



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 58 (2) of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/PR/20/0894

**Re: Property at 1 Seaview Terrace, Elleabeich, Oban, PA34 4RG (“the
Property”)**

Parties:

**Mr Michael Carter, Ms Jacqueline Carter-Brown, 6 Seaview Terrace,
Ellenabeich, Oban, PA34 4RG (“the Applicant”)**

Mrs Anne Robin, Cluanie, Balvicar, Oban, PA34 4TE (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member)

Background

The Application is in respect of s58(2) of the Private Housing (Tenancies) (Scotland) Act 2016 (“The Act”). The Applicant seeks an order that she should be awarded financial compensation for wrongful termination of her tenancy.

The Case Management Discussion

The Application called for a Case Management Discussion by conference call at 2pm on 23 November 2020. The Second Applicant, Ms Jacqueline Carter-Brown, was present on the call and also indicated she would represent the interests of her fellow Applicant, Mr Michael Carter who was not present on the call.

The Respondent was present alongwith her legal representative, Ms Lauren Dalglish of Complete Clarity Solicitors. Prior to the case calling both parties had lodged various documents and written representations and the Tribunal first of all established that everyone had all these documents and were content to proceed. Both parties confirmed that they wished the Tribunal to proceed.

Discussions.

The Applicant wished a finding that the Applicants' tenancy had been wrongfully terminated by the Respondent. Her position was that the Respondent had served a Notice to Leave on the Applicants confirming that the Respondents wished the Applicants to leave the Property by 1 December 2019 because "*Your Landlord intends to sell the Let Property.*" The Applicants subsequently vacated the Property on 3 December 2019.

The Applicants however were concerned that the Respondent did not then take timeous steps to sell the Property within "*three months*" and had therefore misled the Applicants into leaving the Property.

This was denied by the Respondent who confirmed that the Respondent had first started the process of trying to sell the Property on 22 January 2020, when she had emailed an estate agent to start the process. The Respondent argued that this was in compliance with the demands of grounds 1 of Schedule 3 to the Act.

Matters in Agreement.

During the course of hearing from parties, it became apparent that many facts were agreed between the parties. These were as follows:

- I. The Applicants received a Notice to Leave calling upon them to leave the Property on 1 December 2019.
- II. The Applicants vacated the Property on 3 December 2020.
- III. A Home Report was instructed and prepared with a view to marketing the Property for sale.
- IV. The Home Report was completed on 12 February 2020.
- V. The sale of the Property was ultimately delayed by the Covid-19 global pandemic.
- VI. The Property was ultimately sold on 10 September 2020.

The Legislation.

The Tribunal then referred parties to the wording of Grounds 1 of Schedule 3 of the Act as this is the basis upon which the Notice to Leave was founded.

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

(2)The First-tier Tribunal must 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, 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 subparagraph (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.

Issues in dispute.

At this point Ms Dalglish drew the Tribunal's attention to email correspondence bearing to be between the Respondent and an estate agent beginning the process of marketing and selling the Property. On the face of it, the Tribunal could readily see an email dated 22 January 2020 between the Respondent and the estate agent looking to progress the sale.

This seemed to narrow the issues in dispute significantly as the Applicant acknowledged that if this email were genuine then the Respondent would have no case to answer as they would have satisfied the test of intending to sell, or at least putting the property up for sale, within 3 months of the tenant ceasing to occupy it.

The Applicant's position was however that this email was a forgery. The Applicant readily conceded that she had no evidence whatsoever for this serious allegation which directly accused the Respondent of fabricating evidence with a view to misleading the Tribunal.

As the discussion progressed it became apparent that the only issue in dispute between the parties was whether the email was genuine.

The Applicant's position was that if it were genuine then her case was doomed to failure as even in her own view the Respondent would have satisfied the demands of the legislation by having intended to sell the Property, or at least put it up for sale within three months of the tenant ceasing to occupy it.

This agreed position meant that the Tribunal did not require to conduct the exercise of determining what evidence may be required to demonstrate compliance with the terms of the Grounds relied upon in the Notice to Leave.

Consideration of the Issue in dispute.

The Tribunal was ultimately being asked to make a finding that the Respondent had fabricated evidence when it was candidly acknowledged by the Applicants that they had no evidence of this whatsoever. The Tribunal also noted that a Home Report was prepared on 12 February 2020 and the Property was subsequently sold. The Home Report would have had to have been instructed at some point and the Applicant's position here was decidedly unclear. Similarly, the fact that the Property was subsequently sold neither seemed to satisfy the Applicants' concerns that the communication with the estate agent was bogus.

Findings in Fact

Having heard from parties, the Tribunal made the following findings in fact.

- I. The Parties had entered into a Private Residential Tenancy in respect of the Property.
- II. The Applicants were the tenants and the Respondent was the Landlord.
- III. The Respondent had served a Notice to Leave on the Applicants calling upon them to vacate the Property on 1 December 2019.
- IV. The Notice to Leave was on the basis that the Respondent intended to sell the Property.
- V. The Applicants vacated the Property on 3 December 2019.
- VI. The Respondent emailed an estate agent on 22 January 2020 to start the process of selling the Property.
- VII. A Home Report was prepared dated 12 February 2020.
- VIII. The sale of the Property was delayed by the Covid-19 global pandemic.
- IX. The Property was ultimately sold on 10 September 2020.

Reasons for Decision

Having made the above findings in fact, the Tribunal determined that there was no adequate basis presented for suggesting that any emails had been forged by the Respondent. Accordingly, the Tribunal determined that the allegation had no merit in it at all and should not be allowed to cause further delay and expense by being considered further at any further Hearing.

It had been agreed between the parties during the Case Management Discussion that if the email were assumed to be genuine then the Respondent had no case to answer.

Accordingly having made such a finding, the Tribunal came to that conclusion and rejected 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.



Legal Member/Chair

23 November 2020

Date