



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 57 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/24/2296

Re: Property at 136 Robroyston Road, Glasgow, G33 1JJ (“the Property”)

Parties:

Linda Carey, 9 Dubton Street Flat 2/1, Glasgow, G34 0NW (“the Applicant”)

Pauline Carroll, 2 McVey Place, Glasgow, G33 6NX (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision

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

- 1) This was an application by the Applicant under rule 110 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”) for a wrongful termination order
- 2) The wrongful termination order sought “compensation for the stress & time spent searching for a new home”. No sum was specified. The application was dated 17 May 2024 and lodged on that date. Supporting papers were provided, in particular the lease (showing rent was £650/month), the Notice to Leave, the Decision granting an eviction order (application EV/23/2831 dated 12 January 2024), and detailed written submissions as to the background and to the issues the Applicant said had flowed from the termination of her Tenancy.
- 3) The eviction order had been on the basis of ground 1: that the landlord intended to sell. The application said that the Applicant left by 12 March 2023. The application papers included screenshots of the Property being re-advertised for letting by 28 March 2024 at a rent of £850/month.

- 4) In advance of the case management discussion (“CMD”) the Respondents lodged brief written submissions and copy emails on 14 October 2024 and said she would “answer any more questions you may have” at the CMD. This resulted in a further emailed response from the Applicant and then a succession of emailed counter-responses, culminating in a brief email from the Respondence on 1 November 2024. The following comments from the Respondent’s email of 25 October 2024 (all *sic*) were of particular significance to my final decision:
- a) “Sorry to hear of her [the Applicant’s] distress however as per my last email correspondence we put it to the tenant there was no rush to move out...”
 - b) “I won’t explain my financial circumstances to any third party although what I will say is that 136 Robroyston road was getting put up for sale at that time but due to unforeseen events our circumstances changed and this didnt need to happen anymore.”
 - c) “Due to the appalling condition the house was left in it wasn’t an option to offer the house back to the tenant, the house was ruined you would’ve thought squatters had been in it & not a family.”
- (For completeness, the Applicant’s email in response of 29 October 2024 gave her comments on the condition of the Property, alleging reasons why she said she was frustrated in her attempts to improve the condition of the Property at the time of vacating.)

The Hearing

- 5) The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 8 November 2024 at 14:00. I was addressed by the Applicant and Respondent. The Respondent’s partner, David Kenna, was present but gave no submissions.
- 6) I sought to clarify the sum sought in the application. The application papers included the Tenancy Agreement which stated a rent of £650 per month. Both parties confirmed that the rent at the termination of the Tenancy was £650/month. This meant a maximum potential order of £3,900 (being 6x£650). The Applicant said that she did not have a view on the appropriate level of order.
- 7) The Applicant stated that she had never sought to leave the Property, nor discussed any intention to seek rehousing, prior to the Respondent’s service of the Notice to Leave. She said that she was unaware of the Respondent’s alleged desire to sell the Property until she received the Notice to Leave of 22 May 2023. The Respondent confirmed that she had not communicated with the Applicant, nor had she had any agent communicate with the Applicant, prior to service of the Notice to Leave.
- 8) The Applicant’s written submissions explained that (as of the submission’s lodging in May 2024):
- a) The local authority housed her in temporary accommodation when she left the Property.

- b) She remained in temporary accommodation, never having received permanent accommodation.
- c) Though the Property was a two-bedroom property, meaning her children required to share a room, she moved to the Property from a yet smaller two-bedroom property so she had enjoyed the increased space. Her current temporary accommodation, however, is again smaller than the Property, and has no garden or external storage meaning they have not managed to retain all their belongings.
- d) Her children frequently refer to the Property and their regret that they are not still living there, and their unhappiness about having had to move.
- e) She has noted signs of anxiety (nail and lip biting) in her son of 8. He has lost touch with his friends and relatives who were local to the Property. He no longer wishes to attend his previous clubs.
- f) Her daughter of 3 cries when being driven past the Property, such as on her route to nursery.
- g) Her commute to take the children to school and nursery has gone from 5 minutes to, at best when the traffic is light, 17 minutes with the resultant increased travel costs.
- h) Since the start of 2024 (that is, during the eviction process), she herself has experienced symptoms associated with anxiety, such as disturbed sleep and feeling sick. She has received prescription medication for anxiety.
- i) The rental for the temporary property is £320.74/week so significantly higher than she was paying for rent for the Property, and higher than the increased rent that the Respondent has sought from new tenants at the Property.

No further submissions on these points were provided at the CMD and the Respondent did not dispute them. (Reference is made to her acceptance that the Applicant has suffered distress in the Respondent's email of 25 October 2024.)

- 9) In seeking further details from the Respondent, I stressed to her that she was harming her position if she refused (as per her email of 25 October 2024) to provide greater detail as to the financial reasons why she sought eviction on the basis of ground 1 but then did not sell. She said that she would provide that information but first wished to provide submissions on a different point. She then explained (in predominately the same terms as within her lodged emails), that she had been happy to allow the Applicant to remain at the Property until she was rehoused. (I noted one of the lodged emails – dated 21 November 2022 from the Respondent to her letting agent - expressed the point as: "*We are happy to wait until she finds something else but if you could just let her know that it can't be indefinitely, I would be grateful (all sic)*".)
- 10) The Respondent said that she was told that the Applicant would not be rehoused without an eviction order. (A lodged email from the letting agent to the Respondent dated 21 November 2022 stated this.) The Respondent said that she raised the application EV/23/2831 and sought the order because the Applicant required it.

- 11) The tenor of the Respondent's submissions (written and oral) throughout was that she had only sought the eviction order because the Applicant needed it so as to be rehoused. She appeared to see this as a significant point in her favour. I stressed to the Respondent that the issue at the heart of the current application was that no termination of any sort would have occurred to the PRT except due to the Respondent's instigation. The Respondent did not dispute the Applicant's position that the Applicant had never sought to leave the Property until the Respondent issued a Notice to Leave seeking her to leave.
- 12) I then pressed the Respondent as to whether she would now provide further details as to why her position on a sale changed. At that point, the Respondent said – repeating her comment from her email of 24 October 2024 - that she would not let a “third party” have her financial details. She clarified that she regarded the Applicant as a “third party” but that she would be willing to let the Tribunal see information on her finances. I explained that no consideration could be made by the Tribunal of information that was not shared with the Applicant and asked if the Respondent would provide further information on that basis. She said that she would not. At that point I asked the Respondent if she wished to seek legal advice. She said that she did not.
- 13) In consideration that the Respondent was not disputing any of the Applicant's submissions, was declining an opportunity to lodge further documents on the critical issue of why she did not seek to sell the Property, and was declining an opportunity to seek legal advice, I saw no benefit in delaying determination of the application.
- 14) No motion was made by either party for expenses.

Findings in Fact

- 15) The Respondent sought, and received, an order for eviction from the Tribunal on 12 January 2024, further to a Notice to Leave under ground 1. The Respondent maintained before the Tribunal that she intended to sell the Property in accordance with the requirements of ground 1.
- 16) The Applicant left the Property on or about 12 March 2024.
- 17) The Respondent's letting agent re-advertised the Property as available for let at a monthly rental of £850 by adding it to Rightmove on 28 March 2024.
- 18) No attempt to market the Property for sale was made by the Respondent.
- 19) Since leaving the Property, the Applicant and her family have suffered significant detriment as the Property was generally suitable for their needs and they have not yet been able to obtain a permanent tenancy in a similar suitable property. Such detriment includes:
 - a) The Applicant has been housed in temporary accommodation.
 - b) The temporary accommodation is smaller in size than the Property and lacks a garden or external storage.

- c) The limited space and lack of external storage has resulted in the Applicant being unable to retain all her and her family's belongings.
 - d) The Applicant has noted anxiety and distress in her children such as:
 - i) Her children frequently refer to the Property and their regret that they are not still living there, and their unhappiness about having had to move.
 - ii) Her son, aged 8, has started nail and lip biting. He longer wishes to attend clubs that he attended previously when living at the Property.
 - iii) Her daughter of 3 cries when being driven past the Property, such as when going to nursery.
 - e) Her son has lost touch with his friends and relatives who were local to the Property.
 - f) Her commute to take the children to school and nursery has gone from 5 minutes to 17 minutes or more, with increased travel costs.
 - g) The rental for the temporary property is £320.74/week so significantly higher than she was paying for rent for the Property, and the rent that the Respondent has sought from new tenants at the Property.
- 20) Since the start of 2024 (that is, during the eviction process onwards), the Applicant has experienced symptoms associated with anxiety, such as disturbed sleep and feeling sick. She has been prescribed medication for anxiety.

Reasons for Decision

- 21) In regard to wrongful termination further to an eviction order, the relevant provision is at section 57 of the 2016 Act:
- (1) *This section applies where a private residential tenancy has been brought to an end by an eviction order.*
 - (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.*
 - (3) *The Tribunal may make a wrongful-termination order if it finds that it was misled into issuing the eviction order by the person who was, immediately before the tenancy ended, the landlord under the tenancy.*
 - (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.*
- 22) In respect of the requirements of ground 1, these are:
- (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 subparagraph (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 sub-paragraph (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.*
- 23) Little evidence to satisfy ground 1 was provided to the Tribunal in 2023 in regard to the eviction order but what was provided was deemed sufficient. The tenant at that time did not materially oppose the application, and it was noted in the Decision that she accepted the landlord's entitlement to sell. The Tribunal in application EV/23/2831 noted that financial circumstances were said to be the landlord's reason for selling (such as increased mortgage payments).
- 24) Turning to those papers provided in the current application, they included an email by the Respondent to her letting agent dated 15 May 2023 instructing her that the Property should be sold and asking the agent to advance "notifying the tenant". This email appeared to have been a supporting attachment to the Notice to Leave. The only evidence of steps towards marketing for sale was an email lodged prior to the CMD by the Respondent. In this email of 20 November 2022 (recipient was not included), the Respondent asked whether the Applicant had yet moved out the Property (pursuant, I believe to an earlier Notice to Leave) and said: "*We will arrange a home report if she has to get the house on the market*". No copy Home Report was lodged by the Respondent and it was not clear if one was ever obtained.
- 25) The Respondent thus lodged no evidence of any actual attempt to market, nor evidence of her undertaking steps exclusively for the purposes of marketing (such as obtaining a Home Report). Further, there was meagre evidence of any alleged intention to market. Finally, in her emails prior to the CMD the Respondent accepted that "due to unforeseen events our circumstances changed and [sale of the Property did not]... need to happen anymore." The Respondent did not thus claim to have ever attempted to sell.
- 26) In regard to the factual details provided by the Applicant on the re-letting, there was no material explanation as to why the Property was re-let only a week after the Applicant left, which was further inconsistent with the Respondent's claim that she could not have "offer[ed] the house back to the tenant" "[d]ue to the appalling condition the house was left in" with "the house... ruined". Clearly her letting agent was comfortable remarketing it one week later. No details were provided of what work or cleaning was done within that week (if any) but it certainly does not appear to have been work with an aim to market the Property for sale.
- 27) It is not possible to know what the change in financial circumstances was that meant the Respondent did not seek to sell the Property. It is, however, difficult to imagine a genuine unexpected change in circumstances that:

- a) Happens so swiftly that it is not possible to discuss with the tenant whether countermanding the eviction might be appropriate;
- b) Means that in practical terms the Respondent cannot sell (as opposed to merely that the Respondent changes her mind on whether to sell); and
- c) Is a positive thing meaning a sale is not required, yet also requires the Property to be remarketed at a higher rent.

The more obvious conclusion is that the Tribunal was misled into issuing the eviction order as there had never been a genuine intention to sell within three months. Instead, it does not seem inconceivable that there was an active attempt to use ground 1 as a ruse so as to evict a tenant who (according to the decision in application EV/23/2831) had some arrears, and thereafter re-let at a higher rent. It should be recalled that legislative rent controls were in place during 2023.

- 28) In the circumstances, the Respondent was ill-served by her position of declining to provide information in the Tribunal process in a normal fashion, and declining to seek legal advice. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. I chose to do so as there was no material dispute stated on the Applicant's evidence and the Respondent declined to provide any evidence beyond the few emails which accompanied her written submissions (none of which appeared disputed).
- 29) In the circumstances, I am satisfied on the balance of probabilities that there has been wrongful termination. I think this is a reasonable interpretation of the circumstances. The Respondent's attempts to deflect - by raising complaints about the condition of the Property at the date of vacating, and trying to paint herself as only having evicted the Applicant because the Applicant wanted to be evicted - did not improve her sparse defence.
- 30) In regard to quantification, there is no guidance in section 59 as to relevant considerations. I am aware that in tenancy deposit cases, there is binding authority that consideration should be given to the landlord's position (such as the landlord's level of experience, and any previous breaches of the regulations) and the objective consequences for the tenant (such as whether or not the deposit was returned quickly), but not the subjective detriment suffered by the tenant (such as whether the lack of the deposit caused financial hardship). I do not think such a distinction is appropriate in regard to wrongful termination. A PRT tenant has security of tenure and, rather than just losing deposit money, they have lost a home. I hold all circumstances, including the subjective detriments suffered by the specific tenant, should be considered.
- 31) In regard to the landlord's position, she provided little information on her level of experience but she did not claim inexperience as an explanation for her actions. In regard to her actions, the swift remarketing and the refusal to cooperate fully in the Tribunal process leaves her actions as quite brazen and arrogant. In regard to the Applicant, she and her family have suffered and continue to suffer a grave detriment. In consideration of all matters, I hold this application merits a maximum award of six times the rent of £650.

Decision

- 32) In all the circumstances, I grant an order for wrongful termination and award a sum of £3,900 plus interest at 8% from the date of the decision.
- 33) Further to section 60 of the 2016 Act, a copy of this Decision should be sent to Glasgow City Council in respect of the Respondent's registration as a landlord.

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 Conn

8 November 2024

Legal Member/Chair

Date