

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/22/1090

Re: Property at 72/7 Brunswick Street, Edinburgh, EH7 5HU (“the Property”)

Parties:

Mr Gregor Thomson, Ms Clarisse du Lac, 33/32 Brunswick Road, Edinburgh, EH7 5GU (“the Applicant”)

Robert Calder Bruce, 7 Diabaig, Achnasheen, IV22 2HE (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants had not been misled into leaving the Property. The application is refused.

Background

1. An application was received by the Housing and Property Chamber dated 14th April 2022. 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 26th August 2022 at 11.30am by teleconferencing. The Applicants were present and represented themselves. The Respondent was present and represented himself. The Applicants raised that the Property was being let out as an Air BnB. The Respondent had stated that his wife lives in the Property as her principal home but lets it out on an Air BnB basis when she is away from the Property. The Tribunal continued the case to a hearing as matters were disputed between parties. The Tribunal considered that the hearing was appropriate to allow

evidence to be heard from both parties and time for any submissions to be made to the Housing and Property Chamber. A direction was issued to both the Applicants and the Respondent as a means of guidance for information that would ensure the hearing was undertaken in an expedient and just manner.

3. On 26th October 2022, the Respondent submitted documents in response to the directions. This included confirmation that his wife was registered with a local doctor and dentist, utility bills, his wife's drivers licence registered to the Property and details of income from Air BnB rentals.
4. On 7th November 2022, the Applicants lodged an invoice for a transit van hire.

The hearing

5. A hearing was held on 9th November 2022 at 10am by teleconferencing. The Applicants were present and represented themselves. Mr Thomson spoke on behalf of the Applicants. The Respondent was present and represented himself.
6. The Tribunal noted that section 58(3) of the Private Housing (Tenancies) (Scotland) Act 2016 states that "*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.*" The Tribunal noted that it had to consider whether the Applicants had been misled into leaving the Property.
7. Mr Thomson told the Tribunal that he still considered that the Applicants were misled into leaving the Property. He noted the response by the Respondent and stated that he should have issued an estimated loss of earnings but noted that it was too late to provide this now. The Applicant was frustrated and aggrieved that they had to move out of the Property and that they were not given an extension of time to remain in the Property to allow them to find a new flat. They had hoped to let the Property until they were in a position to buy a property in a few years time. They had only found a suitable property shortly before the expiry of the Notice to Leave. Mr Thomson again explained that he knew that the matter could go to a tribunal to grant an order for eviction which would have given him extra time. However, as a letting agent himself he was aware that landlords and letting agents search the Housing and Property database when letting properties and did not want to be tarred with having been to a tribunal to be evicted whether it was a no fault basis or not. He considered that the Property had been let out a lot on Air BnB and did not consider it correct that paying tenants can be evicted to relet on the higher premium of the Air BnB basis.
8. The Respondent said that he had bought the Property in October 2019 when he and his wife lived in America. It took a few months to renovate the Property. In January 2020 the Respondent let out the Property on a Private Rented Tenancy ("PRT"). In September 2020 the tenants moved out of the Property. In October 2020 the Respondent and his wife moved into the Property. In December 2020 the Respondent's son returned to live with him and his wife.

The Property was too small for all three of them. They moved into a rental property in February 2021. The Property was then let to the Applicants in March 2021. Towards the end of 2021, the Respondent's son moved out of the rented family accommodation, prompting the Respondent to seek to return to the Property. Until April 2022 the Property had never been let by the Respondent or his wife on an Air BnB basis. He noted that the three months before the Tribunal details were served upon him that the Property was let for 20% of the time. He confirmed that it was his wife's intention to let the Property on Air BnB for the times that she was not there when she was visiting him or on holiday, when she moved back into the Property in April 2022. He raised that his wife had cancelled bookings as she wished to stay in the Property. Since the last CMD in August the Respondent and his wife have not let out the Property on Air BnB. The gross income for the three months prior to the Tribunal from Air BnB business was £700 which is significantly less than the £980 per month that he would have received from the Applicants had they still been in the Property. He advised that the Notice to Leave served upon the Applicants identified a leave date of March 2021 to allow them to have been in the Property for a full year. His wife had left their rental flat in Edinburgh mid February 2022 but had gone to stay with their middle child in Berlin until the Property was free.

9. Mr Thomson accepted that the Respondent's wife was living in the Property as her principal home. He, however, raised issues that he considered that she was profiting from the short term Air BnB lets. He queried if it was appropriate to evict someone then let out the Property on an Air BnB basis. He considered this to be unfair to tenants. In particular those affected by the Edinburgh Festival. He still considered that he was misled into leaving the Property to allow the Air BnB lets to occur.

Facts and reasons for decision

10. A Private Rented Tenancy Agreement commenced on 2nd March 2021.
11. The Respondent served a Notice to Leave upon the Applicants on 17th December 2021. This Notice to leave had stated that it was under ground 4 which states it is to allow the landlord to return to live in the Property. It is accepted by all parties that this was an error as it was always the intention for the Respondent's wife to live in the Property and the ground should have been ground 5. The Respondent and his wife split their time between two houses with the Respondent mostly living in the Highlands and his wife mostly living in Edinburgh. The Respondent's wife does not pay any rent for living in the Property and the Respondent visits and stays there when on business in Edinburgh. The Tribunal accepted that this was an error and not material.
12. The Respondent's wife lives in the Property as her principal home. The Respondent's principal home is in the Highlands. The Respondent's wife does not pay rent to the Respondent for the Property. The Respondent and his wife will visit each other regularly in their respective homes and go on holiday together. The Respondent's wife can work remotely. It is when the Respondent's wife is visiting her husband or on holiday that the Property is let out on an Air BnB basis. This is not for the majority of the time. The letting of

the Property for short term lets on an Air BnB basis is not a matter for the Tribunal.

13. The Tribunal considered if the Applicants had been misled into leaving the Property. The Tribunal did not consider that the Applicants were misled into leaving the Property. They left the Property knowing that they could wait until the Respondent had raised an eviction case with the Housing and Property Chamber. They elected not to do this as they did not want a black mark against their name with other letting agents. They found another property and moved to it before the Notice to Leave expired.
14. It was clear from the Respondent's evidence that it was not the intention to let the Property to the Applicants to fill the gap of Air BnB while tourism was not possible due to Covid. The Respondent had given evidence that prior to this period the Property had not been let as an Air BnB.
15. The Applicants conceded that the Property was the Respondent's wife's Principal home but objected to the use of the Air BnB considering it to be profiteering from the situation. The evidence of the Respondent does not show this. His rental was less from the higher Air BnB rent than it would have been if the Applicants had remained in the Property. The Property has only been let out on days that suited the Respondent's wife. As a journalist she is able to work remotely and chooses to do so at points. The Property was let out approximately 20% of the month. The Tribunal saw this as the Respondent and his wife letting the Property on an Air BnB basis when she did not use the Property as she was away.
16. Taking all of this into account the Tribunal did not consider that the Applicants had been misled into leaving the Property. The Respondent wanted the property to allow his wife to live in it full time and for him to live in it part time. The Air BnB letting was to supplement the Respondent's wife's income and was for a limited amount of the time and generating less money than would have been received by the Respondent had the Applicants remained in the Property. The Tribunal noted that the Applicants were aggrieved at moving as it was a great inconvenience to them. This would still have been the case had the Property not been let as an Air BnB for a part of the time.

Decision

17. The application was refused. A Notice to Leave had been issued by the Respondent on 17th December 2021. This had a 3 month notice period. The Applicants had left the Property within the Notice period. The Applicants were aware they could have waited for a case to be raised with the Housing and Property Chamber to evict them before they needed to move. The Respondent required the Property for his wife to live in it for the majority of the time. The Respondent visits the Property and resides there when in Edinburgh. While the Property is let out on Air BnB it was clear from the evidence that this was not the reason that the Respondent served the Notice to Leave on the Applicants. 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.

9th November 2022

Legal Member: Gabrielle Miller

Date