



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/19/3961

Re: Property at Gariochsford, Rothienorman, Aberdeenshire, AB51 8XU (“the Property”)

Parties:

Mr Ben Grealis, Mid-Paithnick, Crossroads, Keith, AB55 6LP (“the Applicant”)

Miss Diana Muriel, Gariochsford Steading, Rothienorman, Aberdeenshire, AB51 8XU (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Melanie Booth (Ordinary Member)

Decision

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

- Background

This is an application for a wrongful-termination order, in terms of s.58 of the Private Housing (Tenancies) (Scotland) Act 2016 (‘the Act’). It called for a hearing by teleconference at 10am on 31 July 2020. The Applicant and Respondent were on the line to present their cases in person. Although both parties had intimated the possibility of leading witness evidence, ultimately neither did, and the application proceeded on the basis of the parties’ submissions and the various documentary evidence lodged.

- Findings in Fact

1. The Applicant leased the Property from the Respondent in terms of a private residential tenancy executed on 16 and 20 May 2018 and with a start date of 8 June 2018.

2. On 9 August 2019, the Respondent's sister's partner agreed, jointly with his wife, the sale of a flat they own in common in Nice, France. At that time, the Respondent's sister and her partner resided in that flat. The contract of sale was made suspensively conditional on the purchaser demonstrating that he had obtained a loan sufficient to cover the purchase within 45 days. Should he fail to do so, the sellers could give him 8 days notice to allow him to explain his failure. Should he further fail to do that, the contract would be voidable.
3. From around the time of the execution of that contract and the beginning of September 2019, the Respondent and her sister discussed over the phone the possibility of her sister and her partner coming to stay at the Property. The Respondent's sister and her partner decided that they would move to the Property, once the sale of the flat had been completed. It was estimated that they would ultimately move in to the Property in December 2019.
4. On 7 September 2019, the Applicant e-mailed the Respondent to complain about work done to a bush at the Property. He expressed, "concern," alleging that the bush had been cut down without reference to him, and that that action had had a negative impact on his and his wife's privacy.
5. Later that same day, a former tenant of the Property, sent a text message to the Respondent's partner, reading: "Hi mate do you know what laurencekirk is like?? Not town centre be about 6 or 7 miles north west..[sic]" The Respondent's partner replied around an hour later, saying, among other things: "Tenants are not moving yet, will let you know if they do. Would love to babe you back... I have only ever drove past laurencekirk.[sic]".
6. On 8 September 2019, the Respondent replied to the e-mail of the preceding day, disagreeing with the Applicant's characterisation of the work done and its effect. She closed the e-mail by saying, "If however you no longer feel content to stay please let us know and we would be happy to release you from your tenancy contract with a month's notice."
7. On the morning of 9 September 2019, the Respondent's sister e-mailed her, saying, among other things, "Looks like the flat sale is going through, so really excited about the prospect of being with all of you for Christmas. ... I'll let you know dates nearer the time- still waiting to hear the buyer's dates- but if we can get there before Christmas, that would be great."
8. On the afternoon of the same the day, the Respondent sent a notice to leave to the Applicant. It gave as the eviction ground being used, "Your Landlord's family member intends to live in the Let Property." It enclosed a copy of the e-mail from the Respondent's sister of that morning, to support the existence of this ground.
9. The Respondent ceased to occupy the Property on 4 October 2019. He did so on the basis that he believed the ground in the notice to leave to exist. His tenancy was therefore terminated on that date, in terms of s.50 of the Act.

10. On 6 October 2019, the Respondent's sister informed her that the sale of the flat in Nice was very unlikely to proceed. The purchaser had failed to obtain a loan to finance the sale and had exceeded the time allowed in the contract of sale to do so. This failure was ultimately confirmed by a letter dated 18 October 2019 from the French bank Credit Agricole to the purchaser.
11. On 11 October 2019, the Respondent contacted the former tenant who had been in touch with her partner in early September (see para.5 above), to enquire as to whether he would be interested in taking a tenancy at the Property, instead of her sister. He was interested and confirmed this by text message. He currently occupies the Property in terms of a tenancy agreement concluded pursuant to that discussion.
12. The Respondent's sister intended to live in the Property at the time the Respondent served the notice to leave. The Respondent was not made aware of any change in that intention until after the Applicant's tenancy was terminated. Consequently, the Applicant was not misled into ceasing to occupy the Property by the Respondent.
- Reasons for Decision
13. Since the Applicant's tenancy was terminated in terms of s.50 of the Act, the relevant provision in regard to an application for a wrongful-termination order is s.58, which reads:

“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.”

14. Despite there being some irregularity in relation to the form of the lease used in this case, it was not in dispute that the Applicant is a former tenant under a private residential tenancy, and thus entitled to make the application. The principal issue that required to be determined by the Tribunal was therefore whether or not the Applicant was misled into ceasing to occupy the Property by the Respondent.

15. The Applicant's position was:

- a) that the Respondent was in contact with the former tenant who now occupies the Property prior to service of the notice to leave;
- b) that the closing words of the reply e-mail of 8 September 2019 showed that the Respondent wanted the Applicant out of the tenancy;
- c) that the fact that the former tenant was contacted prior to the date of the letter from Credit Agricole shows that the Respondent was arranging for the Property to be let before the sale of her sister's flat had fallen through; and
- d) that there was no evidence to support any intention of the Applicant's sister to live at the Property.

Taken together, the Applicant contended that these points demonstrate that the Respondent's sister never truly intended to live at the Property. Rather, he alleged that the Respondent intended throughout to remove him from the property in order to move the former tenant in.

16. While the Tribunal considered that the events relied upon by the Applicant might, in isolation, have been sufficient to lead to a conclusion that the Respondent had misled him, it agreed with the Respondent's submission that the fuller story surrounding the termination of the tenancy, as set out in the findings in fact, demonstrated that she had not done so.

17. The dispute between the parties was almost entirely around interpretation of the facts presented, rather than over questions of what actually occurred; but it is nonetheless worth recording that the Tribunal considered the account given by the Respondent of how matters unfolded to be both credible and reliable. Her version of events was both internally coherent and was supported in all aspects by the documentary evidence submitted: in particular, the terms of the contract of sale for the Nice flat and the various contemporary e-mail and text messages that were sent. Crucially, it addressed adequately each of the points raised by the Applicant, as follows:

- a) The contact with the former tenant prior to the notice to leave being served was not with the Respondent and was not in relation to his moving to the Property, but rather concerned his intention to move to Laurencekirk. It was the Respondent's partner who was actually in contact on the day in question, and he was clear in that communication that the Applicant was not intending to move yet. His use of the phrase, "will let you know if they do," suggests that he at least was not expecting any imminent opportunity for the former tenant to move back.
- b) Similarly, the words used by the Respondent in her e-mail, read in the context of the wider events, do not specifically indicate an intention on her part to move the former tenant in to the Property. Rather, they fit

well with the picture she presented of having already had discussion with her sister concerning the latter moving to the Property.

- c) The Respondent was aware that the flat sale was about to fall through more than a week in advance of the letter from Credit Agricole (see para.10, above), and before she contacted the former tenant in an attempt to re-let the Property.
- d) The Tribunal considered that the written statement from the Respondent's sister and the Respondent's own testimony (neither of which was challenged by the Applicant in relation to its factual content, and both of which were supported by the documentary evidence presented) provided ample proof of the former's intentions.

18. On that basis, the Applicant's conclusion in relation to the intentions of the Respondent and her sister cannot be supported and no order should be granted.

- Decision

Application 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.



Legal Member/Chair

31st July 2020

Date