



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/24/2136

Re: Property at 4/2 27 Gallowgate, Glasgow, G1 5AA (“the Property”)

Parties:

Mr Ian Ross, Mr Thomas Kerr, 13 Rosehall Terrace, Wishaw, ML2 0AG; G1, 5 Scapa Way, Stepps, Glasgow, G33 6GL (“the Applicants”)

Mr Fabian Pinamonti, Keepers House, Braco Castle Farms, Dunblane, Perthshire, FK15 9LA (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) unanimously determined that the application be granted and an order made requiring the respondent to pay to the applicants the sum of Two Thousand Five Hundred Pounds (£2,500).

Introduction

1. This is an application under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017. The applicants seek a wrongful termination order under Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. A Case Management Discussion took place on 4 February 2025. Both parties represented their own interests. The respondent submitted detailed written submissions with supporting documentation which explained his initial intentions to sell and market the property and the reasons as to why this

ultimately did not happen. His position continued to be challenged by the applicants and an evidential hearing was fixed.

3. On 26 February 2025 the applicants lodged their further written submissions being a response to the respondent's written submissions.
4. The evidential hearing took place by teleconference at 10.00 am on 23 July 2025. All parties joined and represented their own interests. The respondent joined the hearing from Germany which is where he is partly resides. The Germany authorities had not been asked to provide their consent to him giving evidence from their territory. It is known that any request made via the Foreign, Commonwealth and Development Office (FCDO) is not guaranteed to receive a response. Applying Rule 2 it was not in the interests of justice to delay determination of the proceedings. The matter before the tribunal is not a sensitive one and has no public implications. Good diplomatic relations exist between the UK and Germany. The tribunal determined that it was appropriate and lawful to proceed with the hearing.
5. The applicants were invited to make initial submissions based upon their earlier written submissions. The respondent was given the opportunity of answering these and clarifying his defence to the application. The tribunal had additional questions for the parties who were also afforded the opportunity of making concluding submissions. The tribunal reserved its decision.

Burden and Standard of Proof

6. The burden of proof rests upon the applicants and the relevant standard is a balance of probabilities.

Relevant law

7. Ground 1 of Schedule 3 of the 2016 Act specifies:
 - 1 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, and
 - (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.
8. The tribunal had regard to the Decision of Sheriff SG Collins KC in 2024 UT45, *Reynolds v Mr & Mrs Henry*, particularly paragraph 16, which provides clarity and assistance in the interpretation of ground 1 which is in the following terms:
- “Critically therefore, whether a landlord has a ground for eviction under paragraph 1 of schedule 3 depends on his intention, per paragraph 1(2)(b), to either sell the property for market value, or at least put it up for sale. But on either limb of this sub-paragraph, the intention to sell must be genuine. If a landlord puts a property on the market, but has no genuine intention of accepting any offers that may be made for it, he is neither intending to sell the property for market value, nor is he putting it up “for sale”. Rather, if he is purporting or pretending to market the property for sale simply in order to remove an unwanted tenant, then in reality he is putting it up for a purpose other than “for sale”. The marketing of the property and the inviting of offers to purchase in such circumstances is a sham, because there is no real intention to accept any offers which may be made, nor to conclude a contract of sale. It therefore does not constitute ‘putting the property up for sale’ for the purpose of ground 1 of schedule 3.”

Findings and Reasons

9. The property is 4/2, 27 Gallowgate, Glasgow G1 5AA. The applicants are Mr Ian Ross and Mr Thomas Kerr who are the former tenants of the property. The respondent is Mr Fabian Pinamonti who is the former landlord.
10. The parties entered into a private residential tenancy in respect of the property which commenced on 23 August 2021. The rent was £1,300 per month. On 13 September 2023 the respondent increased the rent to £1,339 with effect from 23 December 2023.

11. The respondent's agent served a notice to leave upon the applicants which was dated 27 November 2023. The basis of the notice was that the respondent intended to sell the let property. Ground 1 of schedule 3 of the Act was relied upon. It was specified in the notice to leave that proceedings before the tribunal in respect of any eviction would not be raised prior to 22 February 2025. The applicant did not rely upon ground 1A which at the time was an eviction ground where a landlord intended to sell to alleviate financial hardship.
12. The applicants chose to leave the property on the basis of the notice to leave which they had been served. No eviction order was applied for. The applicants vacated the property on 22 February 2024.
13. The respondent relisted the property for let on 3 May 2024. He entered into a new tenancy which commenced sometime later in May 2024 at a monthly rent of £1,500.
14. The applicants contend that they were misled into vacating the let property in order that the respondent could relet the property at an increased rent. The respondent disputes this.
15. The tribunal did not find the respondent to be a credible and reliable witness. He was particularly vague about how his claimed intention to sell the property had changed from the time that the notice to leave was issued in November 2023 until the time that it was advertised for relet in early May 2024. He could not account clearly for the decision to terminate any plan to sell and to correspondingly advertise the property for relet. The reasons for his claimed change of intention to sell are not credible.
16. The respondent's position is that at the time that the notice to leave was served and at the time that the applicants removed themselves voluntarily from the property, he had every intention of selling the property due to financial difficulties. He claims a material change of circumstances terminated his intention to sell. Firstly, the property was not going to realise as much financial gain as he had expected, additional costs were anticipated and he obtained a private loan from his brother.
17. Shortly before the notice to leave was served, the respondent obtained a market appraisal from Countrywide Estate Agents that the property was worth in the region of £270,000. He hoped however that the property would fetch above market value. The respondent states that he wished to sell the property for £280,000.

18. The respondent signed an agency agreement with Countrywide on 21 November 2023. At around the same time he consulted Mclean & Stewart solicitors to undertake the conveyancing related to any future sale. The respondent took no further formal steps to sell the property. No Home Report was obtained. No photographs nor videos had been taken for marketing purposes and no sale schedule of particulars was prepared. These were all steps that could have been taken between the notice to leave being served in November 2023 and the applicants leaving the property in February 2024. These are all steps which a genuine seller would have taken.
19. Though ground 1A was not relied upon as a ground for eviction, the respondent otherwise relies upon financial pressures as to the motivation as regards to his intention to sell the property. The respondent is however a man of means. He is a co-director, along with his brother, of Heizomatgb Ltd which is a profitable company. The respondent owned a property in Germany. He had whisky cask investments. He would well know his forthcoming personal tax commitments in 2024 long before November 2023. It is not credible that there was an intention to sell the property due to financial constraints. The tribunal's finding in this regard is fortified due to the fact that the respondent also states that he was to buy an alternate property upon sale of the let property. This fact cannot be reconciled with claimed financial difficulties.
20. The respondent also relies upon the fact that he would have required to pay capital gains tax and that purchasing a new property in Scotland would trigger an additional dwelling supplement (ADS) of 8% of the purchase price due to his ownership of his property in Germany. The tribunal does not accept as credible that the appellant would only have found this out in late February 2024 if he had made proper due and diligent enquiries prior to then which he would undoubtedly have taken if he had the genuine intention of selling the let property.
21. The respondent confirmed, in his oral evidence, that a material factor in deciding not to sell was the fact that he was unlikely to achieve £280,000 upon sale. The respondent never obtained a Home Report. He did not obtain a formal valuation of the property. Any decisions made by him not to sell based upon what the property was worth and what it could realistically achieve on the open market cannot be substantiated.
22. The respondent has produced copy communications between himself and Countrywide. He has also produced copy communications with his accountant

regarding the proposed sale. These communications only evidence an initial and superficial intention on the part of the respondent to sell the property. The communications evidence the respondent making general enquiries about a sale and the implications but not the genuine intention to sell. The respondent, in his oral evidence, stated that it was not until late February or early March 2024 that he decided not to sell. The tribunal does not find this to be credible. The agency agreement with Countrywide obligating them to obtain a Home Report was executed on 7 November 2023. A Home Report could therefore been commissioned and completed at any time thereafter. However the Home Report was never instructed and the respondent was unable to give any clear explanation for this.

23. Even if the respondent had still had a notion to possibly sell the property, it was nothing other than a possibility and he was equally exploring the possibility of reletting the property at a higher rent. He was not entitled to serve a notice to leave upon applicants to seek vacant possession for that purpose. The respondent served a notice to leave to keep his options open to possibly sell. This falls short of a genuine intention to sell at the time that the notice to leave was served. The service of a notice to leave sent in anticipation of a ground being met at a later date is not a valid notice to leave, the ground must exist at the time of service - *Majid v Gaffney* [2019] UT 59. Serving a notice to leave stating his expressed intention to sell the property in accordance with ground 1 was misleading.
25. This is an application which turns on the issue of credibility. Looking at the respondents whole evidence in the round, his intention to sell at the time that the notice to leave was served is not credible. The tribunal finds the respondent is not a truthful witness and credible and reliable source of evidence.
26. The tribunal does not accept that the respondent had the genuine intention to sell the property. The tribunal finds that the respondent had not firmly decided to sell at the time of the notice to leave being served. Selling the property was one option but, equally, valid and realistic was the respondent's intention to relet the property at a higher rent. Whilst he had engaged Countrywide and had contacted solicitors to undertake the conveyancing, no material steps to actively market the property had, in fact, taken place.
27. The applicants have discharged the burden of proof upon them. They have established that the respondent misled them. They are entitled to a wrongful termination order and are entitled to corresponding compensation.

28. In terms of Section 59 of the Act, the tribunal requires to make an order not more than 6 months' rent. The rent was £1,339.
29. The applicants had been resident in the property for more than 2 years at the time that the notice to leave was served. They were settled there. They wished to remain there. The notice to leave was served shortly in advance of the Christmas and New Year holiday period. The applicants suffered inconvenience as a consequence of requiring to leave the let property. The applicants could have exercised the right to remain in the property until such time as an Eviction Order was granted but chose not to do so through courtesy and respect for the respondent's claimed intentions. One of the applicants was required to live on a friend's spare bed for 2 months as they were unable to obtain an alternative place to stay within a reasonable distance to their place of work. That same applicant was placed under pressure to view properties which did not align with their preferred wishes. That applicant chose to purchase a property at a time when he would otherwise not have and those consequences are material.
30. The tribunal concluded that a fair reasonable and proportionate penalty to be imposed upon the respondent is one of £2,500. This adequately reflects the level of additional costs, inconvenience, upset and distress suffered by the applicants as a result of being misled into leaving the property by the respondent. The applicants do not rely upon any particular personal vulnerabilities. They were able to find alternative accommodation relatively quickly and vacated the property without exercising their right to remain ending an eviction order being sought. No tenant can reasonably anticipate being entitled to occupy a let property indefinitely.
31. In terms of Section 60 of the Act the tribunal requires to issue a copy of this determination to Glasgow City Council, being the local authority where the respondent is registered as a landlord.

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

24 July 2025

Legal Member/Chair

Date