



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/21/1866

Re: Property at 23 Broomage Avenue, Larbert, FK5 3LF (“the Property”)

Parties:

Gerhard Opperman and Cindy Opperman, spouses, residing together at 2 The Stables, Kinnaird House, Falkirk, FK2 8QX (“the Applicants”)

Jennifer Davidson formerly residing at 23 Broomage Avenue, Larbert, FK5 3LF (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

Decision

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

Background

1. The respondent was heritable proprietor of the property at 23 Broomage Avenue, Larbert, FK5 3LF (“the property”) until she sold it in or about September 2021. On 1 May 2020 the respondent leased the property to the applicants at a rental of £1400 per month. On 6 April 2021 the respondent served a notice to leave on the applicants. That notice to leave said that the respondent relied on ground 4 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.
2. The applicants served their own notice to terminate the lease when they found alternative accommodation. The lease came to an end on 6 June 2021, when the applicants vacated the property.
3. By 9 June 2021 estate agents were actively marketing the property for sale.

4. On 26 August 2021 the applicants submitted an application for a wrongful-termination order to the Tribunal.

The Hearing

5. A Case Management Discussion took place before the Tribunal by telephone conference at 2.00pm on 1 December 2021. The applicants were present, but unrepresented. The respondent was neither present nor represented. Notice of the time, date, and method of the hearing was served by advertisement on the First-tier Tribunal (HPC) website between 20 October 2021 and 1 December 2021. The hearing was delayed until 2.12pm, but there was no appearance by or on behalf of the respondent.

6. The respondent has not made any written representations. Because the respondent did not appear and was not represented there is no opposition to the application. I found the following facts to be admitted or proved.

Findings in Fact

7. The respondent was heritable proprietor of the property at 23 Broomage Avenue, Larbert, FK5 3LF (“the property”) until she sold it between June and September 2021. On 1 May 2020 the respondent leased the property to the applicants at a rental of £1400 per month. In February 2021 the respondent offered to sell the property to the applicants, but the applicants were unable to accept that offer.

8. On 6 April 2021 the respondent served a notice to leave on the applicants. That notice to leave said that the respondent relied on ground 4 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

9. The applicants served their own notice to terminate the lease when they found alternative accommodation. The lease came to an end on 6 June 2021, when the applicants vacated the property.

10. By 9 June 2021 Homes For You, Estate Agents, were marketing the property for sale. A “For Sale” board was displayed in the property’s front garden inviting offers. By 22 June 2021 the property was advertised for Sale at offers over £450,000.00 on the website maintained by Home For You, Estate Agents.

11. On 21 June 2021 the property was advertised for sale on the Rightmove and Zoopla websites. By 3 September 2021 the property had sold for £462,000.00.

12. 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.

13. The applicants were happy with the tenancy of the property and would have remained in the property if they had not received the notice to leave from the respondent. They reacted with surprise to the notice to leave, but, when their emotions settled, they immediately looked for alternative accommodation. The applicants served their own notice of termination of tenancy because they quickly found alternative accommodation - which they continue to live in today.

14. The applicants rented their new home at a rental £300 higher than the rent agreed for the property which is the subject of this application. At the date the notice to leave was served, the second applicant was 5 months pregnant.

15. Between 6 April 2021 and 6 June 2021 the respondent maintained that she intended to live in the property as her own home. 3 days after the applicants vacated the property, estate agents, acting on the respondent's instructions, were marketing the property for sale.

Reasons for Decision

16. On the facts as I find them to be, the respondent served a notice to leave on the basis that she intended to live in the property. Three days after the applicants vacated the property, the property was marketed for sale.

17. The applicants' position is that if they had not received the notice to leave dated 6 April 2021, they would still be living in the property. They say that they only sought alternative accommodation because the notice to leave gave them until 9 July 2021 to vacate the property.

18. The respondent has not made any representations. This application goes without challenge.

19. What I am left with is an unexplained change in the respondent's position. The respondent sought to terminate the tenancy agreement on the basis that she intended to live in the property. If the applicants had done nothing in response to the notice to leave, the respondent could have raised an application for repossession with this chamber of the First-tier Tribunal for Scotland. In any such application, the tribunal would look for evidence that the respondent intends to live in the property for at least three months.

20. The evidence I have is that the applicant was marketing the property for sale three days after the lease came to an end. After considering each strand of evidence, I still do not have a reliable explanation for the respondent's decision that she no longer wanted to live in the property.

21. On the facts as I find them to be, the applicants only brought the tenancy of the property to an end because they received the notice to leave stating that the respondent wants to recover possession of the property so that she can use it as her own home.

22. The only realistic conclusion that I can reach is that the respondent misled the applicants, and, as a result of her misrepresentation, the applicants surrendered occupation of the property. The benefit to the respondent in making such a misrepresentation is that the period of notice required under Ground 4 of schedule 3 to the 2016 Act is only three months. If the respondent had been truthful, a 6 month notice period would be necessary.

23. Because I find that the respondent misrepresented her position to bring the tenancy to a premature end, I make a wrongful-termination order.

24. Section 58(3) of the Private Housing (Tenancies) (Scotland) Act says

(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.

25. Section 59(1) of the Private Housing (Tenancies) (Scotland) Act says

(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.

26. The maximum penalty which can be imposed is six times the monthly rental. The monthly rental for this property was £1400. In assessing the quantum of the wrongful termination order I take account of the impact of the respondent's actions; I take account of the duration of the dishonesty; I take account of the adverse financial effect the respondent's misrepresentation has had on the applicants.

27. The respondent's position remains unexplained. No mitigating factors are put before me.

28. An order for three times the monthly rental reflects the gravity of the respondent's actions.

29. The appropriate level of wrongful termination order is £4,200.00

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicants of Four Thousand Two Hundred pounds (£4,200.00) 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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

P. D

Date: 1 December 2021

Legal Member: Paul Doyle