



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 58 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/23/4022

Re: Property at 90 Queens Crescent, Kepplestone, Aberdeen, AB15 4BE (“the Property”)

Parties:

Miss Heather Davis, 47M Kings Gate, Aberdeen, AB15 4EL (“the Applicant”)

Mr Muhammad Ali Qureshi, PO BOX 1340 Saudi Aramco Oil CO, Najma Housing Complex, Ras Tanura 31311, Saudi Arabia (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing, granted the application under Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 and made a Wrongful-termination Order requiring the Respondent to pay to the Applicant the sum of £3,000.

Background

1. By application dated 9 November 2023, the Applicant sought a Wrongful Termination Order under Sections 58 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant believed she had been misled into ending her tenancy.
2. The Applicant stated that she had moved into the Property on 5 August 2021, having relocated to Aberdeen for work. She had been very happy with the Property and had planned to live there for the foreseeable future, having secured a permanent teaching post with Aberdeenshire Council.
3. On 1 March 2023, the letting agents advised the Applicant that the Respondent needed to change the Council Tax back to his own name, the

reason given being that “he needs it in his name for his sons(sic) university application.” The Applicant refused this request.

4. On 8 June 2023, the letting agents emailed the Applicant to say that the Respondent “needs to move back into the Property” and attached a Notice to Leave by 3 September 2023.
5. The 12 weeks’ notice period included 6 weeks of school summer holidays, during which time the Applicant had a number of trips booked. It was important to her to sort out her accommodation and she secured another flat, albeit at a considerably higher rent. She then told the letting agents that she would like to move out on 24 July 2023.
6. The only reason she chose to end the tenancy earlier than the date set in the Notice to Leave was that it had left her with no choice. She needed to find a new property before the start of the new school term and there were very few flats available.
7. On 24 September 2023, the Applicant discovered that the Property was being advertised by the same letting agents as being immediately available at a rent of £950 per month. The rent she had been paying was £800. The advertisement on Rightmove had been added on 20 September, so it was clear that the Respondent had not lived in the Property for a 3-month period.
8. The Applicant believed she was misled into moving out.
9. Having queried the situation, the Applicant’s mother received an email from the letting agents on 3 October 2023. They said that the Respondent had advised them earlier in the year that his family were moving back to Aberdeen, as his eldest son was going to be attending Aberdeen University. He had instructed the letting agents to issue a Notice to Leave.
10. On 16 October 2023, the Respondent emailed the Applicant’s mother directly. He said he had told the letting agents to issue the Notice to Leave because they intended to move back to the Property at the start of October, because his eldest son was going to start university and his young son required special support at school. They wanted to move back so that the Respondent’s wife and elder son could explore schools in the area. They were coming to Aberdeen in the following week.
11. The Applicant provided the Tribunal with an energy bill showing usage of £141.33 between 25 July and 24 September 2023. She stated that the Property is a two-bedroom flat and questioned whether it would comfortably accommodate two adults, a young adult/teenager and a young child with special needs.
12. On 6 November 2023, the Applicant’s mother received a further email from the letting agents to say that the Respondent’s circumstances had changed after the Notice to Leave was issued. His son had been involved in a

motorbike accident over the summer and also needed to upgrade one of his school exam results for entry to university. This meant that he would not be starting there until January 2024, so would not be living in the Property until then. The Property had been empty from 25 July until 29 September 2023, before being rented on a short-term basis. The Applicant stated that this did not tie in with the Property having been advertised as a long-term let. The email from the letting agents said that the Property was empty again and would remain so until the Respondent and his family returned early in 2024.

13. The view of the Applicant was that the Respondent wished to re-let at a rent higher than that which, with Scottish Government restrictions, he could have sought from the Applicant from September 2023.
14. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 5 August 2021 at a rent of £750 per month, an email of 1 March 2023 from the letting agents to the Applicant asking her to agree to change the council tax back to the Respondent, another email of 8 June 2023 telling the Applicant that the Respondent “needs to move back into the property”, a Notice to Leave stating that “the Landlord intends to live in the Let Property”, a screenshot taken on 24 September 2023 of an advertisement on Rightmove stating that the Property was available now to rent on a “Long term” basis at a rent of £950 per month, various emails between the Applicant’s mother and the letting agents querying the situation and seeking information, and the emails of 16 October and 6 November 2023 referred to in the application. The papers also included a screen shot of a message from the Respondent to the letting agents on 5 June 2023, stating “my family is planning to move back to Aberdeen for my son’s education.” It was attached to the email of 16 October 2023 from the Respondent to the Applicant and her mother.
15. On 25 April 2024, the Tribunal advised the parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 16 May 2024. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

16. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 5 June 2024. The Applicant was represented by her mother, Mrs Fiona Davis. The Respondent was not present or represented.
17. The Applicant’s representative told the Tribunal that she had no knowledge of whether the Respondent and his family were presently living in the Property. She stressed that she had tried in many emails to elicit information that would support the Respondent’s position, but no evidence had been provided that the Respondent or his family had intended to move back in when the Notice to Leave expired. It was only when she let the letting agents know that she had seen the Rightmove advertisement that the emails regarding an alleged change in circumstances appeared.

18. Following the Case Management Discussion, the Tribunal made a wrongful-termination decision and issued an Order requiring the Respondent to pay to the Applicant the sum of £3,000.
19. On 13 June 2023, the Respondent asked the Tribunal to Review its Decision on the ground that he had not received the papers intimating the date of the Case Management Discussion until 9 June 2024. He provided evidence which indicated that this was indeed the case.
20. The view of the Tribunal was that the interests of justice required the Respondent to be given the opportunity to respond to the application and to be present or represented at any proceedings at which the application was determined. He had been denied that opportunity as the case papers had not reached him timeously. The Tribunal decided that the request from the Respondent should be regarded as a request for Recall under Rule 30, rather than a request for Review.
21. The Tribunal intimated its decision to the Parties on 11 July 2024 and, in accordance with Rule 30, the Applicant was given a 10-day period within which to lodge a statement of objection if she wished to oppose the Recall.
22. On 18 July 2024, the Applicant's representative advised the Tribunal that she had no objection to the case being heard again and understood that the Tribunal had to ensure that the process is fair. She did, however, ask the Tribunal to issue a Direction to the Respondent requiring him to provide evidence of his assertion that he intended to live in the Property. The Tribunal regarded that request as a reasonable one to make, and issued a Direction to the Respondent in the following terms:
 - i. The Respondent is required to provide copies of any documentation which supports his stated intention in a Notice to Leave of 8 June 2023 to live in the Property. This should include any relevant documentation confirming his son's acceptance (provisional or final) for admission to study in Aberdeen. It need not include a copy of his university application or the personal statement that was included with it.
 - ii. The Respondent is required to provide copies of any documentation such as flight booking confirmations which support his statement in an email to the Applicant and her representative of 16 October 2023 that he and his family were travelling to Aberdeen in the week following that email.
 - iii. The Respondent is required to provide copies of all utilities bills in respect of the Property covering the period from 25 July 2023 to date.
23. On 18 July 2024, the Applicant asked the Tribunal to establish whether or not the Notice to Leave had been lawfully issued. Despite numerous requests, she had seen nothing to show that the Respondent had a firm and genuine intention to live in Aberdeen, let alone the Property, as his permanent and only home. If, as he had stated in his email of 16 October 2023 "as planned, we are coming to Aberdeen next week", surely he could provide evidence, such as travel

documents, visas, confirmed university offers or removal arrangements, that he intended to move his family, including a child with special needs, 4,000 miles to live in another country. The Applicant had planned to stay in the Property for the foreseeable future, and left the flat in good faith, but her enquiries had led her to believe she had been misled.

24. On 22 August 2024, the Respondent provided written representations to the Tribunal. He stated that he and his family had a clear intention to move back to Aberdeen towards the end of 2023, but their circumstances changed, and they could not move, and the Property remained empty. His email of 16 October 2023 explained the circumstances. There might have been some flexibility on the date of expiry of the Notice to Leave, if the Applicant had made contact with the letting agents.
25. There were a number of attachments to the Respondent's email. He provided copies of utilities bills from 25 July 2023 to 24 July 2024. From 25 October 2023 to 24 July 2024 the charges were Nil. For the period 25 July 2023 to 24 August 2023, the electricity bill was £28.74 and the gas bill £22.05. The following month, to 24 September 2023, the cost of electricity was £54.60 and gas was £29.21. The bills for the period 25 September 2023 to 24 October 2023 were £2.12 for gas and £2.71 for electricity. All of these amounts were exclusive of VAT.
26. The Respondent also provided a copy of a communication from UCAS dated 20 February 2024, confirming a conditional offer of a place at Robert Gordon University and of a KLM booking confirmation of 24 July 2023 for the Respondent and Ms Ali Iram. The flights booked were for return flights, with connections, from Dammam to Aberdeen on 20 October 2023, returning on 27 October 2023.
27. On 2 September 2024, the Applicant commented on the Respondent's written representations following the Tribunal's Direction. She drew the Tribunal's attention to the fact that the Respondent and his letting agents had stated on several occasions that the Notice to Leave was issued in June 2023 as the family were moving back to Aberdeen, primarily because the Respondent's oldest son was going to attend University there and that, in addition, they wanted to "explore schools in the area" for their younger son, who had been diagnosed with learning difficulties. On 16 October 2023, the Respondent advised that the University start date had been changed to January 2024, but that the plan to move the family to Aberdeen remained the same. It was only after the Applicant had seen the Property advertised on a long-term basis, that the letting agents advised the Applicant that the Respondent's son had been involved in an accident some months earlier, that he needed to improve his school grades before starting University in January 2024 and that the family would be returning "early next year". The Respondent had not mentioned this in his email sent a week earlier. The conditional offer was dated 20 February 2024, so there was no evidence to support the Respondent's claim that he was due to start in January 2024.

28. The Applicant noted that the travel tickets tied in with the Respondent's statement on 16 October 2023 that they intended to travel to Aberdeen the following week, but the tickets were return tickets, which was not consistent with the Respondent's assertion that they were moving back to Aberdeen to live. The energy bills showed that there had been usage between July 2023 and September 2023, at levels consistent with that of the Applicant in a similar period. The bill to 24 October 2023 in fact only covered 3 days and showed that the contract ended on 27 September 2023. The letting agents had said in an email on 6 November 2023 that the Property was rented on a short-term basis on 29 September 2023 and the Applicant suggested that the "Nil" amounts shown on subsequent bills might indicate that a new tenant had been required to take on in their own name responsibility for the energy bills. This would be expected in a long-term let, not a short-term arrangement.
29. The Applicant's view was that the Respondent had not provided evidence to show that, at the time of service of the Notice to Leave, he had a firm and settled intention to live in the Property. At best, he had shown that he planned to visit Aberdeen for a week in October 2023, without the son who was apparently the main reason for the move. He had also stated that no-one had stayed in the Property after the Applicant moved out, despite the letting agents confirming there had been another tenant and the energy bills showing levels of consumption in line with someone living there.
30. On 10 September 2024, the Respondent made final written submissions to the Tribunal. He repeated that the family's plans all changed when his younger son was diagnosed with learning disability and his older son was involved in a motor-cycle accident in July 2023. He added "Apart from that the property has been empty to this date". Their intention was clear and genuine, but the family's circumstances changed.

Reasons for Decision

31. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.
32. Section 58 of the 2026 Act applies where, as in the present case, a private residential tenancy has been brought to an end without an Eviction Order. It provides that 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 landlord.
33. The Tribunal noted that the Notice to Leave stated that the Landlord intended to live in the Property, but the correspondence from the letting agents appeared to indicate that it was the Respondent's wife and two of their children who would be living there. It appeared to the Tribunal that the Notice to Leave gave the incorrect reason for Notice being given.

34. The Tribunal noted that the advertisement on Rightmove which appeared on 20 September 2023 clearly stated that the Property was available “Long term”. This was at odds with the explanation given by the Respondent’s letting agents in their email of 6 November 2023 that the Property was let out on a short-term basis. That tenancy would have been a Private Residential Tenancy Agreement and landlords cannot impose an end date in such an agreement. The email had explained that the Respondent’s circumstances had changed, in that his eldest son had been involved in a serious motorbike accident in the summer and also had to upgrade one of his school exam results for entry to university. The email from the Respondent to the Applicant and her mother on 16 October 2023, however, made no mention of the motorbike accident as a change of circumstances and, whilst it stated that his eldest son would be starting university “next year”, it added a second reason, namely that his youngest son required special support at school and that his wife and eldest son would be moving into the Property to explore schools in the area that might provide that support. There was no indication in that email that the Respondent himself intended to live in the Property.
35. The Tribunal could not make a finding that the Respondent wanted to be able to re-let at a higher rent than he would be permitted to charge the Applicant when the rent could next be increased, but was not satisfied that the Respondent intended to live in the Property as his only or principal home for at least 3 months. The evidence suggested that it would be his family who would be living there, and this was stated in terms by the Respondent in his message to the letting agents of 5 June 2023, but the Notice to Leave did not give that as the reason for requiring the Applicant to leave. The Respondent could have given Notice to Leave stating that a member of his family, namely his son, intended to live in the Property to pursue his course of study, but he did not do so.
36. The Tribunal accepted that it might have been argued that the Notice to Leave had been inadvertently wrongly framed and considered, therefore, whether, had the Notice to Leave stated that a member of the Respondent’s family required the Property as his only or principal home, it would have accepted the Respondent’s explanation for his failure to occupy it, The Tribunal considered carefully the Respondent’s written representations.
37. The Tribunal found the Respondent’s arguments unconvincing and inconsistent and regarded as very significant the fact that the Property had been advertised for a “Long term” let on 20 September 2023. The Respondent had provided travel details for a one-week visit in October 2023, but it appeared that the son who was due to attend University did not make that journey. The Respondent had stated that his son’s University start date was put back to January 2024, but the UCAS letter confirming a conditional acceptance was dated 20 February 2024, suggesting that it was a place for the Session beginning in the autumn of 2024. It certainly could not have related to a start date one month before it was issued.
38. The energy bills between 25 July 2023 and 24 October 2023, the last of them being for a three-day period to 27 September, are clearly indicative of the

Property having been occupied during that time and did not support the Respondent's contention that the Property had been empty since the Applicant left on 25 July 2023.

39. Finally, it appears from the energy bills that neither the Respondent nor any member of his family has in fact ever occupied the Property since the Applicant moved out.
40. The Tribunal decided, on the balance of probabilities, that, whether or not the tenancy, admitted by the letting agents to have begun in September 2023, lasted only for a relatively short time, the advertisement on 20 September 2023, presumably placed on their client's instructions, clearly stated that the intention was a long-term let, which was completely at odds with the Respondent's stated intention in the Notice to Leave that he required the Property for his own occupation (or even that it was required for his wife and two sons). Despite the statements he made regarding his younger son's diagnosis and his elder son's accident, the Respondent still said on 16 October 2023 that the family wanted to move back so that his wife and elder son, who would be starting University in January 2024, could explore schools in the area. The letting agents, in an email of 6 November 2023 to the Applicant's mother, stated that the Respondent's eldest son would be living in the Property when he started University in January 2024.
41. Having considered all the evidence, written and oral, before it, the Tribunal decided, on the balance of probabilities, that the Applicant had been misled into leaving the Property. The fact that she then left before the date specified in the Notice to Leave was irrelevant. She took the Notice to Leave at face value and responded perfectly reasonably by seeking alternative accommodation. The Tribunal was satisfied that, but for the Notice to Leave, the Applicant would have remained in the Property. The Tribunal decided to make a Wrongful-termination Order against the Respondent.
42. Having made a determination under Section 58 of the 2016 Act, the Tribunal then considered the amount it would require the Respondent to pay to the Applicant. The Tribunal noted that the rent could only have been increased by 3% (to £824 per month) when it was next reviewed and that the Applicant's rent for the new property was £295 per month higher than the amount she had been paying. The Tribunal could not regard this as actual loss, as it could not speculate as to whether the tenancy might have continued to the present day or whether the Applicant might have been able, in time, to find somewhere less expensive, but the loss of opportunity to have her rent restricted to £824 per month was a relevant factor when considering the amount the Respondent should be required to pay.
43. Whilst the Tribunal regarded the Respondent's action as serious. It had significant repercussions for the Applicant, who had been misled into leaving a flat in which she was very settled, having lived there for nearly two years. She had incurred van hire charges in connection with her removal and the considerable inconvenience and upheaval of having to look for another flat

with the school holidays only a few weeks away. Through his letting agents, the Respondent had openly advertised the Property in September 2023 and had not provided the Tribunal with a credible explanation for having done so.

44. Having taken into account all the facts and circumstances of the case presented to it, the Tribunal decided that an Order requiring the Respondent to pay to the Applicant the sum of £3,000 was proportionate, reasonable and fair.

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

George Clark

Legal Member/Chair

17 December 2024
Date