



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/24/0753

Re: Property at 0/1 1 Mannering Court, Glasgow, G41 3QQ (“the Property”)

Parties:

Mr Barry Liddell, 0/1 26 Napier Place, Glasgow, G51 2LL (“the Applicant”)

Mr Thomas Baird, 54 Hill Drive, Eaglesham, Glasgow, G76 0AH (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Jane Heppenstall (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 (amended) application dated 12 April 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 Applicant was 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, together with a statement from the Applicant as to why he considered a wrongful termination order should be granted
 - (ii) copy tenancy agreement between the Parties dated 31 January 2023 relating to the Property and specifying a rent £500 per month
 - (iii) copy Notice to Leave issued by the Respondent to the Applicant dated 13 September 2023 with an end date of 9 December 2023 and citing Ground 1, "landlord intends to sell the Property" as the reason for giving the notice
 - (iv) Screenshot from internet of property available for rent by "Houses for sale & to rent", which refers to a one bedroom property at Mannering Court Glasgow being offered for a rent of £650 per month.
 - (v) Copy email from "Houses for sale & to rent" to the Applicant dated 21 December 2023 in which it is confirmed that the listing of a property for rent is "under review".
 - (vi) Newspaper report dated 07 January 2024.
3. A Case Management Discussion ("CMD") took place on 6 August 2024 by tele-conference. Both parties attended the CMD. The Respondent denied the wrongful termination of the tenancy between the parties. The Tribunal assigned a date for an evidential hearing.
4. On 15th August 2024 the Respondent had lodged a written statement (in the form of a letter addressed to the Tribunal) along with
 - i. Copy letter addressed to the Respondent from Future Property Auctions dated 6 August 2024 confirming that Future property Auctions were instructed to market the Property for sale on 12 December 2023/2024.
 - ii. Screenshot from Zoopla showing the Property listed for sale on 23 January 2024 at a fixed price of £120000
 - iii. Copy account of payments and outlays (for the period from 03 July 2024 to 29 July 2024) incurred by the Respondent in connection with the sale of the Property
 - iv. Copy email from Allied Surveyors to the Respondent dated 20 December 2024 confirming that Allied Surveyors had been instructed to prepare a home report in relation to the Property.
 - v. Copy Home report prepared in relation to the Property by Allied surveyors Scotland (Limited) dated 4 January 2024, and valuing the property at a market value of £110000.
 - vi. Copy Home report prepared in relation to the Property by Shepherd Chartered Surveyors dated 12 January 2024, and valuing the property at a market value of £125000
 - vii. Copy invoice from Clyde Property estate agents for sale commission in relation to the Property dated 5 July 2024

- viii. Copy email from Clyde Property to the Respondent dated 6 August 2024 in which Clyde Property confirm that the Property was marketed for sale by them from 8 April 2024 to 27 July 2024
- ix. Copy terms and conditions for sole selling rights agreement between Clyde Property and the Respondent dated 29 March 2024
- x. Copy email to Respondent from KW Law dated 11 July 2024 enclosing a disposition in relation to the sale of the Property for signature by the Respondent
- xi. (along with further copies of some of the documentation provided to the Tribunal by the Applicant).

The Hearing

- 5. A Hearing took place on 10 January 2025 in Glasgow Tribunal Centre, 20 York Street, Glasgow. Both the Applicant and the Respondent attended the hearing and gave evidence. The Tribunal members asked questions of all parties and witnesses.

Findings in Fact

- 6. The Respondent is the owner and heritable proprietor of the property Flat 0/1, 1 Mannering Court, Glasgow, G41 3QQ.
- 7. From 5 February 2023 the Respondent leased the Property to the Applicant under a Private Residential Tenancy Agreement. The agreed rent to be paid by the Applicants under the terms of this tenancy agreement was £500 per month. That tenancy superseded an earlier tenancy between the First Applicant and the Respondent in relation to the Property which had commenced in April 2021.
- 8. By email dated 13 September 2023 the Respondent's agents served a notice to leave on the Applicant which required the Applicant to remove from the Property before 09 December 2023. Said Notice to Leave relied upon Ground 1 of Schedule 3 to the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- 9. 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".
- 10. The Respondent intended to sell the Property at the point the Notice to Leave was served.

11. The Applicant moved from the Property on 8th December 2023.
12. The reason for the Applicant moving out of the Property was a direct result of the Notice to Leave being served on them. The Applicant would not have moved out of the Property at that time had it not been for the service of the said Notice to Leave.
13. After the Applicant had removed from the Property, the Respondents completed certain works to upgrade the Property.
14. In January 2024 the Respondent obtained a valuation of the Property and a home report from two separate firms of surveyors. The Respondent arranged for the Property to be marketed for sale through Future Property Auctions during the period from 2 February 2024 to 2 April 2024. The Respondent thereafter instructed Clyde Property to market the property during the period from 8 April 2024 to 27 July 2024.
15. The Property was sold by the Respondent in July 2024.
16. No other tenancy of the Property was granted by the Respondent following the date upon which the Applicant vacated the Property on 8 December 2024.
17. 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

18. The Applicant's evidence was provided in written form, and further supported by supplementary evidence at the hearing.
 - i. The Applicant had moved from the Property after receiving the Notice to Leave. He had understood the Property was to be marketed for sale soon after he left the Property on 8 December 2024.
 - ii. In early September 2023, prior to the service of the Notice to Leave, the Applicant had been contacted by telephone, by Mr Stuart Hamilton who was a representative of the Respondent's letting Agents, Messrs Phoenix Property Group. During that call Mr Hamilton had enquired whether the Applicant would be willing to pay a higher rent for his tenancy of the Property. The Applicant had indicated that he did not want to increase the rent as there were problems with the heating in the Property.

- iii. On the same date, and after a matter of minutes, the Respondent's letting agent again called the Applicant. The Applicant was advised that the Respondent had decided to serve the Respondent with a Notice to Leave from the Property.
- iv. Given that the Applicant was advised that the Respondent had decided to serve the Applicant with a Notice to Leave only minutes after he had been asked to consider increasing the rent for the Property, the Applicant considered that it was likely that he was being required to leave the Property as there was no agreement as to increasing the rent for the Property.
- v. The Applicant thereafter received a Notice to Leave dated 13th September 2023 (effective from 9th December 2023) which indicated the Respondent intended to sell the Property.
- vi. The Applicant left the Property on 8 December 2024 as he understood that he had no alternative, given the terms of the Notice to Leave.
- vii. On 19 December 2024 the Applicant became aware that the Property had been advertised online as available to rent at a rent of £650 per month. The Applicant contacted the Respondent's letting agent as he considered he had been misled as to the reason for the Notice to Leave. The Applicant explained to the Letting agent that he believed, as the Property was now being advertised for rent, that the Respondent had wanted him to leave the Property to achieve a higher rent under a new tenancy and not because the Respondent wished to sell the Property. During that discussion the Respondent's letting agent had indicated that the Applicant could move back into the Property if he was willing to pay the higher rent of £650 per month.
- viii. On 21 December 2024 the Applicant was advised by email that the online Property listing was under review. The online listing of the Property was removed by that date.
- ix. The Applicant was suspicious of the motives of the Respondent. He did not accept that the Respondent had intended to sell the Property at the time he had received the Notice to Leave the Property. He considered that his discussions with the Respondent's letting agents, during which he had been asked to consider paying a higher rent for the Property, suggested that the Respondent's true intent had been to remove him from the Property to allow the Respondent to relet the Property at a higher rent. The Applicant's concerns in this respect had been heightened after he became aware that the Property had been advertised for rent after he had left the Property. He believed that the online rental listing of the Property in December 2023 was cancelled because he had challenged the Respondent's letting agent as to the true intent of the Respondent when the Notice to Leave was served.
- x. The Applicant further highlighted that the Respondent had not sought have the Property valued prior to service of the Notice to Leave. The

Applicant considered that this further suggested that the Respondent had not intended to sell the Property as at the date of the Notice to Leave as no preparation was made by the Respondent to sell the Property until after the Applicant had left the Property.

19. The Respondents' evidence was provided in written form and further supported by his evidence to the Tribunal at the hearing.
- i. The Respondent had reached the decision to sell the Property in the Summer of 2023. The Property was leased at rent of £500 per month. The respondent paid a mortgage over the Property at over £300 per month. The Respondent also paid factoring costs of approximately £40 per month along with letting agents' fees of approximately £50 per month. In addition, he had recently required to pay over £800 towards the cost of communal gutter repairs at the Property. Against that financial background the Respondent had made the decision to sell the Property for economic reasons.
 - ii. The Respondent discussed his decision to sell with his letting agents in September 2023. He confirmed in his evidence that he informed his letting agent of that decision and authorised them to proceed to serve a Notice to Leave upon the Respondent citing his intention to sell the Property as his reason for serving the Notice.
 - iii. The Respondent is a qualified surveyor and had formed his own expectations of what he could achieve as sale price for the Property. He discussed these expectations with his letting agent. The Respondent confirmed that during this discussion he did raise with his Letting Agent the possibility of having to re-let the Property in the event he was unable to sell the Property at his anticipated sale price.
 - iv. The Respondent confirmed that he was unaware that the Property had been advertised online for rent on 19 December 2024. He had not instructed his letting agent to market the Property for let at that time. As soon as he became aware that the Property had been advertised as available for rent he instructed his letting agent to remove the online advertisement. The Property had been marketed for rent online for 24 hours at that time. This had occurred after the Applicant had left the Property. The Respondent believes that the letting agent may have been seeking to ascertain whether the Property could be relet if the sale of the Property, at an acceptable price, could not be achieved.
 - v. The Respondent obtained two home reports/valuations for the Property in January 2024. He initially instructed Future Property Auctions to market the Property for sale and thereafter instructed Clyde Property to market the Property from April 2024. An offer to purchase the Property was made in July 2024 and the Property was thereafter sold by the Respondent in July 2024.

- vi. The Respondent confirmed in his evidence that he had intended to sell the Property from before the date that the Notice to Leave was served upon the Respondent. He further confirmed that this remained his intention beyond the date that the Applicant vacated the Property. The Respondent highlighted that he would not have gone to the expense of marketing the Property for sale had that not been his intention.
- vii. The Respondent specifically disputed the suggestion that he had instructed the service of the Notice to Leave upon the Applicant as a means to remove the Applicant from the Property to allow the Respondent to relet the Property at a higher rent than was paid by the Applicant.

Reasons for Decision

20. 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.

21. 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).

22. 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.

23. 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. Perhaps unsurprisingly the Applicant was suspicious of the Respondent's intentions in relation to the Property given that he had been asked to consider paying a higher rent immediately before

he had received the Notice to leave. It is equally not surprising that the Applicant's suspicions were further heightened by the fact that the Property was advertised for let not long after he had left the Property. That said, neither of these factors in themselves directly refute the Respondent's evidence that he always intended to sell the Property. The Respondent did not dispute that the Applicant was asked to consider paying a higher rent. That discussion had occurred before the Notice to Leave was served. The Respondent explained that he was having to consider selling the Property at a lower amount than he thought the Property was worth due to poor market conditions in the domestic house sale market. He had discussed the possibility of having to relet the Property if he could not obtain a reasonable sale price for the Property. The Tribunal accepted the Respondent's evidence that, as at the date the Tenant left the property, it was his settled intention to sell the Property. No evidence was led before the Tribunal as to who had instructed the online marketing of the Property for rent for a 24 hour period after the Applicant had left the Property.

24. 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 Property was not relet after the Applicant left the Property. The Property was sold after the Applicant left the Property. The Tribunal is not satisfied that there is a sufficiency of evidence to suggest that the Respondent's intention was not to sell the Property.

25. 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.

Andrew Cowan

7 February 2025

Legal Member/Chair

Date