



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

Chamber Ref: FTS/HPC/PR/24/2138

Re: Property at 2 Wilson Street, Coatbridge, ML5 3QA (“the Property”)

Parties:

Miss Abby Anderson, 14 Bramley Place, Coatbridge, ML5 4UY (“the Applicant”)

Mr Stephen Cantwell, 55 Meadow Walk, Coatbridge, ML5 3QA (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (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. By application dated 8 May 2024 the applicant seeks a wrongful termination order under section 57 of the Private Housing (Tenancies) Act 2016.
2. The applicant lodged the following documents with the application:
 - Copy of previous First-tier Tribunal (“FTT”) decision reference FTS/EV/23/1716
 - Extract from the land register
 - Extract from the Scottish landlord register

3. The respondent lodged written representations and copy correspondence from Kirkland estate agents, copy bank and credit card statements and photographs of the property.
4. A case management discussion took place via teleconference on 10 September 2024. The applicant attended and was represented by James Melvin, advice worker from Coatbridge Citizens Advice Bureau. The respondent and his wife, Sheila Cantwell were also in attendance. Parties were in dispute as to whether the respondent had misled the Tribunal in terms of section 57. The Tribunal fixed a hearing to determine the application.

Hearing – 18 March 2025- teleconference

5. The applicant attended and was represented by James Melvin, advice worker from Coatbridge Citizens Advice Bureau. The respondent and his wife, Sheila Cantwell were also in attendance.

Summary of submissions from Mr Melvin

6. Mr Melvin confirmed that the applicant sought an order under section 57 of the Act. He referred to the previous eviction application when the respondent had been represented by Mr O'Hear from HC2M property agents. The respondent had relied on ground 1 in schedule 3 of the 2016 Act to obtain an order. That ground required them to show that there was a genuine intention to sell the property and that it was reasonable to grant an order for eviction.
7. Mr Melvin stated that the FTT had been misled as the respondent had failed to provide full information regarding the marketing and sale of the property. In particular, the FTT had been provided with a letter showing that the previous letting agents, H2CM had been instructed to sell the property. However, a further letter engaging Kirkland estate agents dated 27 July 2023 had now been produced which had not been provided to the Tribunal considering the eviction application. Mr Melvin submitted that had this information been before the FTT it may have led them to make further enquires in relation to the arrangements for sale of the property. He stated that the fact that the respondent had entered into 2 separate sole selling agreements in respect of the sale of the property may have led the FTT to question whether the respondent was acting in good faith and whether they had a cavalier attitude to the process. Mr Melvin stated

that the failure to provide full details of the 2 selling agreements amounted to misleading the FTT and that had the Tribunal known there were 2 sales agreements they may have come to a different conclusion in the eviction application. In his submissions Mr Melvin stated that as the FTT had been misled a wrongful termination order should be granted.

8. Mr Melvin stated that in his view a wrongful termination order could be granted if the respondent had deliberately misled the FTT but that it would also be open to the Tribunal to grant an order if there had been no deliberate intention to mislead, if the information provided had been in itself misleading.

Summary of applicant's evidence

9. The applicant confirmed that she had moved into the property in December 2019. She had resided in the property with her son and pet dog. The letting agents for the property HC2M were aware that she had a dog when she moved in. The applicant stated that she had enjoyed living in the property. She had found out that the respondent wanted her to leave the property when she was served with a notice to leave in March 2023. She stated that Stephen O'Hear from HC2M had come to the house with the notice which stated she had to leave by 25 May 2023. The applicant said that she was panicked when she received the notice as she was pregnant at the time and was very worried about the prospect of losing her home. The applicant stated that she sought advice from the local authority when she received the notice. She was advised that because of protections put in place as a result of the coronavirus pandemic she did not have to leave when the notice expired. The applicant stated that she is employed as a typist at Monklands hospital. She stated that she was not aware that she had to attend the case management discussion on 6 October 2023 when an eviction order was granted. She stated that she did not understand the papers which she had received before the case management discussion. She stated that she received notice from Sheriff Officers that an eviction order had been granted after the case management discussion and sought assistance from Coatbridge CAB at that point. She was advised by the CAB that although an order had been granted it could not be enforced for a period of 6 months from the date of the order. The applicant stated that she gave birth in December 2023. She had a visit from Stephen O'Hear around that time. She stated that

she offered to increase the rent payments to £725 per month to try and keep the property. She stated that Mr O'Hear told her that increasing the rent would not make a difference as the landlord wanted to get a lump sum from the sale of the property. The applicant stated that she had not had any direct dealings with the respondent. The applicant stated that she gave notice on 5 January 2024 that she would leave the property on 31 January 2024. After she left the property she went to live with her mother. She stated that the letting agents had tried to find alternative properties for her to move into but none were suitable. She stated that a property that had been offered was in an area that she did not want to live in and another was not ground floor which did not suit her son. The applicant stated that she moved into a local authority tenancy after staying with her mother for 6 months. The property is in Coatbridge which has allowed her son to continue at the same school but is in a different area.

10. The applicant stated that after she left the property she noticed that someone else had moved into the property very quickly. She stated that she spoke to a previous neighbour who had confirmed that the property had been re-let.
11. The applicant stated that whilst she had been in the property there had been no viewings by prospective buyers or arrangements made for a homeowners report to be prepared that she was aware of.
12. The applicant stated that shortly before she had moved out there had been a storm which had resulted in part of the garden fence being damaged. She stated that she had just given birth and had been unable to repair the damage. She stated that there had been an issue with the payment of the electricity bill in the property however she had dealt with this and it had not impacted the respondent.

Summary of Sheila Cantwell's evidence

13. Mrs Cantwell is the respondent's wife. She primarily dealt with the administration of the property. Mrs Cantwell is a lead nurse in intensive care and works on a part-time basis. Mrs Cantwell stated that she and the respondent own 3 properties which are currently rented out. She stated that during the tenancy period they had not had any issues with the applicant's conduct. She stated that the respondent had decided to sell the property due to her brother's illness. Mrs Cantwell stated that her brother who lived in London

had received a terminal illness diagnosis in February 2023. She stated that her brother was the father of 11 children, 6 of whom were under the age of 16 at the time he became ill. He owned 2 properties in the London area where his children lived. He was unable to work due to his ill health and required urgent financial support. Mrs Cantwell stated that the extended family were trying to help as there were mortgages in excess of £400,000 over the 2 properties. Mrs Cantwell stated that she and the respondent had agreed that the property occupied by the applicant would be sold and the proceeds used to provide support to her brother and his family. Mrs Cantwell stated that it was nothing personal against the applicant and she had hoped that the applicant would be helped to find alternative accommodation by the letting agents HC2M.

14. Mrs Cantwell stated that the family were under a great deal of stress due to her brother's diagnosis. The property had been managed by HC2M and she requested that they market the property for sale and also deal with the service of a notice to leave and subsequent application seeking an order to evict.
15. Mr O'Hear from HC2M had told them not to get a Homeowners Report. She stated that she and the respondent had become frustrated at the lack of progress being made by HC2M to sell the property and had signed a second agreement with Kirkland Property on 27 July 2023. Ms Cantwell stated that HC2M were primarily concerned with letting property rather than selling it. She stated that both documents were described as sole selling agreements but she did not think there was an issue with signing a second agreement. Mrs Cantwell stated that initially they had secured a private buyer and had agreed that HC2M would act for them in relation to the sale however that did not progress and Kirkland were instructed.
16. Mrs Cantwell stated that it was the respondent's genuine intention that the property be sold. She stated that the respondent had left HC2M to deal with the eviction application process. She stated that the respondent did not attend the hearing on 6 October 2023 when an eviction order had been granted.
17. Mrs Cantwell stated that she had been advised that after the eviction order was obtained it would not be enforceable for 6 months. She stated that due to a number of factors the respondent's intention in relation to the property changed.

She stated that her brother passed away in October 2023. She stated that his family still required financial support as he had died intestate and the process of administering his estate will take a number of years.

18. Mrs Cantwell stated that she recalled Mr O'Hear advising her that the tenant had offered an increased rent to stay in the property however this had been refused as prior to the applicant moving out it had still been the intention that the property would be sold to release the equity.
19. Mrs Cantwell stated that she had thought they would wait until March to sell the property. She stated that after the applicant moved in she and the respondent went to visit the property. She stated that some work required to be done to repair the fence at the property. She stated that around this time there had been a change in the wider economy in relation to mortgage interest rates. This meant that the repayments due on mortgages had increased which had impacted the amount that the property would achieve on the open market. She stated that she was advised by Kirkland property that as the market had been flooded by many landlords trying to sell tenanted properties and that certain works would be required to achieve the highest amount for the property, they might want to consider waiting until the market came up before selling the property. She stated that she had not been advised that failing to sell the property may lead to an application for a wrongful termination order.
20. Mrs Cantwell stated that the respondent had agreed to re-let the property rather than sell it after the applicant moved out but had been told by Kirkland property that this would be on a month to month basis which meant that it could be sold at short notice.
21. Mr Cantwell stated that it had not been the respondent's intention that the whole equity from the property would be given to her brother's family as financial support but rather the excess after the sums invested by the respondent in the property had been deducted. As this amount had been greatly reduced by the impact of the broader economic changes the decision had been made not to sell. Mrs Cantwell also stated that the costs involved in carrying out repairs to the property including to the electrics and boiler were also a factor in this calculation.
22. Mrs Cantwell referred to bank accounts and credit card statements that had been lodged. She stated that these demonstrated that she had a number of

credit card debts and loans. She stated that when they recovered the property it was financially easier to quickly paint and redecorate the property for it to be relet than for it to be put in a condition where it would achieve the maximum amount at sale.

23. Mrs Cantwell stated that there was no reason the respondent would have sought an eviction order if there had not been a genuine intention to sell the property. There had been no difficulties with the applicant's occupation and it did not make any sense that they would have lied about their intention to sell.

24. Mrs Cantwell stated that when the respondent had first decided to sell the property a private buyer had been interested, However, due to the length of time taken to receive the property the buyer had lost interest. Mrs Cantwell stated that there had also been an intention to sell the property to her daughter however this had also not progressed.

Summary of the respondent's evidence

25. The respondent confirmed that he agreed with all the information provided by Mrs Cantwell. He stated that when the applicant had moved out of the property there had been issues with a Scottish Power bill which the company had sent to the property after the applicant moved out. He stated that it was clearly stated in the tenancy agreement that no dog was permitted in the property and that the applicant had breached that term of the tenancy agreement. The respondent stated that when they got access to the property after the applicant moved out significant work needed to be carried out in the garden. He stated that he worked for 2 full days on the garden and stated that a trampoline had been left behind.

Findings in fact

26. The respondent is the owner of the property.

27. Parties entered into a tenancy agreement with a commencement date of 16 December 2019.

28. A notice to leave dated 1 March 2023 was served on the applicant by hand delivery. The notice stated that the respondent sought to recover possession as he intended to sell the property. The notice specified that proceedings would not be raised before 25 May 2023.

29. The respondent signed a selling agreement with HC2M letting agents on 7 July 2023.
30. The respondent signed a sales agreement with Kirkland Estate Agents on 25 July 2023.
31. The applicant's representative from HC2M letting agents submitted an application to the FTT under reference number FTS/HPC/EV/23/1718 seeking an order for eviction relying on ground 1 (landlord intends to sell) in schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
32. The eviction application was scheduled for a case management discussion on 6 October 2023. The respondent was represented by Mr O'Hear from HC2M letting agents. The applicant did not attend the case management discussion. The FTT determined that the respondent intended to sell the property and an order for eviction was granted.
33. The FTT considering the eviction application had not been provided with a copy of the sales agreement between the respondent and Kirkland estate agents.
34. Enforcement of the eviction order was suspended for 6 months under the Cost of Living (Tenant Protection) (Scotland) Act 2022.
35. The respondent's brother in law was seriously ill throughout 2023.
36. The respondent's brother in law passed away in October 2023.
37. The respondent and his wife provided financial support to the respondent's brother in law and his family during his illness.
38. As at 6 October 2023 the respondent intended to sell the property to release equity which would be used to financially help his brother in law.
39. The respondent did not mislead the Tribunal as to his intention to sell the property at the case management discussion on 6 October 2023 when an order for eviction was granted.
40. The applicant sought advice from the local authority when she received the notice to leave.
41. Sheriff Officers served notice of the case management discussion held on 6 October 2023 on the applicant.
42. The applicant was served with an eviction notice following the case management discussion on 6 October 2023. She sought advice from Coatbridge Citizens Advice Bureau and was advised that the order was not enforceable for 6 months from the date of the order.

43. The applicant offered to increase the monthly rent payments after she received the eviction notice in order to remain in the property. The offer was refused.
44. The applicant moved out of the property on 31 January 2023.
45. The applicant moved in with her mother for a period of 6 months before moving into a local authority tenancy in the Coatbridge area.
46. The respondent and his wife attended the property after the applicant moved out. The property required work to be carried out to achieve the optimum sales price including works to the electrics and boiler.
47. The property market had decreased since the application had been submitted impacting the amount the property was likely to achieve at sale.
48. The respondent's intention in relation to the sale of the property changed when the applicant moved out.
49. The respondent decided to re-let the property after the applicant moved out of the property.
50. The property was not placed on the market after the applicant moved out.

Reasons for the decision

The legislation

51. Section 57 of the Private Housing (Tenancies)(Scotland) Act 2016 states:

Wrongful termination by eviction order

(1) This section applies where a private residential tenancy has been brought to an end by an eviction order.

(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.

(3) The Tribunal may make a wrongful-termination order if it finds that it was misled into issuing the eviction order by the person who was, immediately before the tenancy ended, the landlord under the tenancy.

(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.

52. Section 51 makes provision in relation to the Tribunal's power to issue an eviction order. It provides that:

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies. (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

53. Ground 1 of Schedule 3 to the 2016 Act provides as follows:

Landlord intends to sell

(1) It is an eviction ground that the landlord intends to sell the let property.

(2) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if the landlord—

(a) is entitled to sell the let property,

(b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

54. The applicant's position is that the FTT that granted an order for eviction was misled.

55. The Tribunal found that all parties gave evidence in an honest and straightforward manner. The evidence of all parties was generally not in dispute in relation to the material facts.

56. It was not disputed that the FTT that granted the eviction order had not been provided with the second selling agreement signed by the respondent in favour of Kirkland estate agents. Mr Melvin's submission was that on a narrow interpretation of the legislation this omission amounted to misleading the FTT.

57. The Tribunal had regard to the Upper-tier Tribunal decision in the case of *Miriam Reynolds v Gordon Henry and Patricia Henry* 2024UT45 and *Combe & Robson: A review of the first wrongful termination orders*, 2021 Jur. Rev. 88. In line with the approach in *Reynolds* the Tribunal considered that a wrongful termination order (WTO) should be granted if there was a not a genuine intention to sell at the time when the order was granted.

58. The explanatory notes for the 2016 Act (at paragraph 90) confirm:

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).

59. The Tribunal determines that the failure to provide the second selling agreement to the FTT did not amount to misleading the FTT for the purposes of section 57. The Tribunal accepted Mrs Cantwell's evidence that the conduct of the eviction application was left to the letting agents HC2M. The Tribunal accepted that the respondent and Mrs Cantwell had been dealing with Mrs Cantwell's brother's illness in the period before the eviction order was granted and had not deliberately sought to withhold information from the Tribunal. The Tribunal found that had the second agreement been before the FTT it would have supported the ground relied on rather than cast doubt on the respondent's intentions. The Tribunal did not agree with Mr Melvin's

submission that the failure to provide the report was in itself misleading regardless of the impact that information may have had on the final outcome of the Tribunal. The Tribunal did not agree with Mr Melvin's submission that had the Tribunal been provided with the second sales agreement they would have reached a different decision in relation to the eviction application. The Tribunal considers that in assessing whether the FTT was misled the relevant question is whether or not there was a genuine intention to sell at the relevant date as set out in paragraph 90 of the explanatory notes.

60. 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 eviction order was granted.
61. The Tribunal determined that the respondent's intention to sell the property changed after he took possession of the property. In finding that there was a genuine intention at the date the order was granted the Tribunal took into account the oral and written submissions of the respondent, the evidence of Mrs Cantwell and the 2 sales agreements produced. The Tribunal accepted the undisputed evidence provided that Mrs Cantwell's brother had a terminal diagnosis and that a decision was made to sell the property to provide financial support to her brother.
62. The Tribunal gave particular weight to the evidence of the applicant that after an order was granted she sought to increase the rent in the hope that she might be able to stay in the property. The applicant's evidence was that the letting agent had told her that an increased offer would not make any difference as the respondent wanted to get a lump sum from the sale of the property. The Tribunal considered that this showed that it had been conveyed to the letting agent that there was a genuine intention to sell.
63. The Tribunal took into account that it was a cause for reasonable suspicion that the property had been placed on the rental market so soon after the applicant had left however that factor did not refute the respondent and Mrs Cantwell's evidence that they had a change of intention following the applicant vacating the property. The Tribunal accepted the undisputed evidence that the price the respondent had hoped to achieve from the sale of the property had decreased after the order had been granted. The respondents had submitted and email from Ross Kirkland estate agent which stated that in the first

quarter of 2024 the market for similar property was slower than expected or predicted. The Tribunal accepted as credible the respondent and Mrs Cantwell's evidence that when they visited the property after the applicant had left they realised that repairs to the property would be required to the boiler and electrical systems to achieve the optimum sales price and that was the primary reason they decided to place the property back on the market.

64. The Tribunal were particularly swayed by Mrs Cantwell's statement that there was no reason that they would have sought an order to evict on the grounds that they intended to sell the property if that had not genuinely been the case. It was accepted by the parties that the tenancy had been uneventful and the respondent had no reason to seek an eviction order from the applicant only to relet the property. The Tribunal determined that on the balance of probabilities the respondent had a genuine intention to sell the property when the eviction order was granted on 6 October 2023. This intention changed after the applicant left the property and the respondent visited the property. A number of factors led to the changed intention – the reduced property market, the costs of works required to achieve the optimum price. In addition Mrs Cantwell's brother had passed away in October however her evidence was that there continued to be a need to provide financial support to his children.
65. For these reasons the Tribunal is not satisfied that the FTT had been misled into granting an eviction order and the present application is refused.

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.

Mary-Claire Kelly

Legal Member/Chair

18 March 2025

Date