



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/24/0585

Re: Property at 2/1 557 Alexandra Parade, Dennistoun, Glasgow, G31 3DB (“the Property”)

Parties:

Miss Abbie Brownlie and Mr Ryan James Borthwick, residing together at 85 Gartloch Avenue, Gartcosh, G69 8FE (“the Applicants”)

Mrs Marisa Zecchino, residing at Auchengree Farm, Lenzie Road, Stepps, Glasgow, G33 6BZ (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application for a Wrongful Termination Order is refused.

Background

1. An application dated 06 February 2024 was submitted to the Tribunal under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a Wrongful Termination Order against the Respondent on the basis that the Applicants were misled into ceasing to occupy the Property by the Respondent by virtue of service of a Notice to Leave.
2. The Application comprised the following documents: -

- (i) application form in the First-tier Tribunal standard application form;
 - (ii) copy tenancy agreement between the Parties with a date of entry of 1 August 2022 and at rent of £600.00 per month
 - (iii) copy Notice to Leave issued by the Respondent to the Applicants dated 4 May 2023 with an end date of 29 July 2023 and citing Ground 1, “landlord intends to sell the Property” and
 - (iv) Screenshot from Rightmove website dated 6 February 2024 showing the Property advertised for rent at £1,200.00 per month
3. A Case Management Discussion (“CMD”) took place on 23 July 2024 by tele-conference.
 4. At the CMD the Applicants explained that that they had vacated the Property in July 2023 following their receipt of the Notice to Leave. They had later noted that the Property was marketed for re-let at a higher rent than they had paid under their tenancy agreement with the Respondent. The Applicants believe they were misled into ceasing to occupy the Property as they believed that the Respondent did not intend to sell the Property as stated in the Notice to Leave.
 5. At the CMD the Respondent explained that it was intended to sell the Property at the date the Notice to Leave was served upon the Applicants. The Respondent explained that, following advice from estate agents and after the Applicants had vacated the Property, work had been carried out at the Property with a view to achieving a higher sale price. Following that refurbishment work the sale price recommended by estate agents had been lower than expected and estate agents had advised the Respondent to consider re-letting the Property until the sale market improved.
 6. By the date of the CMD the Respondent had lodged a written statement (in the form of a letter addressed to the Applicants) along with
 - a. Copy email from Respondent to Mitchells Sales and Letting agents dated 12 April 2023
 - b. Copy email from Mitchells Sales and Letting agents to Respondent dated 19 April 2023
 - c. Copy email from Mitchells Sales and Letting agents to Respondent dated 25 April 2023
 - d. Copy email from Mitchells Sales and Letting agents to Respondent dated 18 August 2023
 - e. Copy email from Mitchells Sales and Letting agents to Respondent dated 26 January 2024
 - f. Copy email from Slater Hogg estate agents to Respondent dated 16 February 2024

g. Copy email from Mrs Nadia Millar to Respondent dated 10 July 2024

7. The Tribunal determined to fix a hearing of evidence. The Tribunal issued Direction to parties in the following terms:

“The Applicants are directed to:

- i) provide documentary evidence, if any, of the steps taken by them on receipt of the Notice to Leave.
- ii) provide documentary evidence, if any, and/or a statement of the reasons why they believe the Respondent did not intend to sell the Property within three months of them vacating the Property.
- iii) provide evidence of the losses incurred by them as result of vacating the Property and
- iv) provide any other evidence which they consider the Tribunal should take into account.

The Respondent is directed to:

- I) provide documentary evidence, if any, of her reasons for intending to sell the Property.
- provide documentary evidence, if any, and/or a statement of the advice given to her in respect of marketing the Property.
- III) provide documentary evidence, if any, and/or a statement of the advice given to her in respect of re-letting the Property and
- IV) provide any other evidence which she considers the Tribunal should take into account.”

8. Parties did not lodge any documentation in compliance with the Directions in advance of the hearing of evidence.

The Hearing

9. A Hearing took place 13 December 2024 in Glasgow Tribunal Centre, 20 York Street, Glasgow. Both Applicants attended the hearing and gave evidence. The Respondent also attended the hearing and gave evidence. The Tribunal also heard evidence from a witness on behalf of the Respondent, Mrs Nadia Millar. The Tribunal members asked questions of all parties and witnesses.

10. Although parties had not lodged any documents in compliance with the terms of the Directions issued by the Tribunal, the Applicants sought to lodge documentation at the hearing on evidence. The Applicants explained that they had misunderstood the terms of the Directions and had assumed they could lodge and refer to documents on the date of the hearing. The Tribunal adjourned to arrange for copies of the Applicants' documents to be made available to the Respondent, and thereafter the Respondent confirmed that she did not object to the late lodging of these documents. The Tribunal

therefore received the following documents from the Applicants (which were thereafter referred to at the hearing of evidence):

- a. Copy texts between the First Applicant and the Respondent dated 19 May 2023
- b. Copy texts between the First Applicant and the Respondent dated 4 July 2023
- c. Undated statement from Calum Williams, owner of a flat at 557 Alexandra Parade, who confirms refurbishment work at the Property had started on 17 September 2023
- d. Further Undated statement from Calum Williams, which references a meeting between Mr Williams and the “owners” of the Property
- e. Undated statement from Evanna Carlin, occupier of a Flat at 557 Alexandria Parade, who confirms who confirms refurbishment work at the Property had started on 17 September 2023
- f. Copy text messages between Calum Williams and Evanna Carlin dated 17 September 2023

Findings in Fact

11. The Respondent is a joint owner and joint heritable proprietors of the property at 2/1 557 Alexandra Parade, Dennistoun, Glasgow, G31 3DB. The Respondent jointly owns the Property with her sister, Mrs Nadia Millar, who resides at Inglefield, Mosswell Road, Glasgow G628HB (“the joint owner”).
12. On 1st August 2022 the Respondent leased the Property to the Applicants under a Private Residential Tenancy Agreement. The agreed rent to be paid by the Applicants under the terms of this tenancy agreement was £600 per month. That tenancy superseded an earlier tenancy between the First Applicant and the Respondent in relation to the Property which had commenced in 2017.
13. On 04 May 2023 the Respondent personally served a notice to leave on the Applicants which required them to remove from the Property before 29 July 2023. Said Notice to Leave relied upon Ground 1 of Schedule 3 to the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”).
14. Ground 1 of Schedule 3 to the 2016 Act states that “It is an eviction ground that the landlord intends to sell the let property”.
15. The Respondent and the joint owner intended to sell the Property at the point the Notice to Leave was served.

16. The Applicants moved from the Property on 2nd July 2023.
17. The reason for the Applicants moving out of the Property was a direct result of the Notice to Leave being served on them. The Applicants would not have moved out of the Property at that time had it not been for the service of the said Notice to Leave.
18. After the Applicants had removed from the Property, the Respondents completed certain works to upgrade the Property. Around September 2023 the Respondents commenced refurbishment work to the Property including the installation of a new kitchen, rewiring and the removal of lead piping in the Property. The refurbishment works cost the Respondent approximately £12000 and were completed by December 2023.
19. In January 2024 the Respondent obtained a valuation of the Property from an estate agent. That valuation was significantly less than the Respondent had anticipated. The Respondent was advised by the estate agent that the market for the Property had changed from August 2022 and that she was unlikely to achieve the sale price for the Property she had anticipated when the Respondent had started the refurbishment works. The Respondent was advised to delay the sale of the Property whilst the property market improved in anticipation of a higher sale price at a later date.
20. In or around February 2024 the Respondent and the joint owner agreed to delay the sale of the Property and further decided to relet the Property at that time.
21. The Respondent relet the Property at a rent of £1200 per month after refurbishment works were completed at the Property.
22. The Respondent's intentions in relation to the sale of the Property changed after the Applicants had left the Property.
23. Between the date of service of the Notice to Leave upon the Applicants, and the date upon which the Applicants moved from the Property, it was, and remained, the genuine and settled intention of the Respondent to sell the Property.

Summary of Evidence

24. The Applicants' evidence was provided in written form and further supported by supplementary evidence at the hearing. The Applicants were suspicious of the motives of the Respondents. They had moved from the Property after receiving the Notice to Leave. They had understood the Property was to be

marketed for sale soon after they left the Property on 2 July 2023. Through contact with neighbouring proprietors of the Property they understood that substantial works were carried out to the Property after they had vacated. They referred to written statements provided to the Tribunal from Calum Williams and Evanna Carlin, which confirmed that refurbishment works had commenced at the Property in September 2023. Thereafter in February 2024 they become aware that the Property was marketed for rental. They referred to a screen shot of Slater Hogg Lettings website from that date which showed the Property as being available to rent at a monthly rent of £1200 per month. This was double the rent that the Applicants had paid during their period of occupancy under the tenancy agreement. The Applicants surmised that the true intention of the Respondent had been to remove them from the Property to allow the Respondent to thereafter upgrade the Property to allow it to be let a higher rent than paid by the Applicants. As the property was not marketed for sale within three months of the date from which they had vacated the Property they questioned the true motive of the Respondent in requiring them to leave. The Applicants consider they were misled as the Respondents chose to cite ground 1 in the notice to leave which clearly stated the Respondent intended to sell the Property. The Applicants fairly and properly conceded in their evidence that they had no direct evidence of the Respondents intention at the time the Notice to Leave was served. Their view that the Respondent had misled them was because the Property was never marketed for sale and that it was advertised for let after they had moved from the Property. For all these reasons the Applicants consider they were misled into ceasing to occupy the Property by the Respondents.

25. The Respondents' evidence was provided in written form and further supported by oral evidence of the Second Respondent at the hearing. In addition, the Tribunal heard evidence from Mrs Nadia Millar, the Respondent's sister and joint owner of the Property. The Respondent gave evidence that she and Mrs Millar had jointly agreed, around April 2023, that they wished to sell the Property. She explained that at that time the mortgage payments in respect of the Property had increased from £222 per month in April 2022 to £522 per month by April 2023. The Respondent and the joint owner considered at that time that it was not financially viable to continue to let the Property as the rent recovered in terms of the tenancy with the Applicants barely covered the mortgage and expenditure connected to the ownership of the Property. On 12 April 2023 the Respondent emailed a local estate agent seeking a market value for the property. She exhibited a copy of the email in which she had confirmed to those agents that "I am intending to sell our flat at 557 Alexandra Parade". On 25th April the sales agent confirmed by email to the Respondent that, if the property was upgraded with a new kitchen, they could "comfortably" value the property between £160000 and £200000. A copy of this email was exhibited to the Tribunal. The Respondent explained

that, based on the advice from the sales agents, she and her sister agreed that they wished to sell the property. They recognised that they would require to upgrade the property to achieve a higher sales value and agreed to carry out upgrade works prior to the planned sale. It was the intention of the Respondent and the joint owner to upgrade the property and put in on the market for sale within three months of the date that the Applicants left the Property. The Respondent confirmed that the Notice to Leave was then served upon the Applicants on 4 May 2023. She specifically confirmed that, as at the date of that notice, it was her genuine intention to jointly sell the Property with her sister, after they had completed some upgrade works to the Property. The Respondent confirmed that the Applicants left the Property on 2 July 2023. Thereafter the Respondent and the joint owner arranged for appropriate trades to visit the property and to provide quotes for works to be carried out to the Property. Contracts were agreed and works to upgrade the Property commenced in September 2023. The works were completed by December 2023 at an approximate cost of £12000. The Respondent explained that the extent of the required works was larger than first anticipated after it was deemed necessary to remove lead piping which served the water supply in the Property. In January 2024 the Respondent contacted the sales agents with a view to putting the Property on the market at that time. Two different sales agents advised that due to a change in market conditions the upgrade property was, by then, only expected to achieve a sales price of between £155000 and £165000. The sales agents suggested that the Respondent and the co-owner should delay the sale of the Property to determine whether the sales market had improved and increase the likelihood of a higher sales price for the Property. The Respondent referred to her emails with Mitchells Estate Agents and Slater Hogg Letting as evidence of the advice that she had received in relation to the value of the property after the upgrade works had been completed. The Respondent and joint owner agreed to delay the sale of the Property for these reasons. They agreed to rent the Property until such times as the property market improved with a continuing intention to sell the Property at a future date. The Property was then relet in March 2024 at the rent of £1200 per month. The Respondent again confirmed in her evidence that it was her genuine intention to sell the Property when the Notice to Leave was served. That was still her intention at the date the Applicant's vacated the Property. The decision to delay the sale of the Property was not taken until early 2024 on the advice of the estate agents.

26. Mrs Nadia Millar gave evidence to the Tribunal. She is a joint owner of the Property with the Respondent. In her evidence she confirmed that she had agreed with the Respondent in April 2023 that the Property should be sold, primarily because the mortgage costs in relation to the Property had increased to a level where it was no longer economic to let the Property. Mrs Millar explained in her evidence that for her own personal reasons she also

wanted to realise the equity value in the Property. She confirmed that she and the Respondent had agreed to carry out works to increase the value of the Property prior to sale. She confirmed that these works were completed. She confirmed that around January 2024, following advice from estate agents, she and the Respondent had agreed to delay the sale of the Property in the hope that the property sales market would improve, allowing for a higher value to be realised on eventual sale. Mrs Millar confirmed in her evidence that it was her intention to sell the Property, along with the Respondent, when the Notice to Leave was issued. She confirmed that this was also the intention for the Respondent.

Reasons for Decision

27. In considering their decision the Tribunal had regard to the terms of Section 58(3) of the Act which states:

58(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.

28. The Guidance notes to the Act confirm (at paragraph 90) that:

Section 57 provides that where a tenancy has been ended by eviction order and the tenant is not satisfied that the landlord was genuinely entitled to recover possession of the property under one of the specified eviction grounds, meaning that the Tribunal was misled into issuing an eviction order, the tenant can apply to the Tribunal for a wrongful-termination order. In such cases – and in the case of section 58 wrongful termination applications – the test will be whether the landlord genuinely intended to use the property in the way that the eviction ground required (even if, for some reason, that intention has not come to fruition).

29. In this case the Tribunal was satisfied that the Applicants moved out of the Property as a direct result of the Notice to Leave being served on them.

30. The Tribunal found that all parties gave evidence to the Tribunal in an honest and straightforward manner. The evidence of all parties was generally not in dispute in relation to the material facts. The Applicants had provided written evidence that works were carried out to the Property after they had vacated the Property. This was not disputed by the Respondent. The Applicants had provided evidence that the Respondent had re-let the Property in 2024. Again,

this was not disputed by the Respondent. The Applicants consider that they were misled by the Respondent. The Tribunal consider that there is no material evidence to support such a contention.

31. The Tribunal is satisfied on a balance of probabilities that the Respondent had a genuine and settled intention to sell the Property at the time the notice to leave was served upon the Applicants. The Tribunal are further satisfied on the balance of probabilities, that between the date of service of the Notice to Leave upon the Applicants, and the date upon which the Applicants moved from the Property it remained the genuine and settled intention of the Respondent to sell the Property. The Tribunal accepted the evidence of the Respondent, as confirmed by Mrs Millar, that the Respondent's intentions only changed after the Applicant had removed from the Property. The Respondents decided to delay the proposed sale of the Property based on advice from estate agents and for economic reasons.

32. For these reasons the Tribunal is not satisfied that the Applicants had been misled into ceasing to occupy the Property as a direct result of the Notice to Leave issued by the Respondent, in terms of section 58(3) 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.



13 December 2024
Date