



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/21/2109

Re: Property at 81 Victoria Park Drive North, Glasgow, G14 9PJ (“the Property”)

Parties:

Mrs Isma Akhtar, 14 Jordanhill Drive, Jordanhill, Glasgow, G13 1SA (“the Applicant”)

Virginia Calder, 9 Streamline Mews, London, SE22 8SL (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £1300.00.

Background

1. By application dated 30 August 2021 the Applicant applied to the Tribunal for an order for payment on the grounds that her tenancy of the property had been wrongfully terminated under Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) The Applicant submitted a copy of a Notice to Leave, evidence of someone living in the property, the Registered title, copy text message and the tenancy agreement.
2. By Notice of Acceptance dated 10 November 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned to take place on 21 December 2021.
3. At the request of the Respondent the CMD was postponed and a further CMD assigned.

4. By email dated 8 February 2022 the Respondent submitted written representations to the Tribunal.
5. By email dated 14 February the Applicant submitted further written representations in response to the Respondents submissions of 8 February.

The Case Management Discussion

6. A CMD was held by teleconference on 15 February 2022. Both parties attended in person.
7. The Applicant advised the Tribunal that Cairns Letting had erected a For Sale sign at the property on 14 May 2021 but had then removed it a few days later. The Respondent confirmed that this was indeed the case as a friend of the family had noticed the sign and had contacted the Respondent's sister who had been furious as at that point no agreement had been reached with Cairn Letting that they would be marketing the property and they had "jumped the gun" and had been told to remove the sign.
8. The Respondent went on to say that it had taken a while to decide who to appoint as Estate Agents and they then had to get them out to look at the property. She went on to say that on the advice of the agents they had decided not to do much internally but that the back garden needed a lot of work. The Respondent said that at that time around the middle to the end of June it was impossible to find a gardener to do the work. The Respondent said there had also been other problems that had led to a delay such as the surveyor failing to issue his invoice for the Home Report but not being willing to issue the report until it was paid. Nevertheless, the Respondent accepted that the property had not been marketed for sale within a period of three months from the tenancy coming to an end as would have been required in terms of Ground 1 of Schedule 3 of the 2016 Act. It was a month late in being marketed.
9. The Respondent denied that during the period after the Applicant had left the property had been tenanted. She explained that a friend of her sister had returned from Milan and had needed somewhere to stay for a month until he could return to his own home. She said the property had been barely furnished. The Respondent was adamant that she had not charged any rent and offered to provide copies of her bank statement to prove this was the case. She said she had been happy for the property to be occupied at that time in order that the garden and other works could be supervised.
10. The Applicant explained that she had been unhappy after being told that the property was being sold to discover within a month of her leaving that someone was living in it. She said that she had called in to collect mail and that it had looked quite homely. The Applicant went on to say that moving had been very stressful particularly at a time when she had been trying to home school and following on from experiencing the deaths of two family members. She said it had not been easy for her to find another property in the area. Nevertheless,

she had moved out of the property a few days ahead of the date in the Notice to Leave as she had wanted to assist both the letting agents and the landlord. She had known that she could have stayed on in the property but had not wanted there to be any ill feeling.

11. The Applicant said that she had kept the garden tidy during the tenancy. She explained the back garden was north facing and did not get much sunlight and had a lot of shrubs and trees. She said there was very little grass. She said it had been in reasonably good condition when she left.
12. The Respondent said that following the Applicant's departure from the property Cairn Lettings had sent check-out photos of the garden and she had been horrified at its condition. She explained the Applicant had installed a trampoline in the back garden and a metal shed and the grass had been laid bare. The Respondent went on to say that the garden work had been done in July 2021.
13. The Respondent said that the other repairs had consisted of repairing a cracked drainpipe and dealing with a damp wall affected by it and replacing a cracked sink.
14. The Respondent spoke of having issues with Cairn Letting and their management of the property and this had led to the decision not to instruct them in the sale of the property.
15. Both parties were in agreement that they thought the Tribunal had sufficient information before it to make a decision without the need for a further hearing.

Findings in fact

16. The parties entered into a Private Residential Tenancy agreement that commenced on 9 December 2019 at a rent of £1300.00 per calendar month.
17. The Respondent served a Notice to Leave on the Applicant dated 27 November 2020 citing Ground 1 of Schedule 3 of the 2016 Act and advising that it was the Landlord's intention to sell the property within 3 months of the tenant vacating.
18. The Applicant vacated the property on or about 25 May 2021.
19. The Respondent did not commence marketing the property until the end of September 2021.
20. A friend of the Respondent's sister lived in the property for about a month in July 2021.
21. The Respondent arranged for some garden works to be carried out in July 2021.
22. Some other minor repairs were carried out prior to the property being marketed.

23. The Respondent did not instruct an Estate Agent to market the property until some time after the Applicant had vacated the property.
24. The Applicant found the move and the purchase of a new property stressful.

Reasons for Decision

25. It was accepted by the Respondent that there had been a delay in marketing the property beyond the three-month period provided in terms of Ground 1 of Schedule 3 of the 2016 Act. That in the Tribunal's view should not automatically mean that a tenancy has been wrongfully terminated as there may on occasions be reasons outwith an owners control that prevent a property being marketed despite their best intentions. Each case will depend on its particular facts and circumstances. However, in this instance it appeared to the Tribunal that much more could have been done in advance of the Applicant leaving the property to try to ensure that the property was placed on the market within the three-month period. The Tribunal could see no reason why an Estate Agent was not identified and instructed long before the property was vacant. Furthermore, steps ought to have been taken in advance to ascertain what if any repairs were going to be required and tradesmen either instructed to carry out the works while the Applicant was still there or to undertake the work shortly after she had left.
26. The Tribunal noted that the Respondent had experienced some issues with her letting agents but that does not excuse the considerable delay in choosing a suitable Estate Agent to market the property.
27. The Tribunal accepted that the Respondent did not rent out the property and that she had simply allowed a friend to live in it for about a month. However, the Tribunal could understand how such an act might appear to the Applicant who would of course be unaware of the arrangement.
28. The Tribunal was also satisfied that moving out of the property would have been a stressful time for the Applicant but that could be said of any move she might have had to have made whether in May 2021 or at some later date.
29. Nevertheless, on balance the Tribunal was satisfied that the Respondent could have done more to ensure that the property was marketed for sale within the statutory three-month period. She did not give this the priority it deserved and therefore the Tribunal finds that the Applicant was misled into ceasing to occupy the let property when she did. However, it cannot be said that this was a deliberate act on the part of the Respondent but rather she did not give the matter the attention it deserved. Therefore, the Tribunal considers that any sanction that should be imposed should be at the lower end of the scale. An award of the equivalent of one month's rent namely £1300.00 is in the Tribunal's view an appropriate amount in all the circumstances.

Decision

30. Having carefully considered the parties written and oral submissions finds the Applicant entitled to a wrongful termination order and orders the Respondent to pay the Applicant the sum of £1300.00.

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.

G Harding

**Graham Harding
Legal Member/Chair**

**15 February 2022
Date**