



**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/21/2324**

Re: Property at 7 Dunsdalehaugh Square, Selkirk, TD7 5EE (“the Property”)

Parties:

Miss Kerry McKenzie, Scott McCunnie, 36 Murray Place, Selkirk, TD7 5BN (“the Applicant”)

Mr James Lenaghan, Struan, Lindean, Selkirk, TD7 5QW (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Frances Wood (Ordinary Member)

Decision

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

Background

1. An application was received by the Housing and Property Chamber dated 23rd September 2021. The application was submitted under Rule 110 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Applicants being wrongfully evicted from the Property by the Respondent.
2. A Case Management Discussion (“CMD”) was held on 11th January 2022 at 2pm by teleconferencing. The Second Named Applicant, Mr Scott McCunnie, was present and represented the Applicants. The Respondent was present and represented himself. The Applicant still maintains that he was unlawfully evicted. Mr McCunnie noted that the first rent increase since moving into the tenancy was notified two weeks before the Notice to Quit was served which stated that the Respondent was to have a family member move into the Property. Since then there has not been a member of the Respondent’s family move in. Mr McCunnie stated that the Property was listed for sale. Mr McCunnie

considered that he and his family had been unlawfully evicted as no one had moved into the Property after they had been evicted. The eviction has had an effect on the mental health of the whole family. Mr McCunnie raised concerns that the Respondent is not a registered landlord as he could not find him on the register. Mr McCunnie noted that the move had monetary costs for removing and rehoming but also emotional costs. Substantial decoration was required for the new property. Heavy smokers had been in the property prior and all rooms needed cleaning and decorating. A fence needed to be put up to keep his children safe. The garden also needed to be resurfaced. SBHA, his new landlord, were not able to undertake any of the work as only essential work was being done due to Covid restrictions. A nominal payment of £60 was received by the Applicants from SBHA for decoration costs, however, the costs went far beyond that. Mr McCunnie lives with his partner and children. He has three children living with him who are aged 2, 5 and 6 with his son from a previous relationship, who is 8, who is with him at the weekends. His 6 year old child is being assessed by CAMHS for Autism and is being supported by a psychologist. The move has been particularly significant upon his 6 year old child. Mr Lenaghan confirmed that his position remained that he did not undertake an unlawful eviction. He had intended for his son to return to the Property and live in it. His son had previously lived in the Property. His son has severe Autism and had been placed in a care home in Perthshire under the Mental Health (Scotland) Act 2003. Mr Lenaghan had been in the process of moving his son into the Property. This was done with the support of the care manager of the care home. However, after an incident with a neighbour in August 2021 at the Property, which his son had witnessed, it became evident that his son would not be able to live in the Property. His son had become very anxious when in the Property due to the incident with the neighbour. The same month his son had run away due to this anxiety and police were involved as he is considered a vulnerable adult. Mr Lenaghan's son is now residing with him awaiting a supported accommodation placement. Mr Lenaghan wished to sell the Property due to issues that had occurred in August and that the Property is no longer suitable for his son. He noted that the eviction was not a reflection of the Applicants but simply that he had to put his son's needs as a priority. As there was no agreement the Tribunal set a full hearing to allow evidence from both parties including witnesses and any other evidence that was considered relevant. The Tribunal issued a direction for further information from both parties.

3. Both parties lodged further submissions prior to the hearing.

The Hearing

4. A Case Management Discussion ("CMD") was held on 30th March 2022 at 10am by teleconferencing. The Applicants were present and represented themselves. The Respondent was present and represented himself.
5. Ms McKenzie told the Tribunal that she considers that she had been misled to leaving the Property. She said that her landlord had issued a Notice to Leave to allow his son to move into the Property but his son failed to move in and eight

months after she and her family vacated the property, it was still vacant. The Property was then marketed for sale. She considered that the landlord should have had a concrete plan in place for his son to move in. It had been considerable interruption to the family to move at that point. Mr McCunnie had been made redundant prior to the eviction. It was not a good time for them to move and they would have preferred to move on at a time when they were financially stable. They moved on 27th March 2021 which was before the notice period ended on 31st March 2021. They had been allocated a property through SBHA. It is a three bedroom house with a front and back garden. The rent is less than the previous tenancy. They did require to undertake a lot of decorative work to bring the property up to their standard. Ms McKenzie also noted that a rent increase was applied two weeks before the Notice to Leave was served upon them. She considered this to be encouragement for her to leave. She also noted that damp and mould was not addressed for some time after it was reported and that work only commenced a few days before they were due to leave. Finally, she has raised issues with her local authority's private rented sector department regarding Mr Lenganhan not being a registered landlord but the registration being in his wife's name and also around 'unannounced visits' by her landlord.

6. Mr Lenganhan told the Tribunal that he had been in discussion with his son's care home in Perthshire from August/September 2020 about finding a place for him closer to home. The Property had been identified as his son had lived in it before, it was close to Mr Lenganhan's house and his workplace. In addition, it had an extra room which meant it could be shared with another suitable person to share the costs of the care. The third bedroom could be used as quiet room. Mr Lenganhan issued the Notice to Leave in December which required the Applicants to leave the Property on or by 31st March 2021. He estimated this would allow three months to undertake repairs and any adaptations then have his son move in in June or July 2021. Mr Lenganhan was unclear about when the application for funding was able to be presented to the funding board but believes he was notified in August or September 2021. On 6th August 2021 Mr Lenganhan had a disagreement with the downstairs neighbour in respect of previous water ingress from the property to the neighbour's property. The police were involved but concluded it was a misunderstanding. Mr Lenganhan's son heard this discussion and has been anxious regarding being in the Property as a result of hearing the discussion. He was unwilling to return to the flat. The funding application was later refused in the autumn of 2021. His son has been trying to be placed in suitable accommodation for four years as he needs 24 hour care and support. Mr Lenganhan was hopeful that this property would be the solution and explained to the Tribunal that it was necessary to get everything required in place before getting funding. The property was central to this. Both Mr and Mrs Lenganhan were frustrated by the unsuccessful ending to the process so decided in the autumn of 2021 to sell the Property. They listed it in November 2021 and it was sold in January 2022. Mr Lenganhan previously had four rental properties. He has now sold two. He tried to get workmen out to attend the Property regarding the damp and mould and had commissioned a specialist survey but due to the impact of Covid the work was greatly delayed. Mr Lenganhan explained that his not being on the landlord register was 'an

oversight' and confirmed to the Tribunal that his landlord registration was now with his local council to be processed. He told the Tribunal that the rent increase was a standard one from £495 per month to £525 per month. He reviews his properties rents yearly and saw no reason not to impose a rent increase in respect of the property even though he knew the tenants would likely be vacating it soon.

7. After hearing the evidence of Mr Lenganhan, Ms McKenzie still considered that she had been misled into leaving the Property. He did not have a clear plan as to when his son was to move into the Property and funding had not been in place at any point in the process. They had been asked to leave a property which subsequently lay vacant for the entire period until it was sold.
8. The Tribunal has to consider if the test in section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 has been met. Section 58(3) states "*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 as the landlord under the tenancy immediately before it was brought to an end.*" The test is if the former tenant was misled into leaving the Property. The Tribunal noted that the Applicants had their life greatly disturbed by having to move when they did. They had submitted medical evidence to support the impact on their health conditions. The Tribunal appreciates their frustrations given that the Property was not occupied by Mr Lenganhan's son and remained empty until it was sold. However, the Tribunal considered, on balance, that Mr Lenganhan did intend his son to occupy the Property and was not intent on selling the Property at that time. The Tribunal noted that it is a long and complex process to gain the appropriate funding for a care and support package for a vulnerable adult and that Mr Lenganhan may have issued the Notice to Leave at an early point in the process but that he had done so with the hope that his son would return home in a reasonable time after that. It may be that Mr Lenganhan did act earlier than was needed in terms of the funding application but he was trying to get the Property ready with a belief that his son would be in it in June or July 2021. The Tribunal did not find that he misled the Applicants in the reason that he issued the Notice to Leave. He did not look to sell the Property until sometime after his son had been refused funding to live there. There was evidence submitted from the care home that arrangements had been made to visit the Property to settle his son in prior to him moving there. While we found Mr Lenganhan to be quite vague with his dates, we understood that this was a continuing process and he and Mrs Lenganhan were regularly meeting with the social work department and had also made representation to their Member of Parliament.

Findings and reason for decision

9. A Private Rented Tenancy Agreement commenced on 30th April 2019.
10. The Respondent served a Notice to Leave upon the Applicant on 14th December 2020. This Notice to leave was on ground 5 namely that a member of the Respondent's family intended to live in the Property.

11. The Applicants left the Property on 27th March 2021 which was before the expiry of the notice on 31st March 2021. The Applicants have since moved into a SBHA house.
12. The Respondent's son has significant autism which means that he needs 24-hour care. He had been in a residential care home placement in Perthshire. This was very far from his family. His family worked with the social work department to have him relocated to the Borders.
13. As part of the relocation process the Respondent served the Notice to Leave upon the Applicants. He had discussed this with the social work department. He had anticipated his son living in the Property from around June or July 2021. After the Applicants had left the Respondent intended to undertake any repairs needed, to carry out any adaptations and to decorate the Property.
14. An incident occurred on 6th August 2021 between the Respondent and the downstairs neighbour. The Police were called. The Police deemed this to be a misunderstanding. However, the Respondent's son was present and heard the discussion. It left him anxious to be in the Property. The funding for the care package for the Respondent's son to live in the Property was refused. These events meant that the Respondent's son could not live in the Property and the Respondent subsequently went on to sell it.
15. In November 2021 the Respondent listed the Property for sale. It was sold in January 2022.
16. The Respondent had intended for his son to live in the Property if the required funding package could be put in place but this was not able to occur and this is not something which could have been reasonably foreseen at the point of issuing the Notice to Leave. The Respondent did not mislead the Applicants.

Decision

17. The application is refused. The Applicants were not misled. As such section 58 of the 2016 Act does not apply in this case and thus the application is 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.

G. Miller

30th March 2022

Legal Member/Chair

Date