



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/22/1218

Re: Property at 2/1 65 Causeyside Street, Paisley, PA1 1YT (“the Property”)

Parties:

Luke Humberstone, 3/1 45 Seedhill Road, Paisley, PA1 1SD (“the Applicant”)

Amarjit Kaur Kambo, 194 - 204 Main Street, Wishaw, ML2 7NB (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a wrongful-termination order should be granted against the Respondent in terms of Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and has decided to make an order for payment in the sum of TWO THOUSAND ONE HUNDRED POUNDS (£2100) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

- 1. By application dated 28 April 2022 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for a wrongful termination order under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**
- 2. On 1 June 2022, the Tribunal accepted the application under Rule 9 of the Regulations.**

3. The Tribunal originally assigned an earlier Case Management Discussion (“CMD”) under Rule 17 of the Regulations. Sheriff Officers were unable to serve the application on the Respondent. The CMD was accordingly discharged. A new CMD was assigned for 12 September 2022. The Application was served on the Respondent by Sheriff Officers at the Respondent’s business address of 194 - 204 Main Street, Wishaw, who after diligent enquiries, left it in the hands of an employee. An Execution of Service dated 26 July 2022 was received by the Tribunal.

Case Management Discussion

4. The Tribunal proceeded with the Case Management Discussion on 12 September 2022 by way of teleconference. The Applicant was present and represented himself. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in the Respondent’s absence.
5. The Tribunal had before it a Private Rented Tenancy Agreement between the parties dated 4 May 2019, a Notice to Leave dated 10 November 2021, a copy advert from Your Move for the Property, emails between the Applicant and G4 Properties dated 22 March 2022, an excerpt from Landlord Registration and photographs. The Tribunal also had a copy of title number REN37047 for the Property.
6. Mr Humberstone explained to the Tribunal he had lived in the Property since May 2019. He was very content living there. The Property was convenient for his place of work and was good for parking. It was a spacious flat.
7. On 10 November 2021 the Respondent’s letting agent 1st Lets (Glasgow) Limited served a Notice to Leave stating the ground of eviction as being the Landlord wanted to sell the let Property with reliance on Ground 1 of Schedule 3 of the 2016 Act. The Notice to Leave gave the Applicant until 14 May 2022 to leave the Property.
8. The Applicant explained he was disappointed that he was being asked to leave the Property. As a result of the Notice to Leave he started to look for alternative accommodation that would be convenient for his work. He viewed about 10 different properties. He viewed a property which had been refurbished to an extremely high standard and struck up a relationship with the Landlord and was then able to secure another property from the same landlord which did not go to market. This is the property where he now lives. It is further away from his work. The rent is £150 per month more expensive than the rent under the tenancy agreement with the Respondent. He pays £500 per month. With reference to the tenancy agreement between the parties the Tribunal noted that in terms of Clause 9 the rent was £350 per month.

9. He informed 1st Lets on 21 January 2022 that he had found another property and suggested he move out on 7 February 2022. This was accepted by the Respondent and the Applicant returned the keys to the Property on 7 February 2022.
10. The Applicant advised that he had incurred removal expenses as the Property was unfurnished as he had to move his furniture to his new property. He also incurred additional expenditure in changing address and found it difficult to secure a deposit so soon after Christmas.
11. The Applicant explained he left the Property in a clean state and referred the Tribunal to the two photographs lodged. He received the full deposit back. He went on to explain that on about 18 March 2022 he saw an advert by Your Move advertising the Property at £450 per month, £100 per month more than he had paid in rent. He referred the Tribunal to the copy advert lodged and also to the two photographs lodged which he explained he had taken on 6 February 2022 which matched some of the photographs in the advert, showing that the property advertised was the Property. He emailed the letting agents G4 Properties on 22 March 2022 who confirmed they were the letting agents. With reference to the excerpt from Landlord Registration the Respondent was shown as the registered Landlord. No address for the Respondent was shown. The Tribunal referred to the title sheet REN37047 for the Property which also showed the Respondent was still the heritable proprietor of the Property.
12. The Tribunal questioned the Applicant as to whether there had ever been any explanation from either the Respondent or 1st Lets as to why the Notice to Leave had been served. He explained that he had had some issues with repairs not getting done at the Property and had raised an action for a Repairing Standard Order with the Tribunal in 2021. The Tribunal advised it was not aware of that action. Mr Humberstone went on to explain the main issues he had at the Property was with the boiler, rats and with seals at the windows. The Tribunal issued a Repairing Standard Order in terms of which the Respondent had to replace the boiler and attend to repairs in the kitchen to stop rats from entering the Property. When the plumber had attended the Property to replace the boiler he advised the Applicant that the Applicant had caused the Respondent so much trouble that the Respondent might want to sell the Property. No-one else had mentioned that the Respondent might sell. After the repairs had been carried out the Tribunal issued a Certificate of Completion on 27 October 2021. He explained that he found that the seal on the kitchen tap was in need of repair and that there was a small leak in the kitchen. He sent emails to 1st Lets about these items on about 1 November 2021. No-one came to fix these items and the next thing he received was the Notice to Leave on 10 November 2021. His friends had described this as a "revenge eviction". He explained that he certainly feels misled by the Respondent and that he was induced into leaving. He also received a rent increase notice increasing the rent from £350 to £400 per month but this did not take effect as he moved out.

Findings in Fact and in Law

13. The Applicant lived in the Property from 4 May 2019– 7 February 2022. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement from 4 May 2019 in relation to the Property. In terms of Clause 9 they agreed the Applicant would pay the Respondent a monthly rent of £350.
14. In 2021 the Applicant raised an application for a Repairing Standard Enforcement Order. The Respondent required to replace the boiler at the Property and seal up holes in the kitchen to stop rats from entering the Property. The Tribunal issued a Certificate of Completion on 27 October 2021.
15. The Applicant emailed the Respondent's agents 1st Lets on 1 November 2021 to advise the seal at the kitchen tap was broken and that there was a small leak under the kitchen sink. The Respondent did not attend to these items.
16. On 10 November 2021, 1st Lets served a Notice to Leave on the Applicant in terms of Section 50 of the 2016 Act which stated the reason for the Notice was that the Respondent wanted to sell the Property by reliance on Schedule 3, paragraph 1 of the 2016 Act. The Notice required the Applicant to leave the Property by 14 May 2022.
17. As a result of the Notice to Leave the Applicant started to search for alternative accommodation and managed to secure alternative accommodation. The Respondent agreed the Applicant could leave the Property on 7 February 2022.
18. The Applicant moved from the Property on 7 February 2022 into a new tenancy at a monthly rent of £500. The Applicant moved as he had been led to believe the Respondent was selling the Property.
19. The tenancy ended on 7 February 2022 in accordance with section 50 of the 2016 Act.
20. By 18 March 2022 the Property was advertised for let by Your Move at a rent of £450 per month.
21. On 22 March 2022 the Respondent contacted G4 Properties to ask whether they were the letting agents for the Property. G4 Properties are the Letting Agents.

22. The Respondent is the heritable proprietor of the Property under Title Number REN37047. The Respondent is registered as a Landlord of the Property.
23. The Applicant incurred and continues to incur losses by way of increased ongoing rental costs of £150 per month. He incurred further losses in moving from the Property including removal costs and finding a deposit.
24. The Applicant was misled by the Respondent into ceasing to occupy the Property in terms of Section 58(3) of the 2016 Act.
25. The Respondent wrongfully terminated the tenancy.

Reasons for Decision

26. The Tribunal considered the Application together with all documents lodged and the oral submissions from the Applicant. The Applicant was the tenant immediately before the tenancy ended in terms of Section 58(1) of the 2016 Act. The Tribunal accepted that the Property had been the Applicant's home since 5 May 2019 and had it not been for the Notice to Leave he would not have moved from the Property. In reaching its decision, the Tribunal took into account the wording of the Notice to Leave which stated that "*Your Landlord intends to sell the let Property*". The Tribunal accepted that the documents lodged showed this was not the Respondent's true reason for wishing to terminate the tenancy. The Tribunal considered that the Applicant's action against the Respondent resulting in a Repairing Standard Enforcement Order with a Certificate of Completion issued on 27 October 2021 preceded the issuing of the Notice to Leave. The Tribunal considered it was telling that neither the Respondent nor the letting agents 1st Lets had been in contact with the Applicant other than the Notice to Leave about the Respondent's intention to sell the Property or indeed that he was no longer intending to do so and was intending to let out the Property again. It appeared to the Tribunal that the Respondent may have taken exception to the Applicant's action against him and had no intention to sell the Property, but used this as a reason to terminate the tenancy. The Tribunal considered that as the Property was advertised for let at a higher rent by 18 March 2022, only 6 weeks after the Applicant vacated the Property that it was reasonable to conclude the Respondent did not intend to sell the Property. The Respondent was still the owner of the Property and was still registered as a Landlord for the Property. The Tribunal accepted that as a result of the Notice to Leave the Applicant had moved from the Property having being misled by the Respondent into leaving the Property and that his tenancy had been brought to an end in terms of Section 58(1) of the 2016 Act.

27. In considering the amount to be paid by the Respondent to the Applicant, the Tribunal took into consideration that the actions of the Respondent had caused significant inconvenience and disruption to the Applicant who had viewed about 10 properties, in that he had to move from the Property and find other accommodation. The Tribunal accepted that the Applicant now had to

pay a higher rent of £500 per month when previously he had paid £350. It also took into account he had incurred removal costs when otherwise he had been happy to live there. The maximum penalty which can be imposed by the Tribunal in terms of Section 59(1) of the 2016 Act is six times the monthly rental. The monthly rental for this property was £350 immediately before the tenancy was terminated. In assessing the quantum of the wrongful-termination order, the Tribunal took all the circumstances into account and decided that an order for six times the monthly rent was just and appropriate in the circumstances considering the losses of the Applicant including ongoing increased rental costs of £150 per month.

Decision

28. The Tribunal made a wrongful termination order for £2100.

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.

S. Evans

13 September 2022

Legal Member

Date