



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/21/1866

Re: Property at 23 South Broomage Avenue, Larbert, FK5 3LF ("the Property")

Parties:

Mr Gerhard Opperman and Mrs Cindy Opperman, formerly residing at 2 The Stables, Kinnaird House, Falkirk, FK2 8QX and now at 1 Newborough Close, Warrington, WA5 9JG ("the Applicants")

Mrs Jennifer Davidson, 17 Milton Road, Pittenweem, Anstruther, KY10 2LN ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that:-

The Applicants are entitled to a wrongful termination order under Section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016 in that the Applicants were misled into ceasing to occupy the Property by the Respondent, and the Tribunal therefore makes a wrongful termination order requiring the Respondent to pay to the Applicants a sum of £ 2,800.00.

1. Background

- 1.1 The application proceeds on the basis of Rule 110 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") as set out in the Schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
- 1.2 Prior to the Hearing a Case Management Discussion ("CMD") took place on 1 December 2021. The Respondent was neither present nor represented at the CMD and in her absence the Tribunal granted a wrongful termination order in a sum of £4,200.

- 1.3 On 21 March 2022 on the application of the Respondent, the Tribunal granted permission to the Respondent to appeal the decision of 1 December 2021 in terms of Rule 38 of the Rules.
- 1.4 On 16 July 2022 the Upper Tribunal for Scotland granted the Respondent's appeal, quashed the decision of 1 December 2021 and remitted the application back to the Tribunal to be heard afresh.
- 1.5 A Hearing ("the Hearing") on the application therefore took place by telephone conference on 5 September 2022.
- 1.6 Prior to the Hearing, by email dated 24 August 2022 the Respondent submitted to the Tribunal written representations and supporting papers.
- 1.7 The Applicants attended and gave evidence at the Hearing.
- 1.8 The Respondent also attended and gave evidence at the Hearing and was supported by her husband, Mr Howard Davidson.

2. The Hearing

- 2.1 The following facts were not in dispute between the parties:-
 - i. That the Respondent and her husband are the heritable proprietors of the Property.
 - ii. That the Respondent leased the Property to the Applicants in terms of a Private Residential Tenancy agreement that commenced on 1 May 2020 and that the rent payable in terms thereof was £1,400 per calendar month.
 - iii. That by Notice to Leave dated 6 April 2021 the Respondent gave notice to the Applicants to leave the Property on or before 9 July 2021 on the basis that the Respondent intended to live in the Property.
 - iv. There were no detailed reasons given in, or evidence attached to, the Notice to Leave.
 - v. That the Applicants vacated the Property on 6 June 2021.
 - vi. That the Respondent subsequently sold the Property.
- 2.2 The Applicant's oral representations were principally given by the First Applicant who stated:-
 - i. When the PRT was entered into, the Applicants explained that they wanted a long-term rental.
 - ii. In around March 2021, the Applicants received a telephone call from the Respondent's Letting Agent, "Kevin" of Homes for You, advising that the owners of the Property were intending to sell the Property or move in.
 - iii. Initially the Applicants were interested in purchasing the Property. However, because of their Visa terms, finance could not be secured.
 - iv. The Applicants notified the Letting Agent that they could not proceed with the purchase of the Property.
 - v. As the Applicants were not in a position to purchase the Property they required to look for alternative accommodation and the Letting Agent intimated that three months' notice to remove would be given.
 - vi. The Notice to Leave was received in early April 2021.

- vii. The Applicant's contacted the Letting Agent again and advised that if the owners of the Property were intending to sell then the six months' notice should be given. The Letting Agent advised that he had been told the owners were moving in themselves and therefore only three months' notice was needed.
- viii. By then the Applicants' children had commenced at school and were settling in. Accordingly, the Applicants wanted to stay in the area. Their children had been through the process of relocating countries and had changed school. Accordingly, the Applicants wanted to keep the children within the catchment area.
- ix. The Second Applicant was then pregnant and due on 1 August 2021. The Applicants wished to avoid moving house near that date. To do so would be risky and stressful. The Applicants therefore only had a short period to find a rental property. The Applicants applied for and required to queue at a number of properties in order to view them. Their maximum budget was £1500 per calendar month. Many properties listed were taken off the market within a few days due to tenancy terms being agreed before the Applicants even had a chance to view them. There were three or four properties like that. In other instances, there was a list of 15 applicants for a property.
- x. A lifeline was thrown by the Respondent's Letting Agent who offered to help find a property for the Applicants. They identified the property at to The Stables, Kinnaird House, Falkirk, FK2 8QX ("The Stables"). The rent was £1800 per month, outwith their budget. They offered £1600 per month and ultimately agreed a rent of £1700 per month.
- xi. The Applicants moved out the Property on 6 June 2021 by agreement with the Respondent's Letting Agent to minimise the stress and get settled before the new baby arrived.
- xii. The Applicants have since relocated to England with effect from 25 August 2022.
- xiii. The Second Applicant drove past the Property on 9 June 2021 and saw the "For Sale" board erected. The photograph lodged with the Tribunal was taken by the Second Applicant on her mobile phone.
- xiv. The Applicants also took a screenshot of the advertisement of the Property on or after 22 June, the date of publication.
- xv. The Applicants had been accommodating towards the Respondent and had ended up paying more rent than they had intended in moving to The Stables from the Property. The energy efficiency of The Stables was very poor and all of that put the Applicants in an adverse position financially than when renting the Property.

2.3 The Respondent made the following oral representations:-

- i. She never saw nor signed the PRT with the Applicants. The Respondent accepted the Letting Agent was acting on her behalf.
- ii. The Respondent and her family moved to the United States in January 2016 on a five-year temporary assignment with the Respondent's employer. During that period the Respondent and her husband started the process to obtain their "Green Cards".
- iii. The Respondent's father was suddenly diagnosed with very advanced cancer. Accordingly, the Respondent and her family put their belongings into storage and got on a flight back to Scotland. Sadly, the Respondent's father died fairly quickly. However, due to COVID19 the Respondent and her family were then stuck in the UK due to the resultant travel bans.

- iv. Initially the Respondent and her family stayed with her parents in Anstruther and thereafter with a relative.
- v. The Property had previously been the Respondent's family home for around six years prior to 2016.
- vi. The Respondent and her family needed a house and through a family friend rented their holiday house which was unoccupied due to the lockdown and a tenancy agreement was entered into for a period of six months at a monthly rent of £2000. The Respondent anticipated being able to return to the US within that period. During that period the Respondent continued to pay the mortgage on the Property of £350 per month and the cost of storing the family belongings at \$300 per month.
- vii. As a consequence of being in the UK the Respondent and her husband then required to make their "Green Card" applications through the UK embassy and the Respondent's employer's lawyers were assisting. However, the embassies were then closed to new applications.
- viii. In February 2021 the family friend from whom the Respondent was renting the property in which they were living asked the Respondent's family to leave by the end of June 2021. No formal Notice to Leave was served. The property in question was the family friend's personal holiday house and it was never anticipated that the Respondent's family would live there as long as happened. The property was too small and was not suitable in any event and due to the size of the Respondent's family the property was suffering a lot of wear and tear which was causing them some stress.
- ix. The Respondent and her husband considered their options. They didn't want to move again and were considering rental properties. Their children had started school and nursery and accordingly they sought to rent a property in the area without success. A house came on the market for sale and the Respondent and her husband offered more than the asking price but again were unsuccessful in buying the property.
- x. If they sold the Property, they would have other options.
- xi. They considered moving to England where the Respondent's employer's headquarters are based. The Respondent spoke to the Letting Agent and Kevin suggested asking the Applicants if they wanted to buy the Property.
- xii. The Respondent still couldn't find another rental property and therefore decided to move back into the property. That decision was made at the end of March 2021. The Respondent was resigned to her children starting at a school near the Property until they were able to move back to the USA. That was not ideal for the children. However, the Respondent was looking forward to moving to the Property as she had many happy memories of living there previously. The Property is also close to the Scottish office of her employer, JP Morgan. The Respondent had researched schools in the area of the Property. There were schools within the catchment area and they were familiar with them. They intended to get in touch with those schools after the Applicants had moved out the Property. They knew from previous experience that places at these schools would be available quickly.
- xiii. The "Green Card" applications were lodged by the Respondent's employer's lawyers with the UK embassy. However, there was a massive backlog of such applications which could take 6 to 12 months to process.
- xiv. With regard to the service of the Notice to Leave, the Respondent contacted the Letting Agent. They needed to move out the property they were living in by the end of June 2021. The Respondent had email correspondence with the Letting Agent instructing the Notice to Leave to be served on the Applicants. In discussions with the Letting Agent, he said he would require to consider the notice period. He needed to research whether six months' notice was required. After the notice was served, the

Respondent asked what notice period had been given and the Letting Agent advised of the removal date of 9 July. The Respondent said she was clear with him that the intention was to move into the Property. She had been talking a lot with him about how difficult it was to find properties in Elie or Anstruther.

- xv. Even although the Applicants moved out the Property at the beginning of June 2021, the Respondent's children were still at school so the family needed to stay where they were until the end of June.
- xvi. The Respondent's aunt became aware of a property for sale in Pittenweem. The Respondent stated that properties in the area sold within a week at 30% over the asking price. They didn't think it was feasible to buy something in the area. The property in question had not sold. It had been on the market for a while and the price had reduced. It was not ideal as it had been a holiday house. It would allow their children to stay at the same school. With regard to finance for the purchase of the property both the Respondent and her husband were working and had sufficient funds for the deposit. The Respondent viewed the property on 4 June and made a verbal offer to purchase the property to the seller on the same day. The owner accepted the offer. The formal offer was submitted by the Respondent's solicitor on 9 June 2021.
- xvii. Earlier that week on 7 June the Respondent got in touch with the Letting Agent to advise of the situation. Kevin wanted to drum up interest in the sale of the Property as quickly as possible and therefore put a "For Sale" sign in the garden of the Property.
- xviii. The Respondent started moving her family's belongings to the Property on 12 June in preparation to move there at the end of June. Several trips were made.
- xix. On 30 June the Respondent and her family moved into the Property.
- xx. The Letting Agent advertised the Property for sale on 22 June. Viewing took place that weekend and the following week and a verbal offer on the Property was accepted around 3 July. The sale eventually went through on 2 September 2022.
- xxi. The Respondent's purchase settled on 2 August 2021. The Respondent wanted the purchase settled prior to the schools starting back. The Respondent's daughter is in the same school as previously and her son was then at nursery and is now at the same school too.
- xxii. It was her family's intention to live in the Property for at least three months. They didn't want to keep moving. At the time of serving the Notice to Leave the Respondent never anticipated moving to a house in Fife. She expected she would be going back into the office in Glasgow. Her employer had given her exceptional permission to work from home.
- xxiii. The Respondent is employed as an IT Project Manager. Her employer was understanding of her need to get home from the USA quickly and she continued to work remotely thereafter. Her manager is based in London and her team in New York. She continued to do the same job working UK hours. Over a period of nine months the Respondent had various conversations with her manager with regard to the situation. From the end of Spring into Summer 2021 colleagues were being asked to go back into the office. However, the Respondent's employers understood her situation.
- xxiv. It was a tumultuous time. There were pros and cons of all decisions. Their intention was to move back to the Property and they did so. The Property could have been put on the market earlier. They could have given six months' notice of their intention to sell. They did not intend to mislead the Applicants. They were very stressed at the whole situation. They still await their "Green Cards".

3. Findings in Fact

- 3.1 The Tribunal makes the following findings in fact having regard to the application and documents submitted and the oral representations of the parties:-
- i. The Respondent and her husband are the heritable proprietors of the Property.
 - ii. The Respondent leased the Property to the Applicants in terms of a Private Residential Tenancy agreement that commenced on 1 May 2020 and the rent payable in terms thereof was £1,400 per calendar month.
 - iii. In around May 2020 the Respondent and her family required to suddenly leave the USA where they were staying due to the ill health of the Respondent's father. Following his death the Respondent and her family were unable to return to the USA due to travel bans in place due to COVID19.
 - iv. The Respondent entered into a tenancy agreement with a family friend for the lease of a vacant holiday house at a monthly rent of £2000.
 - v. In around February 2021 the Respondent's landlord asked them to vacate the holiday house by June 2021.
 - vi. In around March 2021 the Respondent gave the Applicants the opportunity to purchase the Property but the Applicants were unable to do so.
 - vii. By Notice to Leave dated 6 April 2021 the Respondent gave notice to the Applicants to leave the Property on or before 9 July 2021 on the basis that the Respondent intended to live in the Property for a period of at least 3 months.
 - viii. In terms of Ground 4 of Part 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 as then amended by the Coronavirus (Scotland) Act 2020, Section 2 and Schedule 1, paragraph 2 the Respondent gave the Applicants 3 months' notice to leave the Property.
 - ix. No detailed reasons were given in or evidence attached to the Notice to Leave.
 - x. Having received the Notice to Leave the Applicants searched for alternative accommodation.
 - xi. On 4 June 2021 the Respondent made an oral offer for the purchase of a property in Pittenweem which the seller accepted. A formal written offer to purchase the property was made by the Respondent's solicitor on 9 June 2021.
 - xii. The Applicants vacated the Property on 6 June 2021 moving to The Stables at a monthly rent of £1,700.
 - xiii. The Respondent placed the Property on the market for sale on 9 June 2021 and it finally sold on 2 September 2021.
 - xiv. The Respondent began moving the family's belongings into the Property on 12 June.
 - xv. The Respondent and her family lived in the Property from 30 June until around 2 August 2021 when they moved to their new Property in Pittenweem.
 - xvi. At the time of serving the Notice to Leave the Respondent did not intend to live in the Property for a period of at least 3 months which was simply one option available to her if no alternative accommodation became available in the catchment area of the school and nursery school attended

- by her children and she continued to search for alternative accommodation in that area which was her preferred outcome.
- xvii. After the Applicants removed, the Respondent lived in the Property for a period of less than 3 months.
 - xviii. The Applicants were misled by the Respondent into ceasing to occupy the Property.

4. Findings in Law

- 4.1 The Tribunal makes the following findings in law:-
- i. That the Applicants were misled into ceasing to occupy the Property by the Respondent and the Tribunal therefore makes a wrongful termination order in terms of Section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016.
 - ii. The Applicants are entitled to a payment from the Respondent in terms of Section 59(1) of the 2016 Act.
 - iii. A payment by the Respondent to the Applicants of £2,800 is reasonable.

5. Reasons for Decision

- 5.1 The Applicants were credible and reliable in their evidence.
- 5.2 The evidence of the Respondent was generally credible and reliable but in relation to key issues the Tribunal was not persuaded that her account was truly reflective of the actual circumstances.
- 5.3 The Tribunal is satisfied, on the balance of probabilities, that the Notice to Leave was issued by the Respondent wrongfully on the basis of a 3 month notice period relative to an alleged intention on the part of the Respondent to move into the Property to live there as her only or principal home for a period of at least 3 months when, in reality, the Respondent continued to search for alternative accommodation and knew that if a suitable property became available within the catchment area of her children's schools she would instead sell the Property as happened.
- 5.4 As at 6 April 2021 when the Notice to Leave was served the Applicants were misled into ceasing to occupy the Property within 3 months. Moving into the Property allowed the Respondent and her family to have a place to stay if no other suitable property was found in the interim, and allowed them to vacate the property leased to them by the family friend who required their removal by 30 June 2021. The Tribunal was not satisfied that the Respondent and her family intended to live in the Property for a period of at least 3 months as their search for alternative accommodation in Fife continued.
- 5.5 In particular, a family member of the Respondent was obviously aware of the Respondent's desire to continue living in the East Neuk of Fife and was looking for properties on her behalf. When a property was identified, the Respondent viewed and made an offer on that property on the same day, and had the funds available to secure the purchase thereof all of which led the Tribunal to

conclude that the Respondents' real intention was always to move to the East Neuk if at all possible rather than move into the Property for at least 3 months.

- 5.6 The Respondent did not require to vacate the property leased by the family friend by 30 June. A formal tenancy agreement was in place on commercial terms. A Notice to Leave ought to have been served on the Respondent but no such Notice was served. The Respondent could have insisted on such a Notice or at least asked the family friend to allow her and her family to stay in the property for a longer period to allow the Respondent to give the Applicants 6 months' notice of their intention to sell the Property which, ultimately, was their intention if a suitable property in Fife could be secured as happened.
- 5.7 The Applicants have therefore established a breach of Section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016 and are entitled to an order for payment in favour of the Applicants in terms of Section 59(1).
- 5.8 The Tribunal considered the Respondent's actions fell towards the lower end of the scale of the penalty available to it.
- 5.9 In the circumstances a payment of two times the rent is reasonable, being £2,800.00, and a wrongful termination order is made to that effect.

6. Decision

- 6.1 The Applicants are entitled to a wrongful termination order under Section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016 in that the Applicants were misled into ceasing to occupy the Property by the Respondent, and the Tribunal therefore makes a wrongful termination order requiring the Respondent to pay to the Applicants a sum of £2,800.

7. Right of Appeal

- 7.1 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.**

G Buchanan

Legal Member/Chair

5 September 2022
Date

