



**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/21/3088**

**Re: Property at 28 Strathclyde Gardens, Cambuslang, G72 7ET (“the Property”)**

**Parties:**

**Mr Nicholas O'Hare, 32 Montford Avenue, Kings Park, G44 4PA (“the Applicant”)**

**Mr Dudley Cooper, 17 Sir Henry Jake Close, Banbury, OX16 1EY (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed.**

**Background**

1.This was an application for a wrongful termination order dated 13<sup>th</sup> December 2021 which was brought in terms of Rule 110 of the Tribunal rules of procedure.

2.The Applicant sought in his application an order for wrongful termination under S58(2) (wrongful termination without eviction order) and compensation for the stress and anxiety suffered and in relation to what he described as the deceptive and unlawful tactics used to remove him from the property.

3.The Applicant provided with his application copies of the tenancy agreement, the notice to leave, a letter accompanying the notice to leave, an agency agreement, emails between the letting agent and the landlord Respondent, photographs of the property, a website advert for rental of the property, and a GPs letter.

4.A case management discussion first took place on 28<sup>th</sup> April 2022 and was continued for the papers to be served on the Respondent. The Respondent made written representations regarding his position and lodged letters from his building society and a property checkout report. A further case management discussion took place on 20<sup>th</sup>

June 2022 and it was clear from the discussion and submissions made to the Tribunal that the issue in the application was whether the Respondent had genuinely intended to sell the property, this being the eviction ground relied on in the Notice to Leave in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 and whether the Applicant had been misled into ceasing to occupy the property immediately before it was brought to an end.

5. It was not disputed that the Respondent had entered into a tenancy agreement initially with another tenant at the property with effect from 29<sup>th</sup> March 2019. The rent was £525 pounds per month. The Tribunal considered that it would require to hear evidence of the circumstances at the time of the Notice to Leave in order to reach a decision on the issue and set a hearing to take place by teleconference.

6. The Hearing took place on 16<sup>th</sup> August 2022 and the Tribunal heard evidence from the Applicant and the Respondent. The Respondent had lodged further written representations in advance of the hearing. These referred to his position on matters and also contained an email from a staff member at Countrywide estate agents who were the letting Agents for the property.

### **Findings in Fact**

7. The Applicant and Respondent along with another person entered into a private residential tenancy at the property on 29<sup>th</sup> March 2019.

8. In January 2021 letting agents acting for the Respondent gave notice to the Applicant that the rent would be increased by £50 per month.

9. The Applicant objected to this increase and the Respondent agreed to defer it for at least 6 months.

10. The Respondent owns the property on a buy to let mortgage which was due to come to term in November 2021.

11. The Respondent made a number of enquiries with his building society from 2020 onwards regarding the mortgage and was initially advised that he could extend the mortgage term but was then told between August 2020 and May 2021 that due to a change in policy the mortgage term could not be extended.

11. In May 2021 the Respondent decided to sell the property as he understood he had no other option in order to pay off the mortgage.

12. In May 2021, the Respondent requested Letting Agents on his behalf to serve a Notice to Leave on the Applicant requiring him to leave the property and instructed the Letting Agent to list the property for sale and to market it when it was vacant.

13. A Notice to Leave the property dated 21<sup>st</sup> May 2021 was served on the Applicant together with a sales agreement between the Respondent and the Letting Agent and this required the Applicant to leave the property by 25<sup>th</sup> November 2021.

14. At the beginning of November 2021 the Respondent learned from his building society that his mortgage term could now be extended by a period of over 5 years, and this was confirmed in writing to him by letter of 12th November 2021.

15. On 3<sup>rd</sup> November 2021 the Letting Agent telephoned the Applicant to inform him that he could remain at the property but by this time he had verbally agreed to take on another tenancy and did not feel secure to remain at the property given what had occurred with the Notice to Leave.

16. The Applicant moved out of the property in November 2021 and moved to another tenancy in a different area where the rent is higher, and he required to find a new job due to the location of his new leased property.

17. After the Applicant vacated the property it was advertised for rent at a rent higher than that paid by the Applicant during his tenancy.

18. During his tenancy the Applicant contacted the Letting Agent for the Respondent to advise of a number of required repairs at the property. The Applicant stated a number of repairs were required and there were delays in those being attended to.

19. After the Applicant vacated the property the property required a number of repairs, and it was four months before it could be relet.

### **Findings in Fact and Law**

20. The Tribunal found in fact and law: -

- (a) That the Applicant was not misled by the Respondent into ceasing to occupy the property immediately before the tenancy was brought to an end.
- (b) That at the time that the Respondent gave the Applicant notice to leave the property he intended to sell the property or at least put it up for sale within 3 months of the tenant ceasing to occupy it.

### **The Evidence**

21. The tribunal heard evidence from the Applicant. He explained that he rented the property and had received a Notice to Leave he believed in March 2021, although he later accepted that the Notice was served in May 2021. It had indicated that the landlord intended to sell the property. He said he felt that the notice was being served due to his previous opposition to a proposed rent increase and his complaints about outstanding repairs. He said it was very difficult to find another property to rent at this time as it was during the pandemic. He had been contacted by the Letting Agent before the Notice to Leave was served but was given no information as to why the property required to be sold.

22. At what he described as the 11<sup>th</sup> hour the Applicant was contacted by the Letting Agent who advised that he could stay on at the property and that the property was no

longer being sold. He said he was not given a reason as to why the property was not being sold at this time. He considered what he should do but he did not feel comfortable extending the tenancy as he did not feel secure that this might not happen again. The day in November he was called to say that he could stay was the same day on which he had verbally agreed to take on a new tenancy although he had not signed a new tenancy agreement at this time. He agreed that this call took place on 3<sup>rd</sup> November 2021. He did not accept that he had been advised that the notice to leave had been rescinded and those words had not been used on the call. The conversation with the staff member at the letting agent had been what he described as jovial, and she had said that she had fantastic news for him and said that he could stay on. He said he was not advised of the reasons for this.

23. The Applicant ultimately left the property on 25<sup>th</sup> November 2021. Three weeks or so after he left, he noticed that the property was being advertised for rent on a website at an increased monthly rent of £575. This was higher than the rent he had paid each month during the tenancy which was £525 and was the same amount as a proposed increased rent he had refused to pay during the tenancy. He also had to leave his job which he enjoyed and had worked in for 5 years.

24. As a result of requiring to leave the property the Applicant had lost financially. He had to move out of the area and the rent in the new tenancy is substantially more per month than the rent he paid at the Respondent's property. The job he has taken pays much less per year less than the job he had required to leave when he left the Respondent's property. He had required to apply for more than 50 properties and was able to view less than 10 of these. He got to the referencing stage for just one property which was the property he was now renting. He had to borrow for the first month's rent and deposit which had come to £1600. He had lost his deposit after the tenancy and so the need to obtain a further deposit and pay for one month's rent for the new property had been an additional financial burden. The requirement to move had had a psychological and emotional impact on him too and he had found it difficult to work after this. He had provided a letter from his GP dated February 2021 setting out that he suffered from anxiety for the last 3 to 4 years and the letter set out the treatment he was receiving for this at that time.

25. The Applicant complained of the condition of the property when he was tenant and how repairs were not done. He had lodged photographs of the tiles in the shower in the ensuite bathroom at the property which showed missing tiles. He said these were coming off when he was using it and falling onto his feet. He had been advised by a contractor that the wall needed replaced. There had been a leak from the property upstairs, and he said there was mould on the ceiling. He had complained of these issues, and these were recorded but the said nothing was done.

26. Around the time when he was given notice to leave the property, he said he had received notice of a rent increase of £50 per month. This was when he was furloughed, and he had written to the letting agents asking that this be deferred, and he had not been required to pay the higher rent.

27. The Applicant had formed the view that he was considered to be a problem tenant as he had requested repairs be done and had refused to pay the increased rent

amount. He had perceived that these issues had contributed to his being served with a notice to leave the property. The advert he had seen after he ceased to occupy the property had advertised the flat at the same amount as the increased rent he had declined to pay, and this had added to his suspicion over the grounds for the notice to leave.

28.The Applicant accepted in his evidence that the Respondent's explanation which had been given in the tribunal proceedings regarding his mortgage might be accurate to a degree. He struggled to understand and accept the way he had been dealt with which he said was without courtesy or respect. The communication by the Letting Agent was poor and the lack of information given to him left him suspicious regarding the landlord's motives for serving the notice to Leave. He said that if matters had been explained to him properly regarding the need to sell and what had happened after that he might have been able to consider staying on at the property. He said he felt misled because of the state of repairs at the property, the lack of communication, the potential to stay and the fact that the property was readvertised after he vacated it for a higher rent.

29.The Tribunal heard from the Respondent who wished to rely on his written submissions but answered questions during the hearing.

30.The Respondent set out that the property was fully managed for him by Countrywide as Letting Agents. The property is on a buy to let mortgage, and this had a term date in November 2021.The Respondent had lodged a letter from Birmingham Midshires confirming that the mortgage required to be repaid then.

31.The Respondent had contacted Birmingham Midshires in July 2020 to enquire about extending the mortgage. He had lodged a letter confirming that this query had been made. In his statement lodged with the Tribunal he said that he was initially told he could extend the mortgage until 2027.He contacted them again in August or September of 2020 and he was told that their lending policy had changed, and he could not extend the term of the mortgage. He was advised to contact them every month to see if that policy had changed. He continued to contact them to see if their lending policy had changed but with no change in the policy six months before the expiry of the mortgage term with the lender, he contacted Countrywide to instruct them to serve a notice to leave on the Respondent and to prepare and list the property for sale as the mechanism to repay the lender is through a sale of the property.

32.At the start of November 2021 the Respondent contacted Birmingham Midshires to advise that he was selling the property to repay the mortgage and he was advised at this point that he could extend the term of the mortgage by 5 years and 7 months. He contacted Countrywide and asked them to advise the Applicant that he could remain in the tenancy but was advised that he had made other plans and was to leave the property at expiry of the Notice to Leave. The Respondent received a letter from Birmingham Midshires dated 12th November 2021 confirming the extension to the loan term.

33.After the Applicant left the property given that he no longer required to sell it the Respondent instructed Countrywide to advertise the property for rent and they did that,

advertising a rent £50 higher than that paid by the Applicant. The Respondent gave evidence to the effect that this was the rate which Countrywide told him was the market rate for the rental property at the time.

34. There was a four-month period when the property required repairs and could not be rented, and the Respondent said that this had a financial impact on him.

35. The Respondent had also lodged further written representations which he sought to rely on at the hearing. He confirmed that he was advised by Birmingham Midshires early in November 2021 that he could extend the mortgage term and had immediately requested that Countrywide advise the Applicant that he could stay at the property. He relied on an email he had received from Countrywide setting out that they had called the Applicant on the same day 3<sup>rd</sup> November 2021, but he had contacted them the next day to indicate that he did not feel secure extending the tenancy.

36. The Respondent's position was that a rent increase intimated to the Applicant in January 2021 to start in April 2021 was not implemented as Mr O Hare had contacted Countrywide to request that any increase be deferred, and the Respondent had agreed to this due to the difficulties still being faced by people due to Coronavirus.

37. The Respondent gave evidence to the effect that the proposed rent increase had no bearing on the decision to issue a Notice to Leave. He said that he had to issue the Notice to Leave in May 2021 as the mortgage was due to end in November 2021. He said that the matter had been out of his hands, and he been told repeatedly that the mortgage could not be extended, and he said this was not satisfactory for anyone. The decision he made had nothing to do with the Applicant.

38. He understood that repairs had taken some time during the tenancy and pointed to the fact that there were no tradesman available to carry out these repairs due to the pandemic but said that when Countrywide had advised him of the need for work to be done and provided him with an estimate, he had authorised the work to go ahead. He said that the lack of communication by Countrywide was something he would take up with them if necessary.

### **Submissions on behalf of the Applicant**

39. The Applicant submitted that he was unhappy with the way the Letting Agents had acted during the majority of the period of the tenancy and Notice to Leave the property but he said that he perhaps accepted that there was no malice intended by the Respondent. He pointed to the financial emotional and geographical upheaval the move had caused him. He felt misled into leaving the property.

### **Submissions on behalf of the Respondent**

40. The Respondent reiterated that he had no intention to mislead the Applicant and had been forced into the decision to serve the Notice to Leave by the position regarding the mortgage. He said there was no correlation between the suggested rent increase and the decision to serve the notice to leave. He would have preferred to

keep a tenant in the property. He also accepted that the communication by Countrywide was not as good as it should have been.

### **Statement of Reasons**

41. Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 provides as follows -:

“58 Wrongful termination without eviction order

(1) This section applies where a private residential tenancy has been brought to an end in accordance with section 50.

(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 (“the former tenant”).

(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.

(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”.

42. Section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 provides as follows -:

“50 Termination by notice to leave and tenant leaving

(1) A tenancy which is a private residential tenancy comes to an end if—

(a) the tenant has received a notice to leave from the landlord, and

(b) the tenant has ceased to occupy the let property.

(2) A tenancy comes to an end under subsection (1) on the later of—

(a) the day specified in the notice to leave in accordance with section 62(1)(b), or

(b) the day on which the tenant ceases to occupy the let property.

(3) For the avoidance of doubt, a tenancy which is to come to an end under subsection (1) may be brought to an end earlier in accordance with section 48”.

43. It is not in dispute that the tenancy was ended in terms of Section 50 by the Applicant receiving a Notice to Leave and leaving the property. It was also not disputed that on 3<sup>rd</sup> November 2021 the Applicant was advised that he could stay at the property.

44. The question for the Tribunal is whether the Applicant was misled into ceasing to occupy the property immediately before the tenancy was brought to an end. The

Ground relied on by the Respondent in this application is Ground 1 that the Landlord intends to sell the let property.

45. Section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 provides as follows: -

*“62 Meaning of notice to leave and stated eviction ground*

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent”.

46. The eviction grounds which a landlord may rely on are to be found in Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. Ground 1 upon which the landlord relies provides: -

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

(2) The First-tier Tribunal must/may find that the ground named by sub-paragraph (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

(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”.



47. The question is whether the Respondent at the time when agents on his behalf gave the Applicant Notice to Leave was entitled to sell the property and intended to sell the property for market within three months of the Applicant ceasing to occupy it. The Tribunal concluded that he was entitled to sell and did have that intention and therefore that he did not mislead the Applicant into ceasing to occupy the let property immediately before the tenancy was brought to an end.

48. The Tribunal found both witnesses to be credible and reliable their accounts. The Tribunal would note that it had sympathy for the Applicant who found another property and then a few weeks before he was due to leave was told that he could stay at the property. The tribunal accepted that when he left the property there were consequences for him in terms of his work, life, and finances.

49. The Tribunal accepted that the Applicant had had issues during the tenancy with repairs and an attempt to increase the rent not long before the notice to leave was served as well as communication issues with the Letting Agents. He appeared to have reached a view that all the issues together with the re advertising of the property for rent shortly after he had vacated meant that he had not been dealt with honestly and had been misled into leaving.

50. However the Tribunal accepted the evidence of the Respondent which was supported by documentation that at the time the Notice to leave was served he believed that he required to sell the property and intended to do that as his mortgage provider was not prepared to extend the term of his mortgage beyond November 2021. The Tribunal accepted that Respondent appeared to have no choice in May 2021 other than to have a Notice to leave served as a result of this.

51. The Tribunal accepted that an unexpected turn of events, i.e. the change in the policy of the mortgage provider, which the Respondent did not anticipate, caused matters to work out differently from the way he anticipated at the time he had notice to leave given to the Applicant. As soon as he discovered that he could extend the term of the mortgage he requested that the Applicant be given the chance to stay at the property but by that time the Applicant had already verbally accepted another tenancy and did not feel secure in staying at the property. It appeared by that time that it was too late for the Applicant to do other than leave the property. The fact that he was given the opportunity to stay in the view of the Tribunal enhanced the credibility of the Respondent on the issue of his intention given that as soon as matters changed regarding the mortgage, he attempted to put matters back to the way they had been regarding the Applicant's tenancy. The Tribunal accepted his evidence as to the re advertising of the property for a higher rent after the Applicant vacated it as it was necessary to find a new tenant as soon as possible.

52. Given the above the tribunal did not consider that the respondent misled the Applicant into ceasing to occupy the property immediately before the tenancy was brought to an end and accordingly the tribunal dismissed the application.

### **Decision**

53. For the reasons stated above the Tribunal dismissed the application.

### **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.

Valerie Bremner

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Legal Member/Chair

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Date 16.8.22