



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 58 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/20/1947

Re: Property at 291 Keal Drive, Glasgow, G15 6XB (“the Property”)

Parties:

Dr Elizabeth Hutchin-Bellur, Mr Sunil Hutchin-Bellur, 37 Hartlaw Crescent, Glasgow, G52 2JJ (“the Applicant”)

Ms Jill Matheson, 44 Dunottar Avenue, Coatbridge, North Lanarkshire, ML5 4LR (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Wrongful Termination Order should be granted against the Respondent.

This was a unanimous decision.

- Background
- 1. An application dated 14 September 2020 was submitted to the Tribunal under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a Wrongful Termination Order against the Respondent on the basis that the Applicants were misled into ceasing to occupy the property by the Respondent by virtue of service of a Notice to Leave.
- 2. A Case Management Discussion (“CMD”) took place on 24 November 2020 by tele-conference. The second-named Applicant was personally present and appeared on behalf of both Applicants. The Respondent was personally present. The Applicant moved for the Wrongful Termination Order to be granted

and which was opposed by the Respondent. The CMD was adjourned and a Hearing fixed for evidence to be led by parties.

- The Hearing

3. A Hearing took place on 8 January 2021 by way of tele-conference. The second-named Applicant was personally present and appeared on behalf of both Applicants. The Respondent was personally present. The Tribunal members asked questions of both the Applicant and the Respondent. Both parties answered all questions without hesitation. At the end of the hearing we reserved our decision. We found the following facts to be admitted or proved.

- Findings in Fact

4. The Respondent is heritable proprietor of the property at 291 Keal Drive, Glasgow, G15 6XB ("the Property").
5. On 3 November 2018 the Respondent leased the Property to the Applicants under a Private Residential Tenancy Agreement with an agreed monthly rent of £650.
6. On 11 March 2020 the Respondent (via her letting agent) served a notice to leave on the Applicants which required them to remove from the Property on 6 June 2020. Said Notice to Leave relied upon Ground 4 of Schedule 3 to the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
7. Ground 4 of Schedule 3 to the 2016 Act says:

4(1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months.

(3) References to the landlord in this paragraph— (a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them, (b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in subparagraph (2) includes (for example) an affidavit stating that the landlord has that intention.

8. The Respondent intended to move back into the Property at the point the Notice to Leave was served. The Respondent required to relocate due to her employer relocating her base from Campbelltown to Glasgow.
9. The Applicants were unable to move by the deadline set by the Notice to Leave due to the Covid movement restrictions in place at the time.

10. The Respondent's employer delayed her relocation and her employment base did not move to Glasgow until late July 2020.
11. The Respondent advised her letting agent by email of 28 April 2020 that there was "no rush" for the Applicants to move out. This email was not passed to the Applicants. However, the Notice to Leave was not revoked by the Respondent and she still sought recovery of the Property on the basis of Ground 4 as aforementioned.
12. The Respondent moved in with her partner in his property in Coatbridge following her employment relocation taking place in late July 2020. At this point, due to a change in circumstances with the Respondent's partner's employment, the Respondent decided to remain resident in Coatbridge for the foreseeable future and not to move into the Property in Glasgow. This change of intention, and the fact that the Property was no longer required by the Respondent for her occupation at that time, was not relayed to the Applicants.
13. The Applicants indicated to the letting agent in late July 2020 that they had found somewhere else to live. They moved out of the Property on 2 September 2020 at which point the tenancy agreement came to an end.
14. The reason for the Applicants moving out of the Property was a direct result of the Notice to Leave being served on them, and which relied upon Ground 4 of the 2016 Act, as aforesaid. The Applicants would not have moved out of the Property at that time had it not been for the service of the said Notice to Leave.
15. The Applicants returned to the Property on 12 September 2020 following obtaining permission from the agent to do so, to collect a plant from the garden that they had forgotten to take with them. They found that a young couple were residing in the Property. They queried with the letting agent why the Respondent was not residing in the Property but the letting agent advised that he was no longer managing the Property.
16. Within ten days of the Applicants departure from the Property, the Respondent had leased the Property to her partner's daughter at an agreed monthly rental of £450.
17. The Respondent intends to move into the Property at some point later in 2021 when her partner's daughter relocates to Edinburgh.

- Reasons for Decision

18. The Tribunal was satisfied that the Applicants moved out of the Property as a direct result of the Notice to Leave being served on them. The Applicants stated in their evidence that they had asked the letting agent to provide them with evidence of Ground 4 of the 2016 Act being established following receipt of the Notice. They were provided with a copy email sent from the Respondent to the

letting agent which set out the reasons for her requiring to move into the Property. They had carried out research into the legislation and the Ground being relied upon, and were aware that this was a mandatory ground and they therefore required to move out of the Property on this basis.

19. The Tribunal was satisfied that the Respondent did had the intention of moving back into the Property at the point that the Notice to Leave was served. However, it was clear from the Respondent's evidence that this intention changed in or around July 2020, and which was prior to the Applicants moving out of the Property.
20. The Respondent said in her evidence that she considered that when the Respondents advised the letting agent in late July that they would be moving out on 2 September 2020, that this was in fact the Respondents giving her "notice to quit" the Property and that they had therefore chosen to leave the Property. She had never rushed them into moving out. The Tribunal was not satisfied with that submission. It was clear from the timing of the service of the Notice to Leave and the escalation of the Covid pandemic that the Respondents could not move by the deadline set, and that the Respondent had given agreement to them having extra time to source alternative accommodation. The Applicants' confirmation of a final move out date was not them giving her "notice to quit" but simply them giving confirmation of when they could remove from the Property, in response to the demand on them to do so by virtue of the Notice to Leave.
21. The Respondent decided in late July 2020, when she was residing with her partner in Coatbridge, that she would not move back into the Property at that time. She stated in her evidence that she did not consider she had done anything wrong in allowing her partner's daughter to move into the Property following the Applicants' departure, as she needed someone to live in the Property and ensure it was adequately heated through the winter. The Tribunal was again not satisfied with this submission. The Respondent was aware that the Applicants were trying to source alternative accommodation, in the midst of a global pandemic, entirely due to her advising them they she required the Property back to live in. She took no steps in late July 2020 when her circumstances changed and her intentions changed, to advise the Applicants of this and give them the opportunity to continue to reside in the Property if they wished to. She allowed them to continue on the basis that they were being asked to move out so that she could move back in, which was no longer the case.
22. At some point between 2 September 2020 and 12 September 2020, the Respondent re-let the Property to her partner's daughter. Whilst the Respondent stated in her evidence that there was no written lease and that this was in no way a formal leasing arrangement, she confirmed that rent of £450 per month was being paid. Therefore, by default, there does appear to be a leasing arrangement in place between the Respondent and the new occupier.

23. Section 58 of the 2016 Act says:

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.*

24. Section 59 of the 2016 Act says:

Wrongful-termination order

- (1) In this section and in sections 57, 58 and 60, "a wrongful-termination order" means an order requiring the person who was the landlord under the tenancy immediately before it ended to pay the person who made the application for the wrongful-termination order an amount not exceeding six months' rent.*
- (2) Subsection (3) applies where—*
 - (a) the First-tier Tribunal intends to make a wrongful-termination order under section 57 or 58, and*
 - (b) two or more persons jointly were the landlord under the tenancy in question immediately before it was brought to an end.*
- (3) The Tribunal may make a wrongful-termination order—*
 - (a) against all, some, or only one of the former joint landlords,*
 - (b) stating that each person against whom the order is made is liable to pay a specified amount, but the cumulative total of each of the specified amounts must not exceed six months' rent,*
 - (c) stating that each person against whom the order is made is jointly and severally liable for the whole amount to be paid.*

(4) In subsections (1) and (3)(b), “rent” means—

(a) the amount that was payable in rent under the tenancy immediately before it ended, or

(b) in a case where two or more persons jointly were the tenant under the tenancy immediately before it ended, the amount mentioned in paragraph (a) divided by the number of persons who were at that time joint tenants under the tenancy.

25. The Tribunal was satisfied that the Applicants had been misled into ceasing to occupy the Property as a direct result of the Notice to Leave issued by the Respondent, in terms of section 58(3) of the 2016 Act. The Tribunal however, was not satisfied that this was an intentional misleading on the part of the Respondent.
26. The Tribunal was satisfied that it was the Respondent's intention to move into the property at the point when the Notice to Leave was served. However, this intention changed due to a change in her circumstances. In late July 2020 the Respondent no longer intended to move back into the Property and therefore Ground 4 as aforesaid could not be established. The Respondent could have given the Applicants the opportunity of staying thereafter, but failed to do so. The Applicants told her (via the agent) in late July that they had found somewhere to move to and could move out on 2 September. Despite this, the Respondent did not tell them at that stage that she'd already made a decision not to move into the Property and that they could stay. She knew at that point that the ground of eviction could not be established.
27. Whilst it is clear that shortly after the Applicants moved out of the Property, the Respondent re-let it to her partner's daughter, the Tribunal was not satisfied on the basis of the evidence led that this was a situation contrived by the Respondent, but more that the Respondent simply did not know of the legal implications of the situation she had created and her legal obligations towards her existing tenants. The Respondent stated in her evidence that the Property was hers and she did not see why she could not choose who could live there. The Tribunal did not find this statement at all satisfactory, The Respondent was, and still is, a Landlord. This role carries important and significant legal duties and she must ensure that she understands what these are.
28. The Tribunal was satisfied that a Wrongful Termination Order should be issued, but was not satisfied that the financial penalty should be at the upper end of the scale.
29. The maximum penalty which can be imposed is six times the monthly rental. The monthly rental for this property was £650.
30. Whilst the Applicants in their evidence referred to suffering financial loss as a result of having to hire professional removers as opposed to using friends as they would normally do for a house move (as was required due to Covid

restrictions) the Tribunal considered that whilst this was of course unfortunate, this was not something which was the fault of the Respondent. It is an unknown how long these restrictions will be in place, and costs incurred in a move would always have been suffered to some extent, at some point down the line. It should also be noted that no documentary evidence of any such losses having been incurred was lodged for consideration by the Tribunal.


31. The Tribunal was not satisfied that there had been any malice or wilful intent on the part of the Respondent, and therefore considered that a Wrongful Termination Order awarding the sum of £650 to the Applicants, was appropriate.

- Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicants of SIX HUNDRED AND FIFTY POUNDS (£650) within 14 days of service of this Order.

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.


Fiona Watson

Legal Member/Chair

Date: 9 January 2021