something” with the Property. She said he wanted the Property back. She said she explained to him that there were 3 reasons he could seek to take the Property back which were that he wanted to sell, that he wanted to live in the Property or he wanted to refurbish the Property. Ms Pan told the Tribunal that Mr Chan had owned the Property since 2009 and wanted to carry out work to improve the Property. She said he told her he wanted to change the carpets. She said he instructed the Respondent’s Representative to arrange the works. She said that she gave Mr Chan advice and he made the decision. The Tribunal asked Ms Pan if she considered the Applicant remaining in the Property while the work was carried out. She said she could not recall but she did recall Mr Chan saying he wanted to improve the Property.
16. The Tribunal asked Ms Pan when viewing started for the Property after the Applicant vacated. She said she did not know. She said there was a surge of people wanting to view the Property. The Tribunal asked when the next tenant moved in and what rent they were paying. She said they moved in on 9 August and were paying rent of £1400 per month. She said that the Respondent was able to achieve the higher rent because of the new flooring and market conditions. The Tribunal suggested that the Applicant may take the view that asking them to remove from the Property was all about achieving a higher rent. Ms Pan said that was not true.
17. The Tribunal reviewed the exchanges between the Parties following service of the notice to leave. Firstly the Applicant had lodged text messages between the Applicant and the Respondent dated 17 and 20 June 2023 in which the Applicant said they wished to remain in the Property and then noted that the Respondent’s Representative had told them that the Respondent had confirmed the Applicant should be evicted. Secondly the Applicant had lodged copy emails between the Applicant and the Respondent’s Representative dated 7, 14, 17 and 20 June 2023. The Tribunal noted that in his email dated 17 June 2023 Mr Bonnyman said that the Applicant would prefer to stay in the Property and in her email dated 20 June 2023 Ms Safwat told Mr Bonnyman to contact the Respondent’s Representative and not the Respondent she said “*We will deal with all matters concerning the Property*”. Mr Bonnyman replied to that email on the same date noting that contact to date had always been direct between the Applicant and the Respondent.
18. Mr Bonnyman told the Tribunal that if the Applicant had not received the notice to leave they would have stayed in the Property. He said they had wanted to stay

there long term. He said that the Property was the first place that he and Ms McIntosh had lived together and it was close to their places of employment. They were settled there and had bought furniture. He said they had now bought a property but they had only been able to do that due to financial help from their parents and they had not planned to move into home ownership so soon. Mr Bonnyman said that at no time did he have an argument with the Respondent's Representative. He said he had not spoken to Taghrid Safwat on the telephone. He said all communication was by email. He said that he did call the Respondent's Representative after the notice to leave was received and asked for someone to call him back but nobody ever did. Mr Bonnyman told the Tribunal that he had never said he would only deal with the Respondent. He noted however, that the Applicants had been on friendly terms with the Respondent. He said the replacement of the flooring could have been done with the Applicant continuing to occupy the Property. He said the work could have been done on a room by room basis and the works in the ensuite bathroom would not be an issue as there were 2 bathrooms. He said he would have been happy to help by moving furniture as required.

19. Ms McIntosh told the Tribunal she had contacted a flooring company, Glenearn Flooring, and given them the dimensions of the kitchen / living area of the Property. They had provided the email and quote dated 30 August 2024 which had been lodged which indicated replacement of that floor area would take 2 days. She said that a bedroom carpet had been replaced when she was living in her parent's house in Perth and it took around 1 hour.
20. Ms McIntosh told the Tribunal she thought the Respondent seeking possession of the Property was all about achieving a higher rent for the Property. She said that the Applicant may have paid a higher rent to stay in the Property after the flooring was replaced but that was never discussed.
21. Ms McIntosh said that if a wrongful termination order was to be granted she sought the maximum penalty of 6 times the rent. She noted the costs incurred by the Applicant in having to move and the additional commuting costs. She also noted that the Applicant had to take time off work to attend the CMDs and the Hearing. Mr Bonnyman said that the process had caused the Applicant anxiety and discomfort. He said that the communication from the Respondent's Representative had been poor and the grant of an order may make them think more carefully before proceeding in that way again.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant commenced occupation of the Property on 15 March 2021.
2. The Applicant and the Respondent entered into a new Tenancy Agreement in respect of the Property which commenced on 15 July 2022 ("Tenancy Agreement").

3. The rent in terms of the Tenancy Agreement was £830 per calendar month.
4. The flooring in the main bathroom of the Property was replaced in April 2023 following a leak from the flat above.
5. The Respondent issued a Notice to Leave to the Applicant dated 7 June 2023 which stated that the ground for eviction was that the landlord intended to refurbish the Property.
6. Craig Bonnyman sent a text message to the Respondent on 17 June 2023 which stated "*We would like to remain in the flat*".
7. Craig Bonnyman sent an email to the Respondent's Representative dated 17 June 2023 in which he stated "*Francis expressed his desire to keep us on as tenants, and we would prefer to stay*".
8. Taghrid Safwat of the Respondent's Representative sent an email to Craig Bonnyman dated 20 June 2023 in which she stated "*Our position has not changed and there for the notice served is therefore correct. We are the agent of the landlord, and we will really appreciate if you contact us directly and not the landlord. We will deal with all matters concerning the property.*"
9. The Applicant removed from the Property on 14 July 2023.
10. The Applicant would not have removed from the Property if they had not received the notice to Leave dated 7 June 2023.
11. The Property was advertised to let on 17 July 2023 at a rent of £1400 per month.
12. Between 14 July and 8 August 2023 the carpets in both bedrooms in the Property were replaced, the laminate flooring in the living / dining area and the ensuite bathroom was replaced and the toilet in the ensuite bathroom was removed and re-installed.
13. A third party took up occupation of the Property as tenant on 9 August 2023 at a monthly rent of £1400.
14. At the date of service of the Notice to Leave the Respondent intended to refurbish the Property and was entitled to do so.
15. It would not have been impracticable for the Applicant to continue to occupy the Property given the nature of the refurbishment works intended by the Respondent.

Findings in Fact and Law

1. The Respondent misled the Applicant into ceasing to occupy the Property.

Reasons for the Decision

22. Section 58 of the 2016 Act states :

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.*

23. There was very little in dispute between the Parties. The Parties agreed that the Notice to Leave referring to ground 3 was served and that the Applicant vacated the Property on 14 July 2023. The nature of the refurbishment works carried out to the Property and the fact that they were carried out after the Applicant vacated was not in dispute. It was not in dispute that the Property was advertised to let on 17 July 2023 at a monthly rent of £1400 or that a new tenant took up occupation on 9 August 2023 and agreed to pay rent of £1400 per month.

24. The evidence given by the Parties indicated a number of issues were in dispute. Firstly, it was Mr Chan's position that the replacement of the carpets and laminate flooring was necessary because of a leak from the property above which caused damage in both bedrooms and the main bathroom. Aside from reference to a water damaged floor in the ensuite bathroom in the invoice from The LVT Company Ltd, the Tribunal was given no evidence in support of the statement that both bedrooms and the main bathroom had been damaged such as photographs of the damage caused or emails from the Applicant reporting the issue. Mr Chan's evidence was that both bedrooms and the main bathroom were impacted by the leak, that flooring was replaced in April 2023 and that he decided to refurbish the Property because of the leak. The evidence from Ms Pan was that she met with Mr Chan and he told her he wished to carry out works to improve the Property. She said he told her he wished to change the carpets. Ms Pan made no reference to damage caused by a leak. The Applicant's lived in the Property and it was their evidence that the leak had only impacted the main bathroom and that had been dealt with in April 2023. On this point the Tribunal found the evidence of the Applicant to be more reliable.

25. The second issue in dispute was whether the Applicant expressed a desire to

remain in the Property. The Tribunal had sight of a text message from Mr Bonnyman to Mr Chan in which he expressed a desire to stay in the Property and an email from Mr Bonnyman to the Respondent's Representative in which he again expressed a desire to remain in the Property. Mr Chan told the Tribunal he recalled receiving the text message. He also said that the Applicant never said they wanted to stay in the Property. The evidence of the Applicant that they wished to stay in the Property was consistent with the documentary evidence in which the Applicant had expressed a desire to remain in the Property on two occasions. The Tribunal therefore accepted the evidence of the Applicant on this point.

26. The third issue in dispute was whether the Applicant removed from the Property because of the Notice to Leave. This is relevant to section 58(3) of the 2016 Act as the Tribunal requires to be satisfied that the Applicant was misled into ceasing to occupy the let property. If the Applicant removed from the Property for some other reason, the requirements of section 58(3) would not be met. The evidence of Mr Akinoshu was that the Applicant "*moved out of their own volition*". The text messages and emails lodged indicated that on two occasions the Applicant expressed a desire to stay in the Property following service of the Notice to Leave. The evidence of the Applicant was that they wished to remain in the Property long term and that the Property was conveniently located for their places of employment. Their evidence was that they removed from the Property before expiry of the Notice to Leave as a rent increase was shortly to come into effect. The Applicant told the Tribunal that on leaving the Property they went to live with family in Perth which involved a lengthy commute to their places of employment in Edinburgh. Having considered all of the evidence the Tribunal considered that the Applicant removed from the Property because of the Notice to Leave.
27. The key issue in dispute was whether the refurbishment works which the Respondent intended to carry out to the Property at the date of service of the Notice to Leave were refurbishment works of the nature necessary for ground 3 to be established which is that the works are such that it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord. Ground 3(3) states that the evidence tending to show that the landlord has the intention mentioned in sub-paragraph 2(2)(a) includes (for example) (a) any planning permission which the intended refurbishment would require and (b) a contract between the landlord and an architect or builder which concerns the intended refurbishment.
28. The Tribunal considered that the nature of the works which the Respondent intended at the date of service of the Notice to Leave would not require planning permission or the input of an architect or builder. No evidence was presented to the contrary. The Applicant's evidence was that they would have been content to remain in the Property whilst the carpets and laminate flooring were being replaced and would have facilitated the works by moving furniture as required. Their evidence was that they may have considered paying increased rent following the works but the matter was not raised. The Tribunal asked Mr Chan if he had considered the Applicant remaining in the Property whilst the works were carried out. His evidence of was that he did not speak to the Applicant and the Applicant never said they wanted to stay in the Property. That was inconsistent with the

documentary evidence. The evidence of Mr Akinoshu was that the Applicant could not have stayed in the Property during the refurbishment works due to health and safety issues but was unable to specify exactly what the health and safety issues were other than to refer to the possibility of asbestos being present. The evidence of Ms Pan was that she could not recall whether the question of the Applicant remaining in the Property during the works had been considered.

29. The evidence was that the possibility of the Applicant remaining in the Property whilst the carpets and laminate flooring were replaced was not raised.
30. The issue for the Tribunal to determine is whether the Applicant was misled into ceasing to occupy the Property. The Respondent relied on ground 3 when serving the Notice to Leave which is that the landlord intends to refurbish the let property. For ground 3 to be established, subsection (2)(c) requires to be established which is that it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord. The Tribunal considered that it would not have been impracticable for the Applicant to continue to occupy the Property given the nature of the refurbishment intended by the Respondent. The Tribunal therefore determines that the Applicant was misled into ceasing to occupy the Property. The Tribunal will therefore make a wrongful termination order in terms of section 58 of the 2016 Act.
31. As regards the amount of the wrongful termination order, the Applicant sought the maximum penalty of six times the monthly rent. They referred to costs incurred as well as inconvenience and anxiety suffered. Mr Akinoshu submitted that the Applicant would have incurred cost anyway if they had moved to another property in Edinburgh.
32. The Tribunal took into account the costs incurred by the Applicant and the inconvenience of moving their belongings to Perth as well as the cost and inconvenience of them having a lengthy commute from Perth to their place of employment. The Tribunal did not however consider that this case was at the most serious end of the scale justifying a penalty of six times the monthly rent. The Respondent had engaged in the Tribunal process. His evidence gave the Tribunal the strong impression that he relied on his Representative to manage the tenancy of the Property and the implementation of the proposed works. It was unfortunate that the Respondent's Representative did not consider the possibility of the Applicant remaining in the Property whilst the works were carried out and raising that with them. It is also unfortunate that the Applicant did not query the nature of the proposed refurbishment works. The Tribunal considered that an award at the middle of the scale would be appropriate in all the circumstances of this case.
33. The Tribunal determined that an award of £2,490 was appropriate which is 3 times the monthly rent.

Decision

34. The Tribunal determined to grant a wrongful termination order in the sum of £2,490.

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.

J Devine

**Joan Devine
Legal Member**

Date : 3 October 2024