



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 57 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/22/3527

Property: 2/1, 96 Braidholm Road, Giffnock, Glasgow G46 6DF (“Property”)

Parties:

Dr Shazia Nawaz (“Applicant”)

Steven Smith, 6 Marlborough Court, Ayr KA7 1HE (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined not to make a wrongful termination order.

Background

The Applicant sought a wrongful termination order in terms of section 57 of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”). The Applicant had lodged Form G. A case management discussion (“CMD”) took place before the Tribunal on 31 January 2023. Reference is made to the note of the CMD.

At the conclusion of the CMD the Tribunal noted that the Parties agreed the following

1. The Notice to Leave stated that the ground for seeking eviction was ground 4, landlord intended to live in the property.
2. An eviction order was granted on 13 July 2022.
3. The Applicant removed from the Property on 4 August 2022.
4. The Respondent instructed the preparation of a home report which was prepared on or about 25 August 2022.
5. The Respondent instructed the marketing of the Property with Corum Property from 1 September 2022.

6. The Property is not currently being marketed.

The Tribunal noted that the issue which was in dispute and which required to be resolved was whether the Respondent misled the Tribunal into issuing the eviction order by falsely stating in the Notice to Leave and at the tribunal when the order for eviction was granted that it was his intention to occupy the Property as his only or principal home for at least 3 months.

The outcome of the CMD was that a Hearing was fixed and a direction was issued. The direction stated :

The Applicant and the Respondent are required to lodge with the Tribunal :

- 1. A list of witnesses they intend to call at the Hearing to be assigned including a brief summary of the evidence that the witness will give.*
- 2. All documents on which they intend to rely at the Hearing to be assigned.*

The said documentation should be lodged with the Tribunal no later than close of business on the date falling 28 days before the date of the Hearing to be assigned.

The Applicant responded to the Direction by email dated 30 March 2023. The Respondent did not lodge a response to the Direction.

Documents

The documents lodged by the Applicant were:

1. Notice to Leave under Section 50(1)(a) of the 2016 Act dated 10 November 2021 which stated that the ground for eviction was that the landlord intended to live in the Property ("Notice to Leave")
2. Statement of Decision of the First-tier Tribunal dated 3 August 2022 refusing to recall a decision granting an order for eviction on 13 July 2022
3. Home Report for the Property referring to an inspection date of 25 August 2022
4. Property sale brochure for the Property prepared by Corum Property
5. Screenshot of an advertisement on Right Move for the Property which stated "added 01/09/2022" and further screenshot of an advertisement on Right Move for the Property narrating a fixed price of £269,000
6. Email 1 of 4 containing a response from the Applicant to the Respondent's email to the Tribunal of 12 December 2022
7. Email 2 of 4 indicating a deposit of £1500 had been paid by Safe Deposits Scotland to the Respondent on 15 December 2022

8. Email 3 of 4 containing a copy of an email from the Applicant to the Respondent dated 5 December 2021 regarding repairs
9. Email 4 of 4 containing an email exchange between "Dean" and Patricia Rutherford of Corum Property dated 16 January 2023
10. Copy payment confirmation notifications from Royal Bank of Scotland
11. Copy text message dated 21 February timed at 23.53
12. Copy routine maintenance and property inspection report for the Property dated 26 May 2021
13. Copy marketing materials for the Property from Let Property at a price of offers over £239,000.
14. Copy information regarding a sale by auction of the Property on 6 April 2023

The documents lodged by the Respondent were:

1. Written submissions in emails dated 12 December 2022 and 23 January 2023
2. Copy rent statement for the period June 2021 to June 2022

Hearing

A Hearing took place before the Tribunal on 21 June 2023 at Glasgow Tribunals Centre. The Applicant and the Respondent were both in attendance.

The Applicant told the Tribunal that she moved into the Property on 6 October 2020. She said that she met with the Respondent in June 2021 at the Property when the Respondent told her he wanted to sell the Property. She said that the Respondent asked her to serve notice that she would leave the Property. She said that she had raised the application as the Respondent had not lived in the Property since obtaining possession. She noted that the Respondent had not lodged any documents evidencing that he lived in the Property. She said that neighbours had told her the Property was empty. She said that she moved out of the Property on 4 August 2022. She said that the Respondent instructed a home report dated 25 August 2022 and the Property was being marketed by Corum by 1 September 2022. She said that the Property was advertised again on 1 February 2023 and there had been an attempt to sell at auction.

The Respondent told the Tribunal that he did meet with the Applicant in June 2021 but he denied telling her that he wanted to sell the Property. He said he told the Applicant that his personal circumstances had changed. He said he had the impression the

Applicant was sympathetic to his situation and would try to find alternative accommodation. The Respondent denied asking the Applicant to serve notice that she would leave the Property. He said that he told her he did not want to force her out. The Respondent told the Tribunal that he issued the Notice to Leave in November 2021 and sent an email to the Applicant saying that it had been issued. He said that he thought the Applicant would vacate the Property when the Notice to Leave expired in February 2022. He said that the day before or the day of expiry the Applicant contacted him to say she had a problem with the property she had planned to move to and could not vacate the Property. The Respondent said he had a van arranged to move his belongings at that time.

The Respondent told the Tribunal that he purchased the Property in 2005 and had lived in the Property between 2012 and 2020. In November 2020 he moved to the Ayr property. He said that between June and November 2021 his intention was to move into the Property. He said that in February 2022 his intention was to move into the Property. He said that when the Applicant did not vacate the Property on expiry of the Notice to Leave he engaged a solicitor who represented him at the CMD in the eviction application. The Respondent said that he had worked in the property sector for 33 years. He said he built up a portfolio of commercial and residential properties. The Respondent said that he started to sell the properties in the portfolio in 2010 as and when properties became vacant. He said that he still owned four residential properties and was winding down the leases in order to sell. The Respondent said that he had been in a relationship in Ayr which had broken down. He said that his four sons lived in Glasgow, three in the family home which is close to the Property and one in the west end of Glasgow.

The Respondent told the Tribunal that he received the keys for the Property in early August 2022. He said that he attended the Property and noted that a side table had been broken and taped up and the sofa had been damaged with crayons. The Respondent said that every cupboard in the Property had "stuff" left in it including the kitchen cupboards. He said that the Property had been his home and he was upset about the condition of the Property. He said that he took time to consider next steps. He said that he knew people in the property industry and could arrange for a home report to be prepared quickly. The Respondent said that he moved into the Property mid-August 2022 and continued to occupy the Property until it was sold in June 2023. The Respondent said that between August 2022 and June 2023 he had spent time living in the Property, the property he rented in Ayr, Spain, Portugal and London. He said that he lived in the Property on average 2 days per week.

The Respondent said that he decided to sell the Property as he was unhappy with the condition of the Property and with the difficulties experienced in the eviction process. He said that he had never been involved in a contested eviction before. He said it had

been a “battle”. He said that his mental state was such that he wanted to sell the Property.

The Applicant told the Tribunal that she had received unsolicited emails from the Respondent. She queried why the Respondent continued to occupy the property in Ayr if his relationship had broken down. The Applicant said that the Respondent failed to carry out necessary repairs at the Property. She said that she believed the Tribunal had been misled when making the order for eviction as the home report was prepared so quickly after the Respondent obtained possession of the Property and the Respondent had been trying to sell the Property ever since. She said she accepted a table had been damaged but not that the sofa was damaged.

The Applicant said that she had been adversely impacted by having to vacate the Property. She said that the property she had moved to was further away from her family which meant that social interaction was limited and did not serve her son’s needs. She said that her son had autism and had developed a relationship with the staff on the school bus. She said that he had been upset by new staff after the Applicant vacated the Property. She said that her son had initially been scared to come into the new property and then would not come out of his room. She said that her son would not settle at school. The Applicant said that she had felt humiliated. She said that the Respondent had been very persistent about her leaving and had sent an abusive text message late at night. She said that at the time the Notice to Leave was served the Respondent called her and shouted and swore at her. She said that she was frightened and started to cry. She said that she had not wanted her current address revealed to the Respondent but it had been. She said that she was frightened.

The Respondent said that he sent the text message referred to out of a feeling of frustration. He said that he had known the Applicant’s address for some time and had no intention of attending that address. He said that he felt the Applicant had been unreasonable. In response to a question from the Tribunal the Respondent said that he understood that in November 2021 the notice period for a Notice to Leave based on ground 4 (landlord intends to live in the property) was 3 months and based on ground 1 (intention to sell) was 6 months.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement which commenced on 6 October 2020 ("Tenancy Agreement").
2. The Respondent issued a Notice to Leave to the Applicant dated 10 November 2021 which stated that the ground for eviction was that the landlord intended to live in the Property.

3. At the date of issuing the Notice to Leave the Respondent intended to live in the Property once possession was obtained.
4. The Tribunal granted an order for eviction of the Applicant from the Property by Decision dated 13 July 2022.
5. At the date on which the order for eviction was granted the Respondent intended to live in the Property once possession was obtained.
6. Having obtained possession of the Property the Respondent marketed and sold the Property in June 2023.

Findings in Fact and Law

1. The Respondent did not mislead the Tribunal into making the Decision dated 13 July 2022.

Reasons for the Decision

Section 57 of the 2016 Act states:

57. Wrongful termination by eviction order

- (1) This section applies where a private residential tenancy has been brought to an end by an eviction order.*
- (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.*
- (3) The Tribunal may make a wrongful termination order if it finds it was misled into issuing the eviction order by the person who was, immediately before the tenancy ended, the landlord under the tenancy.*
- (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.*

There was very little in dispute between the Parties. The issue for the Tribunal to determine was whether the Tribunal that made the eviction order on 13 July 2022 was misled.

The Respondent relied on ground 4 when serving the Notice to Leave which is that the landlord intends to occupy the let property as the landlord's only or principal home for at least three months. The Respondent had owned the Property since 2005 and had lived there between 2012 and 2020. The Respondent's four sons live in Glasgow, three of them in close proximity to the Property. None of this was in dispute. What was in dispute was whether the Respondent intended to live in the Property at the date of service of the Notice to Leave and at the date of the grant of the eviction order.

The explanatory notes to the 2016 Act at paragraph 90 state:

“the test will be whether the landlord genuinely intended to use the property in the way that the eviction ground required (even if, for some reason, that intention has not come to fruition).”

The meaning of “intends” has been examined by the English Courts when looking at the application of the statutory test in section 30(1)(f) of the Landlord and Tenant Act 1954 which relates to the renewal of business tenancies in England and Wales. In English cases regarding the 1954 Act it has been established that the landlord has to prove (1) that it has an intention which is both ‘genuine’ and ‘firm and settled’ to carry out qualifying works and (2) that it would be able to carry out those works.

S Franses Ltd v Cavendish Hotel (London) Ltd 2019 AC 249 concerns the first part of the intention test: whether the landlord has a genuine firm and settled intention to carry out the works. On that matter the Court developed the previous case law articulating the following principles:

- There has to be a genuine firm and settled intention on the part of the landlord to carry out the relevant work.
- It does not have to be the landlord’s only intention, or even its primary one, provided that it is a firm and settled intention.
- The landlord’s motive for carrying out the works is irrelevant, save as material for testing whether such a firm and settled intention exists.
- Since the statutory test assumed that the landlord’s intention was being obstructed by the tenant’s occupation, that intention could not be conditional on the works being necessary to get the tenant out of the premises. Rather, the test had to be whether the landlord would intend to do the same works if the tenant left voluntarily.

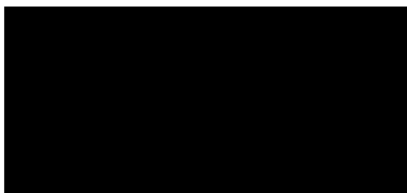
The Tribunal understood why the preparation of a home report within 3 weeks of the Applicant vacating the Property and the marketing of the Property shortly thereafter would cause the Applicant to question the use of ground 4 in the Notice to Leave. Having heard the evidence, the Tribunal was however of the view that the Respondent had a genuine, firm and settled intention to live in the Property at the time of service of the Notice to Leave and at the time of the order for eviction being granted for at least three months as required by ground 4. The Respondent’s evidence was that as a matter of fact he did live in the Property, although not on a full time basis, between August 2022 and June 2023. The Applicant disputed this but was unable to challenge the evidence of the Respondent with evidence from third parties such as neighbours. Even if the Applicant had been able to challenge that assertion, the key issue for the Tribunal is whether the Tribunal that granted the eviction order on 13 July 2022 was misled. The Tribunal determined that as at 13 July 2022 the Respondent had a genuine, firm and settled intention to live in the Property although for the reasons given by the Respondent that intention did not come to fruition on a long term basis.

Decision

The Tribunal refuses to grant a wrongful termination order.

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

Date: 21 June 2023