



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/21/2108

Re: Property at 6 St Leonard's court, Perth, PH2 8EA (“the Property”)

Parties:

Ms Anna Karwat, 49 Preta Street, Perth, PH1 3YB (“the Applicant”)

MB Edinburgh Investments Limited, 30 Stafford Street, Edinburgh, EH3 7BD (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an order for a wrongful termination order in terms of rule 110 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Procedure Rules”). The tenancy in question was a Private Residential Tenancy of the Property by predecessor landlords to the Applicant commencing on 12 September 2019, the Respondent not becoming the landlord until a purchase of the block containing the Property on 31 July 2020. The Tenancy replaced an earlier Short Assured Tenancy between the Applicant and another individual, which commenced on 12 December 2010. On 2 February 2020, the Respondent had issued a Section 33 Notice and Notice to Quit purporting to seek termination of the Short Assured Tenancy as of 13 June 2021. The Applicant returned keys voluntarily to the Respondent’s letting agent on or around 12 July 2021.
2. The application was dated 30 August 2021 and lodged with the Tribunal shortly thereafter. Further papers and submissions were lodged by both parties

thereafter. The application relied upon evidence and submissions that the Respondent had actually held a PRT, that she had voluntarily left further to the Notice to Quit and Section 33 Notice (which were not valid to terminate her PRT), but that the termination was wrongful as she was provided with inaccurate documentation. A maximum award of six months' rent was sought. The Respondent submitted that an order for wrongful termination was not possible as no Notice to Leave had been issued under the 2016 Act and, at the time of issuing the Notice to Quit and Section 33 Notice the Respondent had been unaware of the PRT so had issued the wrong documentation in good faith. The Respondent further submitted that, in any case, the intention was to terminate the Applicant's tenancy so as to sell the Property and that was a true intention at the time and (though not yet sold) remains the intention.

The Case Management Discussion

3. On 19 November 2021 at 10:00, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote conference call, there was appearance by the Applicant as well as Kelly Gibson, Senior Property Manager for the Respondent's letting agent Ballantyne Ream Ltd, as well as Rory Ballantyne who was a director and shareholder in both the letting agent and the Respondent.
4. As a preliminary matter, I noted that the application appeared to be against the Respondent and Ballantyne Ream Ltd, though the terms of drafting made it unclear whether Ballantyne Ream Ltd was being treated as a second Respondent. On discussing matters, the Applicant confirmed that she had sought the application against both companies but was satisfied that it be directed only against MB Edinburgh Investments Ltd as the landlord (in consideration of the wording of the 2016 Act). Otherwise, she insisted on her application.
5. Given that there had been significant further documentation lodged by both parties the lodging of the application and further submissions at the CMD, I was provided with fulsome submissions and, though the Applicant initially sought a continuation to seek legal advice, ultimately both parties confirmed during the course of the CMD that they sought a decision made at the CMD rather than a continuation to a Hearing. I was satisfied to consider matters in this way.
6. The Applicant's position was an extremely sympathetic one. She explained that she had sought alternative accommodation but it had been delayed. Further, her daughter was diagnosed with a condition that meant that a move to new accommodation was a major upheaval and distressing to her. Further, she had attempted to explain to the Respondent's letting agent that she had a PRT and that the notices were not valid, but the Respondent had not accepted this and had repeated that no extended period of occupation was possible as the Property had been sold. In order to try and give as much stability to her daughter, she had chosen not to object to the notices at the time and had undertaken an extended period of moving and living between properties, in order to move out roughly when the Respondent had sought. She and the Respondent's agent had been in contact throughout this period. Subsequent to moving out, she had sought advice

on this situation and been advised by a housing support charity to raise this application. She wished the Tribunal to consider the matter fully.

7. The Respondent's position was not unsympathetic either. It provided evidence of the disposition in its favour which showed disclosure (as part of the warrantice clause) of the 12 December 2010 tenancy, implying that it was the current lease of the Property. The Respondent conceded that the Applicant had said she was a "residential tenant" (such as in an email of 14 June 2021) but – ignorant of the PRT of 2019 – the Respondent's letting agent had not picked up the Applicant's meaning and merely replied that being a tenant under an SAT meant she was a "residential tenant" and she still needed to leave in terms of the Notice to Quit and Section 33 Notice. The Applicant had not, at the time, provided the Respondent or its agent with a copy of the 2019 PRT, so both sides stumbled forward in mis-communication.
8. In regard to the intention behind the termination of the tenancy, the Respondent conceded that the Property had not yet sold. It was said to have been "sold as seen" as part of an attempt to raise funds to repay bank lending. The sale had fallen through but the Respondent had been able to realise other assets and was now in a position to renovate the Property before sale instead. At the moment it had sold off a number of other properties at the block (evidence of which I was able to see for myself from searches I carried out on Registers of Scotland prior to making my decision). It was still intending to renovate the Property in due course and place it on the market. In the meantime, it was informally showing the Property to viewers attending at the block to see the other properties, if they expressed a possible interest in an unrenovated property. The Respondent thus maintained its position that the lack of a Notice to Leave meant no order for wrongful termination was possible but, in the alternative, there had been no inaccurate information as to their intention to sell.
9. There was much other discussion regarding the historic parties and changes of ownership. The Respondent had purchased from M&L Property (Dundee) Ltd who itself had only taken title in October 2019. It was unclear to me whether the landlord under both the 2010 SAT and the 2019 PRT ("SMS Properties Ltd") remained landlord at the point that M&L had purchased (or whether they had ever held title). The Applicant said that yet a different company was mentioned in her tenancy deposit documentation at one point and Mr Ballantyne thought this other company may have been a parent company of M&L. M&L had been a client of Ballantyne Ream Ltd from October 2019, but the predecessor landlord(s) had not been a client. Ms Gibson insisted that Ballantyne Ream Ltd was ignorant of the PRT until after the Applicant had left, and Mr Ballantyne said the Respondent was similarly ignorant. Neither could speak for the knowledge of M&L, the ownership of which was separate to the Respondent and Ballantyne Ream Ltd. Ultimately, neither party provided submissions that suggested any of the historic ownership position was relevant to the application or defence.
10. No motion was made for expenses.

Findings in Fact

11. The Applicant, with another individual, had been tenants under a Short Assured Tenancy of the Property from 12 December 2010 until 11 September 2019.
12. The Applicant became sole tenant under a Private Residential Tenancy of the Property from 12 September 2019.
13. The Respondent became landlord of the Property on 31 July 2020. The predecessor landlord had disclosed to the Respondent the 12 December 2010 Short Assured Tenancy but not disclosed the subsequent 12 September 2019 Private Residential tenancy that had replaced it.
14. The Respondent's letting agent issued the Applicant with a Notice to Quit and a Section 33 Notice, dated 2 December 2020, purporting to terminate the 2010 Short Assured Tenancy as of 13 June 2021.
15. The Applicant corresponded with the Respondent's letting agent to take issue with the notices but left the Property voluntarily on or around 12 July 2021.
16. The Respondent had not issued the Applicant with a Notice to Leave under section 50 of the 2016 Act.

Reasons for Decision

17. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. In light of the submissions by both parties, and their submissions on further procedure, I was satisfied both that the necessary level of evidence had been provided through the application, further papers, and orally at the CMD, and that it was appropriate to make a decision at the CMD.
18. The key fact was undisputed between the parties; no Notice to Leave had been issued to the Applicant. The statutory basis for the Applicant's claim (as there had not been an eviction order issued against her) was section 58(1) of the 2016 Act which is clear that it "applies where a private residential tenancy has been brought to an end in accordance with section 50". Section 50 regards the issuing of a Notice to Leave. No Notice to Leave was issued so the Tribunal cannot, under section 58(3), "make a wrongful-termination order [as it cannot find] ... that the former tenant was misled [through the terms of a Notice to Leave] 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".
19. The purpose of section 58 is clear. With PRTs, with the greater security of tenure to the tenant, there are expanded grounds for ejection that the landlord holds, some of which can be advanced on the basis of the landlord stating an intention (such as to sell, or occupy the property). A landlord who is in bad faith may seek eviction by stating a ground falsely, and a tenant may leave voluntarily and only discover the bad faith subsequently. It thus applies to the specific circumstances

of a Notice to Leave being issued on grounds that subsequently – in the view of the Tribunal – were found to be misleading. Issuing entirely incorrect notices (as occurred here), or not issuing notices at all, have a different remedy in that the PRT cannot be validly terminated in such cases, or in some cases a claim for wrongful eviction. Though in this case the Applicant *de facto* accepted termination by returning the keys, she could have refused to leave. That she did not does not give her a right to seek a wrongful termination order.

20. Though not binding I note that this same reasoning is followed in a number of other decisions of the Tribunal at first instance relating to applications where no Notice to Leave had been issued. See: PR/19/2381 of 3 December 2019 (Macindow v Murrricane); PR/20/0437 of 20 July 2020 (Buoker and Kasoar v Stronaoh); PR/19/4030 of 24 September 2020 (Caroanglu v Edinburgh Holiday & Party Lets Ltd); PR/20/2171 of 20 January 2021 (McKenna-Cansfield v Anderson); PR/20/2529 of 18 February 2021 (Bargeton v Danzan Properties Ltd); and PR/21/1024 of 22 July 2021 (Marshall v Hutchison).
21. Had I taken a different decision, subject to further evidence of the Respondent's actions in regard to renovation and the alternative steps it took after the purported sale of the Property fell through, I think it would have been difficult for the Applicant to convince the Tribunal that there had been wrongful termination. A genuine intention to sell, followed by a genuine failure of the sale, may permit a change of tack by a landlord. Here, the sole change of tack is said that the Respondent has sought to raise funds to renovate and then sell at a later time. That is still an intention to sell. There was no evidence of the Respondent re-letting the Property and thus misleading the Applicant into giving up her tenancy so that the Respondent may find another tenant.

Decision

22. In all the circumstances, I shall refuse 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.

J Conn

19 November 2021

Legal Member/Chair

Date