

Housing and Property Chamber
First-tier Tribunal for Scotland



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/22/0711

Re: Property at The Fielding, Oyne, AB526RR (“the Property”)

Parties:

Mr Grant Blackaby, 01 Mosside Croft, Culsalmond, Inch, AB526TU (“the Applicant”)

Mrs Gail Bisset, Mr Mike Bisset, both residing at Petmathen Lodge, Mains of Petmathen, Oyne, AB526RR (“the Respondents”)

Tribunal Members:

Susan Christie (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a wrongful termination order be granted against the Respondents in terms of Section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016 and makes an order requiring the Respondents, jointly and severally, to pay the Applicant the sum of of Four Thousand Five Hundred Pounds (£4,500) Sterling.

Background

1. The application is made under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 and relates to Section 58 of the Private Housing (Tenancies) (Scotland Act 2016. It was made on 10 March 2022, accepted by the tribunal on 29 April 2022.
2. Written representations were submitted by the Respondent Gail Bisset on 2 June 2022.

The Case Management Discussion

3. The case called on 13 July 2022 by way of a Case Management Discussion (CMD). The Applicant participated along with the Respondents.
4. The application was amended to include the name of Mr Michael Bisset (MB) as second landlord and the spelling of Gail was corrected. Both reside at the

address detailed above which is their principal home. The procedural matters arising from that were discussed and agreed.

5. The main issue which required a Hearing is whether the former tenant, the Applicant, was misled into ceasing to occupy the property by the landlords, the Respondents?
6. The facts are in dispute around the main issue.
7. A decision could not be made at the CMD.A Hearing was assigned for 5 October 2022 and a Direction was issued to the Parties.

The Hearing

8. The case called on 5 October 2022 by way of a Hearing. The Applicant participated along with the Respondents.

Preliminary matters

9. Both Parties had assisted the tribunal by providing a bundle of documents they relied on for the Hearing in an organised fashion. The Applicant's documents were late but accepted by the tribunal as an explanation was given about the e mail intimation of the Direction from the tribunal coming to their attention after the due date due to a mix up, which then prompted a response. This did not cause the Respondents a particular difficulty and they had been given a copy to consider. The Parties were told that they could ask such questions around any new information during the Hearing.
10. The tribunal identified a list of undisputed facts:
 - 1) The Applicant had entered into a Private Residential tenancy with the former landlord in June 2019 over the Property at a rent of £1300 per calendar month payable in advance and with a start date of 14 June 2019.
 - 2) The Property let extended to the dwellinghouse itself along with a wraparound garden, a gravel driveway that was accessed from a shared private track, and a garden shed.
 - 3) A check in Property Report is dated 13 June 2019.
 - 4) The letting agent had advised the Applicant on 12 February 2021 that the Respondents were officially the landlords of the Applicant. The terms of the lease were to remain unchanged.
 - 5) A Notice to Leave was issued to the Applicant dated 15 February 2021 relying on the Ground 4 of Schedule 3 to the Act which is that the landlord intends to live in the let property. It states at Part 4 that an application would not be submitted to the tribunal for an eviction order before 18 May 2021. It contains an explanation at Part 3 that " *we have been notified by the landlord that they wish to live in the let property and their principle home*" and was accompanied by an e mail.
 - 6) The e mail is dated 10 February 2021 and is from Mrs Bisset to the letting agent stating "*just a wee message to inform you that we have now completed the purchase of the Fielding. We would be most grateful if you could serve the existing tenants their notice to terminate with a view to us moving into the property. It would be hugely appreciated if you could give us any indication of when the existing*

tenants plan to move out. Just for your information we will be starting work on the hill with a plan to clear a site for a shed."

- 7) The Applicant had received a detailed letter from the letting agent dated 15 February 2021 with the arrangements around vacating the Property. This covered such things as the Standing order, Post/Deliveries, Utility bills, Council Tax, Inventory, Appliances & Central Heating system, re-marketing (should the landlord wish to remarket the Property for lease) and return of keys. It starts with the words, "*We acknowledge that your tenancy is due to come to an end on 17 May 2020*" (should be 2021).
- 8) The Applicant and his family left the Property on 19 June 2021.
- 9) An extension of one month was requested by the Applicant and accepted by the Respondent to 25 June 2021.
- 10) The Respondents reside at Petmathen Lodge.
- 11) A positive rent reference had been given to the Applicant from the letting agent dated 26 May 2021.

The evidence.

Further undisputed facts

11. The Respondents had received an offer for their home, 'The Steading' around 10 November 2020. They had it on the market for a while and had to accept the offer with an early date of entry to keep the sale.
12. On or around 27 December 2020 the Applicant received a text from the Respondent (MB) which stated "*...We are at the point of now purchasing the fielding along with a lot of the land. It was always our intention of keeping you on as tenants in the Fielding for as long as you wanted but unfortunately, we are no longer in a position to be able to do this. We have been trying to find ways of keeping the Fielding as a rental property but due to this covid situation and business issues this is no longer an option. We will need to come up with a mutually acceptable end of lease. If you can let me have your thoughts on this please.*"
13. The Respondents moved out of their home on 27 February 2021 and stayed in holiday lets with their family.
14. The Respondents were told by their tenants at Petmethan Lodge that they were leaving earlier than had been anticipated. They had expected them to live there for a few years or so. Due to covid related financial matters they had asked to move out on 8 May 2021. That was agreed.
15. On 14 May 2021 the Respondents also received confirmation through the letting agent that the Applicant would not be staying at the Property past 19 June 2021 and the final rent was re-calculated.
16. The Respondents moved into Petmethan Lodge sometime after 8 May 2021 and before 19 June 2021. They have continued to stay there since, as their only or principal home.
17. The Respondents noted that they had been observed by the Applicant as living at Petmethan Lodge prior to the Applicant moving out of the Property.

The Applicant

18. The Applicant summarised his position as follows:
19. He entered the let with the former landlords over the dwelling house and garden ground. The extensive land around the property was highlighted to him as a selling point. The boundaries of the let were not set out with physical boundaries. He had access to the larger area of land around the Property and did some upkeep work to it such as removing fallen trees during lockdown to keep accesses clear. It was a remote property and there was little movement in the early stages until it was purchased by the Respondents. After that activity had increased and works were being carried out that caused diggers and other HGVs to come nearer to the Property and sometimes into the driveway and this had caused consternation. He considered there were safety issues for his family and dogs.
20. He did not wish contact directly with the Respondents over these issues and contacted the letting agent instead about his grievances. He felt that the Respondents works were getting ever closer and from his perspective he was unhappy with certain things. He cited examples of events he had raised as concerns.
21. When the Parties had spoken around September 2020 this was the first time he heard that the Respondents were going to purchase the land. He had been told by them that they had no intention to live in the Property and from their past experience with it they didn't like it. He was told he should have no worries and that he would get to stay in it. At that same meeting they had spoken about other things such as the siting of beehives on the land by the Respondents and about the use of a digger. Subsequently the Respondents had walked around the Property with an architect. He was aware that they had a plan for a new property to be built at the barn which was adjacent to the boundary of the Fielding.
22. He had looked for other lets for himself and his family and could not find any residential lets in the area. They wanted to remain in the area for schools. His family were also tackling health issues raised by covid. He asked for an extension of time to leave of one month and this was agreed, but there were conditions attached by the letting agent such as the rent being paid up front and a definite date of their leaving being set. He did not ask for a second extension due to the conditions attached because he couldn't afford to pay the upfront costs at such short notice as they were looking to buy and take on a mortgage. He also felt that the extension had been granted with reluctance, but that was only his impression. By then he had the feeling the area was less safe for his children and animals due to works being undertaken nearby. That being said, he did accept that the Respondents were moving on with their plans. He was using the same agent for a mortgage (the letting agent) and it had been implied that he risked his chances of a mortgage being limited if an eviction was sought. It was a time of worry as they were struggling to find a longer term property, and he could not give the letting agent a forwarding address as they did not have one. It was having an adverse effect on his family's mental health. They moved by necessity into a relative's house and three months later purchased the property they now live in. It is much smaller and less suited to their accommodation needs.

23. The Property has since been demolished and the Respondents never moved into it. They had ticked the box in the Notice to Leave saying they were going to move into it and gave 3 months' notice when it could have been six months' notice and that would have in his opinion given him more time to secure alternative accommodation. The six months he spoke of co-incidentally tied in with when they got their house which they had bought. They were without a home of their own for 3 months and the associated costs incurred were £600 for storage of his goods. They had bought a much smaller house by necessity to remain in the area for schooling.

The Respondents

24. The Respondents gave joint evidence with Mrs Bisset taking the lead. They always as a family sought to do the right thing. They spoke of the grievances that the Applicant had regarding activity on the land in the lead up to them purchasing the Property and thereafter. They spoke of their building work; installation of cabins and materials being dropped off at the site near to the Property. They did not consider that they had done anything wrong. The letting agent got to the stage that they were only prepared to deal with the Applicant in writing. They were told to relay any matters through the letting agent. They had told workers to tell the letting agent what was being done workwise so that the message was passed to the Applicant. Sometimes this could have resulted in delays in it being passed on. They did not think the issues that the Applicant had with activity around the Property were perhaps as bad as he made out. The Property was in a farming community and there could be activity. In addition, the Applicant's partner was working as a florist from home. They too gave examples in response about matters that had caused grievances to arise. They considered that they were good landlords, gave examples, and spoke of testimonials produced.
25. They had a change of plans and had decided not to build a new property near to the barn to live in. They decided not to spend money on the project when they had a neighbour on their shoulder.
26. They had sold their home, served the Notice to Leave and had planned to move into the Property. They became homeless themselves with their family and that meant they used temporary lets.
27. When the Lodge became unexpectedly available, they moved into that. They had noticed that the Applicant drove past, stopped, and slowed down and they were not happy about that.
28. They had kept their letting agent, who was also their solicitor, fully informed. When asked when they knew that they would not move into the Property they couldn't recall the exact date but thought in April 2022. Mrs Bisset stated that, being honest they did not want to be neighbours with the Applicant and that was part of the reason for not progressing with the new build at the barn.
29. They accepted that at no time did they move out of the Lodge to move into the Property. Whilst the plan was to move into the Property, things changed.
30. They had several surveys done on the Property over a period. They knew it was not in very good condition and that it had rotten windows for example. Their architect told them that contemplated extensions were not worth pursuing. Much later they decided to demolish it, obtained a demolition order

in 2022, and it was demolished recently. Between the Applicant moving out and the demolition it lay empty.

31. They did not know that the Applicant had no forwarding address and would have likely granted another extension to the Notice to Leave period if he had asked. They left the details of the conditions of any extension to their solicitors.
32. In so far as to their change of plans not to move into the Property, they kept their solicitors fully informed and left the lawyer to take it from there. They did not offer to extend the period of notice to six months nor tell the Applicant of their change of plans.
33. The Applicant had left the Property earlier than the end of the extension period.

Findings in Fact and law

- I. The Applicant entered into a Private Residential tenancy over the Property with the former landlord in June 2019 at a rent of £1300 per calendar month payable in advance and with a start date of 14 June 2019.
- II. The Property let extended to the dwellinghouse itself along with a wraparound garden, a gravel driveway that was accessed from a shared private track, and a garden shed.
- III. A check in Property Report is dated 13 June 2019.
- IV. The Respondents had received an offer for their home, 'The Steading' around 10 November 2020.
- V. On or around 27 December 2020 the Applicant received a text from the Respondent (MB) which stated *"...We are at the point of now purchasing the fielding along with a lot of the land. It was always our intention of keeping you on as tenants in the Fielding for as long as you wanted but unfortunately, we are no longer in a position to be able to do this. We have been trying to find ways of keeping the Fielding as a rental property but due to this covid situation and business issues this is no longer an option. We will need to come up with a mutually acceptable end of lease. If you can let me have your thoughts on this please."*
- VI. The letting agent advised the Applicant on 12 February 2021 that the Respondents were officially the landlords of the Applicant. The terms of the lease were to remain unchanged.
- VII. A Notice to Leave was issued to the Applicant dated 15 February 2021 relying on the Ground 4 of Schedule 3 to the Act which is that the landlord intends to live in the let property. It states at Part 4 that an application would not be submitted to the tribunal for an eviction order before 18 May 2021. It contains an explanation at Part 3 that, *"we have been notified by the landlord that they wish to live in the let property and their principle home"* and was accompanied by an e mail.
- VIII. The e mail attached to the Notice to Leave is dated 10 February 2021 and is from Mrs Bisset to the letting agent stating *"just a wee message to inform you that we have now completed the purchase of the Fielding. We would be most grateful if you could serve the existing tenants their notice to terminate with a view to us moving into the property. It would be hugely appreciated if you could give us any indication of when the existing tenants plan to move out."*

Just for your information we will be starting work on the hill with a plan to clear a site for a shed.”

- IX. The Applicant had received a detailed letter from the letting agent dated 15 February 2021 with the arrangements around vacating the Property. This covered such things as the Standing order, Post/Deliveries, Utility bills, Council Tax, Inventory, Appliances & Central Heating system, re-marketing (should the landlord wish to remarket the Property for lease) and return of keys. It starts with the words, “*We acknowledge that your tenancy is due to come to an end on 17 May 2020*” (should be 2021).
- X. The Respondents along with their family moved out of their home on 27 February 2021 and stayed in holiday lets.
- XI. An extension to the Notice to Leave of one month was requested by the Applicant and accepted by the Respondent to 25 June 2021.
- XII. The Respondents were told by their tenants at Petmethan Lodge around 10 April 2021 that they were leaving and had asked to move out on 8 May 2021. That was agreed.
- XIII. On 14 May 2021 the Respondents received confirmation through the letting agent that the Applicant would not be staying at the Property past 19 June 2021 and the final rent was re-calculated.
- XIV. The Respondents decided in April 2021 that they did not intend to move into the Property as their only or principal home.
- XV. The Respondents having decided not to move into the Property as their only or principal home, did not withdraw the Notice to Leave that had been served on the Applicant.
- XVI. The Respondents moved into Petmethan Lodge sometime after 8 May 2021 and before 19 June 2021. They have continued to stay there since, as their only or principal home.
- XVII. The Respondents had been observed by the Applicant as living at Petmethan Lodge prior to the Applicant moving out of the Property.
- XVIII. The Applicant and his family left the Property on 19 June 2021.
- XIX. The Property remained empty and unoccupied after the Applicant and his family left until 2022, when it was demolished.
- XX. The Applicant was misled into ceasing to occupy the Property by the Respondents and the tribunal therefore makes a wrongful termination order in terms of Section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016.
- XXI. The Applicants are entitled to a payment from the Respondents in terms of Section 59(1) of the Private Housing (Tenancies)(Scotland) Act 2016.
- XXII. The tribunal makes a wrongful termination order requiring the Respondents, jointly and severally, to pay the Applicant the sum of Four Thousand Five Hundred Pounds (£4,500) Sterling

The Legislation

34. Private Housing (Tenancies)(Scotland) Act 2016 (“the Act”).

S.50 Termination by notice to leave and tenant leaving

(1) A tenancy which is a private residential tenancy comes to an end if— (a) the tenant has received a notice to leave from the landlord, and (b) the tenant has ceased to occupy the let property.

(2) A tenancy comes to an end under subsection (1) on the later of— (a) the day specified in the notice to leave in accordance with section 62(1)(b), or (b) the day on which the tenant ceases to occupy the let property.

(3) For the avoidance of doubt, a tenancy which is to come to an end under subsection (1) may be brought to an end earlier in accordance with section 48.

S.58 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.

S.59 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.

[Note: the terms of the legislation may soon be subject to changes by virtue of the Cost of Living (Tenant Protection)(Scotland) Bill 2022.]

Reasons for the decision

35. The tribunal considered the legislation when considering the evidence, oral and written.
36. The undisputed facts informed the tribunal and are detailed in this decision.
37. The private residential tenancy between the Parties ended on 19 June 2021.
38. The issue for the tribunal was whether 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.
39. The former tenant being the Applicant and the landlord being the Respondents.
40. The timeline shows that the Respondents served a Notice to Leave that relied on Ground 4 to Part 1 of Schedule 3 of the Act, which is that the landlord intends to live in the let property. Whilst that might have been their intention then, their intention changed when Petmethan Lodge became available. They decided to live there. This was before the end of the Applicant's tenancy over the Property. They moved into Petmethan Lodge sometime after 8 May 2021 and before 19 June 2021. They have continued to stay there since, as their only or principal home. They did not move into the Property nor was it their intention prior to the 19 June 2021 to do so.
41. The Respondents did not seem to the tribunal to have been generally that keen on the Property itself and it was in poor condition. The evidence of the Applicant was that he had been told by them in September 2021 that they had no intention to live in the Property and from their experience with it they didn't like it. This evidence was not challenged or disputed by the Respondents. The tribunal accepted however that their view might have changed after they sold their own home and as they needed somewhere to live. They had looked to possibly extend the property at some point, but it did not seem worthwhile. This was an option they explored as well as a new build at the barn. They did not progress with the new build, and they did not wish to be a neighbour in proximity of the Applicant. They left it empty and unoccupied then demolished it this year.
42. The Respondents determined that they were not going to move into the Property immediately before the tenancy came to an end. They were no longer relying on Ground 4 of Part 1 of Schedule 3 of the Act. Whilst they gave evidence that they kept their solicitors as letting agents fully informed of their change in plans, it was never communicated to the Applicant. The agreed route of communication between the Parties was through the letting agent in writing. The Notice to Leave was not withdrawn. Therefore, the Applicant was misled into ceasing to occupy the let property by the Respondents or their agents who allowed him to continue to think they needed it to live in as their only or principal home for at least 3 months, and that they would be moving into it when he was gone, when in fact that was not their intention.
43. The Applicant had suggested that he should have been given 6 months' notice if their plans had changed and the tribunal took this to mean that the Applicant believed that Respondents could have considered alternative grounds for recovery had their plans changed. The fact of the matter is that

the Respondents did nothing to dissuade the Applicant from his erroneous belief that they intended to live in the Property once he left it.

44. The tribunal did not form any conclusion or attribute blame to either Party for the various grievances that had arisen around the works to the land surrounding the Property, the dogs roaming on the land, the vehicles taking access, the taking of photos and carrying out surveys and such like. Each Party had their own views on that.
45. The tribunal noted with regret that the letting agent had not taken steps to update the Applicant when they were advised of the Respondents change of home plans, but the tribunal did not have any insight into the discussions.
46. The tribunal in exercising its discretion determines that the sum of £4,500 is an appropriate amount that the Respondents require to pay to the Applicant for wrongful termination. The tribunal considered that the Applicant and his family struggled to find alternative accommodation in the 3 month period during which the Applicant and his family were without accommodation of their own and for the £600 storage costs incurred. It was a time of worry as they were struggling to find a home and they had restrictions on their finances as they were looking to obtain a mortgage. They moved out of necessity into a relative's house and three months later purchased the property they now live in. It is much smaller and less suited to their accommodation needs. Had they been advised that the Respondents did not in fact intend to occupy the Property immediately before the tenancy was brought to an end, they could have remained in it for a longer period, during which their home search could have continued.
47. This sum is less than the maximum that can be awarded.
48. The decision of the tribunal is unanimous.

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

10th October 2022
Date