



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/24/0793

Re: Property at 1/1, 79 Guthrie Street, Glasgow, G20 8DJ (“the Property”)

Parties:

Mr Thierry Besnier, 6/2, 75 Port Dundas Road, Glasgow, G4 0HF (“the Applicant”)

Miss Sophia Lin, 4 Shuna Crescent, Flat 2/2, Glasgow, G20 9QS (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that no order should be made and the application should be dismissed

Introduction

This is an application under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017. The application seeks a wrongful termination order under Section 59 of the Private Housing (Tenancies) (Scotland) Act 2016.

Service of the application bundle and intimation of the Case Management Discussion (CMD) was effected upon the respondent by sheriff officer delivery on 24 July 2024.

Both parties lodged additional representations. On 12 August 2024 the applicant lodged an inventory of expenses which he was relying upon. On 14 August 2024 the respondent lodged written submissions in defence of the application.

Procedural history

The CMD took place by teleconference on 23 August 2024 at 11.30 am. Both parties represented their own interests. The respondent provided a detailed explanation at that time with regards to the steps which had, as a matter of fact, been taken to market and sell the let property. Reference is made to the Case Management Discussion Note. The applicant challenged the respondent's explanations and, in the circumstances, an evidential hearing was fixed.

The evidential hearing took place by teleconference on 22 January 2025 at 10 am. The respondent represented her own interests. The applicant failed to attend. The tribunal waited 30 minutes beyond the listing time of 10am before determining the application.

Burden and Standard of Proof

The burden of proof rests with the applicant and the relevant standard of proof and the relevant standard is a balance of probabilities.

Finding and Reasons

1. The property is 1/1, 79 Guthrie Street, Glasgow G20 8DJ. The applicant is Mr Thierry Besnier who is the former tenant of the property. The respondent is Miss Sophia Lin who was the heritable proprietor and former landlord.
2. The parties entered into a private residential tenancy in respect of the property which commenced on 9 May 2022. The rent was £850 per month.
3. On 13 June 2023 the applicant was served with a notice to leave under Section 50(1)(a) of the 2016 Act. The respondent was relying upon grounds 1 and 1A, namely that she intended to sell the let property, and or, to alleviate financial hardship. The notice to leave was prepared by Martin & Co acting on behalf of the respondent. It was dated 13 June 2023 and specified that an application would not be submitted to the tribunal before 7 September 2023. That notice to leave was valid.
4. The applicant's position is that the let property has not been advertised for sale and further it is his position that there was no intention on the part of the applicant to sell the let property. The applicant thus asserts that he was misled into vacating the let property. This is the test which an application under Section 58(3) must be founded upon.
5. The applicant asserts that the cost of the wrongful eviction amounted to £4,300. This is based upon him stating that he required to incur costs associated with the move as well as requiring him to pay higher rent and higher council tax and other utility bills.

6. The tribunal found the respondent to be a credible and reliable witness. Her evidence is fully supported by third party documentary evidence which the tribunal also found credible and reliable.
7. The respondent instructed Martin & Co, Estate Agent, to serve the notice to leave upon the applicant on 13 June 2023. Her motivation to sell the let property was due to financial difficulties. The respondent was provided with the necessary statutory notice. This required him to leave the let property by 7 September 2023. The respondent requested an additional one month extension which the applicant agreed to. He did not move out and a further one month extension was agreed to and the respondent vacated the property on 7 November 2023. Once vacant possession was obtained work was undertaken to place the let property in a marketable state. The applicant subsequently arranged for a Home Report to be prepared and this was obtained in early March 2024. On 14 March 2024 the property was marketed online via Rightmove. Four offers were received on 12 April 2024. The chosen purchaser did not proceed and this required the property to be remarketed on 21 May 2024. A further offer was received on 5 July 2024 which was accepted. Missives were then concluded with a proposed entry date of 18 September 2024. The property has now been sold.
8. The respondent relies upon a detailed letter from the managing director of Martin & Co, Mr Muhammad Nawaz, which sets out the detailed background which the Respondent herself has confirmed. This letter from this professional corroborates the respondent's explanations and evidence. The tribunal found the written evidence from Mr Nawaz credible and reliable and attached significant weight to it. The applicant has not challenged this third party evidence.
9. The tribunal finds as a fact that the respondent had every intention to sell the let property at the time that the notice to leave was served upon the applicant. She has evidenced that intention by her subsequent actions which have led to the transfer of ownership. The respondent did not mislead the applicant. She has discharged any doubt about wishing to evict the applicant on the basis of ground 1. The tribunal does not require to consider the additional element of alleged financial hardship for the purposes of the alternative ground 1A which no longer exists.
10. The applicant's earlier insistence that he does not accept the narrative and explanations provided by the respondent regarding the delay to the property being sold is nothing other than mere speculation. There is no evidential basis for his claim.
11. The applicant has failed to discharge the burden of proof upon him to establish that the respondent misled him to vacate the let property.

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.

Richard Mill

22 January 2025

Legal Member/Chair

Date