



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 57(2) or Section 58(2) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/PR/24/0275

Re: Property at 17 Muirhead, Stonehouse, Larkhall, ML9 3HG (“the Property”)

Parties:

Mr Raymond Gardner, Mr Deborah Gardner, 5 Avon View, Stonehouse, Larkhall, ML9 3JD (“the Applicants”)

ARW Barrie Properties Ltd, 1 Baird Way, Biggar, ML12 6ZB (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

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

1. Background

1.1 This is an application under Rule 110 of the Chamber Rules whereby the Applicants seek a wrongful termination order following the end of a private residential tenancy between the parties. The application was accompanied by copies of the written tenancy agreement between the parties, the notice to leave served and an advertisement pertaining to the property being available for let. The Respondent lodged representations by email.

1.2 The hearing took place on 11 November 2024 by teleconference. The parties attended personally and neither were represented. The Tribunal had not received any further documentation from the parties in advance of the hearing. The parties confirmed they had both lodged further documents, the Applicants a timeline and two images of Facebook posts on 4 November 2024 and the Respondent a letter from Lets Let on 31 October 2024. Following a short adjournment, these were located and crossed over

to the parties. Both parties confirmed that they had received each other's documents and no further time was required to consider them.

- 1.3 The Tribunal noted that the Applicants' documents had been lodged one day late in terms of the Chamber Rules. The Respondent took no real issue with this. The Applicants advised that this was due to a bereavement. The Tribunal considered the contents of the documents and believed the Applicants to have a reasonable excuse and allowed the documents to be lodged.
- 1.4 The Tribunal afforded both parties the opportunity to give oral evidence in support of their positions. The Applicants advised that only Mr Gardner would give evidence and any submissions. Mr Gardner confirmed that the timeline lodged was an accurate summary of events. Their tenancy at the property had begun in January 2011. They had initially been informally advised of the Respondent's intention to sell the property in March 2023 by email. They had been offered first refusal to purchase the property or pay an increased rent of £700 per month. Given their age and income, they had been unable to obtain a mortgage to purchase the property at the proposed price of £150,000.00. They spent a number of days at the end of March and beginning of April 2023 looking for alternative accommodation. An affordable property was identified which they could purchase following the release of funds from Mr Gardner's pension. An offer of £100,000 was made and accepted on the 3 April 2023. The formal notice to leave was received on 9 May 2023. Missives in respect of their new accommodation thereafter concluded and on 19 May 2023 they gave notice to end the tenancy on 16 June 2023 to avoid liability for both rent and mortgage payments. They vacated the property and returned the keys on 16 June 2023. The two images of Facebook posts showed the property described as a rental property and available for rent. The Applicants had been paying £575 per month in rent for the property. This was affordable and the Applicants had no plan to move from the property prior to Respondent's agents notifying them of his intention to sell the property.
- 1.5 The Respondent confirmed that he took no issue with the timeline lodged by the Applicants and that it was accurate. The rent received for the property was low compared to similar properties in the area. There was finance outstanding on the property, which, although covered by the rent, resulted in little in the way of nett income, approximating £200 per month. Consideration was therefore given to selling the property. He had been conscious that the Applicants had resided there for a number of years and, as they had been good tenants, gave them the opportunity to purchase the property or negotiate an increased rent. The price proposed was based on a desktop valuation provided by Momo Homes. The Applicants advised they could not obtain finance for the proposed price nor afford a higher rent. The Applicant had been advised that the property could not be marketed for sale due to its condition. Formal notice to leave was served. Nine days later notice was received from the Applicants. He received advice from his letting agents that this meant he was not obliged to market the property for sale. Following the Applicants vacating the property, around £20,000 was

spent in improvements, including a new kitchen, replacing carpets and underlay and redecoration. The Respondent was undecided at this point as to whether he wished to sell given the amount of money spent on the property. The letting agent advised the property would likely have a rental value of £995 per month. A second valuation for sale was not obtained but the Respondent was aware a similar property had sold in the same street for around £180,000. He thereafter took the decision to advertise the property for let. He confirmed that he had made the Facebook posts advertising the property. The property was relet around 7 to 10 days following the second post.

1.6 Neither party had anything significant to add with regards to legal submissions as to why the order sought by the Applicants should or should not be granted. The Tribunal adjourned the hearing and advised that a written decision would be provided in due course.

2. Findings In Fact

2.1 The Applicants' tenancy at the property began in January 2011. The Applicants initially paid rent of £525 per month. At the time of commencement of the tenancy, the landlord was the Respondent's father.

2.2 The Respondent purchased the property from his father in 2021. The parties subsequently entered into a new contractual tenancy agreement, being a private residential tenancy, which commenced on 25 August 2021.

2.3 The rent payable by the Applicants was increased to £575 per month. This remained the rent payable by them at the time they vacated the property which yielded nett income to the Respondent of approximately £200 per month.

2.4 On 28 March 2023, the Applicants were notified by email of the Respondent wishing to sell the property and that they were being given first refusal to purchase it for £150,000.

2.5 The Applicants were unable to obtain finance to purchase the property for this price nor did they wish to pay a higher rent. The Applicants submitted an offer to purchase alternative accommodation on 3 April 2023. This offer was accepted. The Applicants would not have sought alternative accommodation but for the declared intention of the Respondent to sell the property.

2.6 Formal notice to leave in terms of section 62 of the 2016 Act was sent to the Applicants by email on 9 May 2023. The said notice advised that an application for an eviction order would not be made by the Respondent prior to 4 August 2023.

2.7 The Respondent required vacant possession as improvement works were required to put the property in a marketable condition for sale. At the time

of service of the notice to leave, the Respondent had a genuine intention to market the property for sale upon obtaining vacant possession.

2.8 The Applicants agreed a date of entry to their new accommodation of 5 June 2023. The Applicants subsequently gave written notice to terminate the tenancy to the Respondent on 19 May 2023. The said notice was to terminate the tenancy as at 16 June 2023.

2.9 The Applicants vacated the property on 16 June 2023 and returned the keys to the Respondent on the same date.

2.10 The Respondent subsequently received advice from his letting agents that he was no longer obliged to market the property for sale standing the notice given by the Applicants. A rental valuation of £995 per month was provided to the Respondent following significant improvements to the property.

2.11 The Respondent decided to relet the property following this advice. The property was advertised for let on Facebook on 19 October 2023. The Respondent entered a new tenancy agreement with a tenant commencing later in October 2023.

3. Findings in Fact and Law

3.1 The private residential tenancy agreement between the Applicants and Respondent was terminated as at 16 June 2023 in terms of section 48 of the Private Housing (Tenancies) (Scotland) Act 2016.

4. Reasons For Decision

4.1 In coming to this decision, the Tribunal considered all the of the written material before it, as well as that said by the parties at the hearing on 11 November 2024. It should be noted that there was little in the way of factual dispute between the parties – that which there was revolved mainly around the condition of the property upon the Applicants vacating it and was not deemed relevant by the Tribunal. The Tribunal considered both the First Named Applicant, Mr Gardner and the Respondent to be credible and reliable in the manner in which their respective evidence was given. The application turned on the relevant provisions of the 2016 Act.

4.2 The Applicants sought an order for wrongful termination on the basis of section 58 of the 2016 Act, which is in the following terms:-

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.

Section 58(1) requires that the private residential tenancy has been terminated in terms of section 50 of the 2016 Act. Section 50 states:-

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.

Section 50 states that a tenancy is terminated only when a notice to leave has been served and the tenant ceases to occupy the property. Furthermore, it is the later of the date specified in the notice and the date on which the tenant leaves upon which termination occurs. Section 50(3) also clearly states that, notwithstanding service of a notice to leave, the tenancy can be brought to an end earlier under section 48.

4.3 Section 48 of the 2016 Act states:-

48 Tenant's ability to bring tenancy to an end

(1)A tenant may bring to an end a tenancy which is a private residential tenancy by giving the landlord a notice which fulfils the requirements described in section 49.

(2)A tenancy comes to an end in accordance with subsection (1) on the day on which the notice states (in whatever terms) that it is to come to an end.

(3)But a tenancy does not come to an end in accordance with subsection (1) if—

(a)before the day mentioned in subsection (2), the tenant makes a request to the landlord to continue the tenancy after that day, and

(b)the landlord agrees to the request.

(4)In subsections (1) and (3), in a case where two or more persons jointly are the landlord under the tenancy, references to the landlord are to any of those persons.

Section 48 provides for termination of the private residential tenancy through service of a notice by the tenant. The tenancy ends on the date specified within the notice. In the present application, the Applicants gave such a

notice specifying the 16 June 2023 as the tenancy termination date. As the conditions in section 48(3) were not fulfilled, the private residential tenancy ended on that date through the operation of section 48, as opposed to ending by operation of section 50. It is not open to the Tribunal to make a wrongful termination order where a private residential tenancy has been brought to an end in accordance with section 48 of the 2016 Act.

4.4 In the event that the private residential tenancy had been brought to an end via section 50 of the 2016, the Tribunal could only make a wrongful termination order if, in terms of section 50(3), the Tribunal found that the Applicants were “misled” into leaving the property. The Tribunal could not make such a finding. At the time of service of the notice to leave, the Respondent genuinely intended to sell the property. In support of this was the fact that it was being let to the Applicants at a rental that appeared to be below the market rent for properties in that area. The Respondent offered the Applicants an opportunity to purchase the property from him. The Tribunal accepted his explanation as to why vacant possession was required in order that improvement works could be carried out before marketing it for sale. Consideration was only given to reletting the property following advice from the letting agent after the Applicants submitted notice in terms of section 48 of the 2016 Act.

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.

Legal Member/Chair

9 December 2024
Date