



Decision 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/22/1115

Re: Property at 3/3 15 Clarendon Street, Glasgow, G20 7QP (“the Property”)

Parties:

Mr Michael McMenamin, 3/2 54 Govanhill Street, Glasgow, G42 7LD (“the Applicant”)

Mr Mark McKee, 162 Springwell Road, Northern Ireland, BT19 6LY (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and refused the application for a Wrongful-termination Order.

Background

By application dated 19 April 2022, the Applicant sought a Wrongful-termination Order under Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In the application, the Applicant stated that he had been living in the Property for five and a half years. Towards the end of 2021, the Respondent had tried to implement a rent increase without notice or discussion. The Applicant had refused to accept the proposed increase. The Respondent then told the Applicant that he was moving back to Glasgow in order to take up a new job and that he would require the Applicant to vacate the Property so that the Respondent could live in it. The Applicant had removed from the Property, but when he handed back the keys to the Respondent, he ascertained that the Respondent’s family were not going to be joining him. Within two weeks of the Applicant moving out, someone moved into one of the rooms and the Respondent now had a second person renting the other bedroom in the Property. The Applicant had spoken to both of them, and they had told him that they were there as long-term tenants. The Applicant contended that the

Property is not the principal residence of the Respondent and that the Respondent had repossessed the Property illegally and had then exploited the situation purely for financial gain.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 1 September 2018 at a rent of £820 per month, a Notice to Leave dated 10 January 2022, requiring him to leave by 12 April 2022 and stating that an application for an Eviction Order would not be made before 13 April 2022, and a letter from the Respondent to the Applicant, dated 10 January 2022, enclosing the Notice to Leave and withdrawing the Rent Increase Notice that he had sent on 6 December 2021. In the letter, the Respondent said that if the Applicant found somewhere he liked before 12 April 2022, the tenancy could be brought to an end sooner. The Applicant also provided a screenshot dated 9 May 2022 from a website on which the Respondent was advertising for people to share his three-bedroomed flat at a room rate of £520 per month.

On 23 July 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 13 August 2022.

The Respondent submitted written representations on 12 August 2022. He stated that he had lost his job in September 2019 on the collapse of the Thomas Cook Group. In December 2019, he joined Jet2.com. In October 2020, Jet2.com announced their intention to make him redundant. In anticipation of his loss of income and unable to pay the mortgage, the Respondent and his family were left with no choice but to sell their house in Surrey and move into the Respondent's parents' home in Northern Ireland. After 17 months with no work, the Respondent re-joined Jet2.com. on 14 March 2022. He was in a position where he had to accept any job offer available irrespective of the disruption it would cause to his personal life. The offer of employment required the Respondent to live within 90 minutes' travelling time and required him to report for duty within 90 minutes if contacted during standby duties. It would, therefore, be impossible for him to fulfil his role without living in Glasgow or the surrounding area. He was unable to afford the cost of living in the Property alone, so had taken in two lodgers to help pay the bills. His only and principal home was the Property. He is the registered bill-payer for utilities and Council Tax, is registered with a GP in Glasgow and the Property is the address held for him by HMRC. Between 3 July and 2 August 2022, he had resided in the Property for 25 nights out of a possible 30. He said that he does not have a family home in Northern Ireland. On the occasions that he visits his family there, he sleeps in his parents' spare bedroom.

The Respondent stated that the Parties had agreed a process for determining the rent for the Property and did not accept the contention that it had been done without giving notice and without discussion. The intent to increase the rent was completely unrelated to his subsequent intention to live in the Property. The Rent Increase Notice had been issued 15 days before a job opportunity for the Respondent in Glasgow had been officially communicated to him.

The Respondent provided the Tribunal with an example Jet2.com roster from 3 July to 2 August 2022, which he said was representative of his work pattern, a copy letter

from Jet2.com dated 21 December 2021, offering the Respondent employment from 14 March 2022 as a First Officer based at Glasgow International Airport, an extract from his contract of employment, confirming that he was required to reside within 60 miles or 90 minutes' travelling time from his assigned base and that, during periods of standby duty, he must be able to take up duties at that base within 1.5 hours of being called out, a copy of an email from the Applicant to the Respondent of 17 January 2022, giving notice that he would be vacating the Property on 14 February 2022 and copies of utilities and Council Tax bills addressed to him at the Property.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 28 September 2022. Both Parties were in attendance.

The Applicant told the Tribunal that until 1 July 2022, he had access to the flat next door to the Property and, as a result, had access to CCTV footage which showed everyone entering the building and approaching the flats on the same level as the Property. This footage, he stated, confirmed his view that the Respondent was not living there 25 days per month. The Respondent said that he was aware of the CCTV camera, but sought to avoid it when entering the Property, as he regarded it as an intrusion on his privacy. The Applicant stated that he would be happy to give the Tribunal access to the CCTV footage down to 1 July 2022.

The Respondent told the Tribunal that his family are still in Northern Ireland. Because of his roster pattern, his visits there are erratic and are dependent on how many days off he has. One of the lodgers had moved out of the Property and he was currently seeking a replacement. He said that there were many reasons for his family not being with him in Glasgow. These were private matters. The roster that he had provided was fairly typical and he estimated that he spent about 25 nights per month in the Property.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that, having written and oral representations from both Parties, it was in a position to decide the application without a Hearing.

The Notice to Leave stated that the Landlord intended to live in the Property and, had it been referred to the Tribunal, the Tribunal would have had to find that Ground 1 of Schedule 3 to the 2016 Act applied if it was satisfied that the Respondent intended to occupy the Property as his "only or principal home" for at least 3 months.

Section 58 of the 2016 Act applies where, as in the present case, a Private Residential Tenancy Agreement has been brought to an end by Notice to Leave and the tenant leaving. It states that an application for a wrongful-termination order may be made to the Tribunal and that the Tribunal may make an order if it finds that the former tenant was misled by the landlord into ceasing to occupy the let property.

The Tribunal considered whether to continue consideration of the application to allow it to examine the CCTV footage offered by the Applicant but decided that the time

that this would take would be disproportionate. In any event, it covered the period to 1 July 2022 and the example Roster covered the period from 3 July to 2 August 2022.

The Tribunal accepted that the Respondent had no alternative but to live in or close to Glasgow in order to fulfil his employment obligations and that it was reasonable that he should seek to recover possession of the Property, as he already owned it. It was also reasonable to take in lodgers to help cover costs. The only issue for the Tribunal to consider was whether the Property is the Respondent's "only or principal home". The Tribunal considered the example work roster which the Respondent had provided. It appeared to indicate that the employee would have six days off out of the 31 days covered by the roster and there were only two occasions when successive days off were provided. This tied in with the Respondent's statement that he was in the Property for approximately 25 nights per month. He had also stated in his written representations that when he is in Northern Ireland to be with his family he sleeps in his parents' spare room. There was no suggestion that the Respondent owns any other property.

Having considered carefully all the written and oral evidence before it, the Tribunal decided, on the balance of probabilities, that the Applicant had not established that the Property is not the Respondent's only or principal home. The circumstances were unusual, but the evidence suggested that the Respondent had intended that the Property would be his principal home whenever he took up the offer of employment by Jet2.com. and that he had not misled the Applicant into ceasing to occupy the Property. Accordingly, the Tribunal decided to refuse the application.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

George Clark

Legal Member

28 September 2022
Date