



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/21/2841

Re: Property at 77A Bentinck Drive, Troon, South Ayrshire, KA10 6HZ (“the Property”)

Parties:

Miss Elaine Bald, Mill Cottage, 3 Dunure Mains, Dunure, South Ayrshire, KA7 4LY (“the Applicant”)

Ms Maria Croce, 41 South Beach Lane, Troon, KA10 6ET (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed.

Background

[1] This was an application for a wrongful termination order dated 15th November 2021 and brought in terms of Rule 110 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[2] The Applicant sought in her application an order for wrongful termination under section 58(2) (wrongful termination without eviction order) of the *Private Housing (Tenancies) (Scotland) Act 2016* and compensation amounting to six months’ rent.

[3] The Applicant provided with her application copies of the notice to leave, various e-mails, title deeds, and written submissions.

[4] The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 18th January 2022, and the Tribunal was provided with the execution of service.

[5] Prior to the Case Management Discussion, the Respondent submitted written submissions.

[6] A Case Management Discussion was held at 10.00 on 23rd February 2022 by Tele-Conference. The Applicant participated, and was not represented. The Respondent participated, and was not represented.

[7] It was clear to the Tribunal both from the parties' written submissions, and from their discussion with the Tribunal, that the issue in this application was whether or not the Respondent genuinely intended to reside in the Property, in the sense used in Ground 4 of Schedule 3 to the *Private Housing (Tenancies)(Scotland) Act 2016*.

[8] Both parties agreed that the Respondent only resided in the Property for one week. The question for the Tribunal was whether the Respondent had the requisite intention to occupy the Property as her only or principal home for at least 3 months at the time when she gave the Applicant notice to leave. The Tribunal considered that it would require to hear evidence of the circumstances at the time of the notice to leave to reach a decision on that issue, and set a Hearing to be conducted by Video-conference.

The Hearing

[9] A Hearing was held on 19th April 2022 by Video-conference. The Applicant participated, and was not represented. The Respondent participated, and was not represented.

[10] The Tribunal heard evidence from the Applicant, from the Respondent, and from the Respondent's conveyancing solicitor, Mr Stuart Paterson, of McLennan Adam Davis solicitors.

Findings in fact

[11] After hearing all the evidence led by both parties on the issues in dispute between them and upon which the Tribunal required to reach a decision, the Tribunal found in fact:

- a) That in 2021, the Respondent resided at the property she owned at 1 Willockston Road, Troon, with two of her children. Her eldest child was residing in halls at university, and the Respondent's second child was due to reside in halls at a different university from the autumn of 2021.
- b) The Respondent's partner is deceased, and the Respondent realised that once her second child commenced university, she would be unable to afford to continue residing at 1 Willockston Road with her youngest child and to pay for her two eldest children's university halls fees.

- c) The Respondent concluded that she needed to sell her house, and to buy a smaller and less expensive house for herself and her youngest child to live in. She wished to remain in Troon as her youngest child was still at secondary school and they needed to remain in the school catchment area.
- d) The Respondent put her property on the market for sale, and received an offer dated 17th June 2021. On 5th July 2021, the purchasers requested a date of entry of 1st October 2021. By that time, the Respondent had had one offer to purchase a property rejected and there was nothing else on the market which was suitable and in her price range.
- e) There were very few properties available to purchase or let in central Troon in 2021. The Respondent concluded that it might take many months for her to succeed with the purchase of another property, and that she and her youngest child would need to move into the Property (which the Respondent managed on behalf of her three children who were the proprietors), and served notice to leave dated 29th June 2021 ending the tenancy on 30th September 2021. The Applicant was informed by the Respondent's letting agent that the Respondent intended to reside at the Property until she bought another property.
- f) The Applicant sought alternative accommodation, and moved out of the Property on 17th August 2021.
- g) On 25th August 2021, the Respondent concluded missives for the sale of the house at 1 Willockston Road with a date of entry of 1st October 2021.
- h) On 30th August 2021, the Respondent offered to purchase 41 South Beach Lane, Troon. That offer was accepted in principle with a date of entry to be agreed. On 10th September 2021, the seller's solicitor proposed a date of entry of 8th October 2021, to which the Respondent agreed, and missives were concluded on 27th September 2021 with that date of entry.
- i) The sellers of 41 South Beach Lane were unable to find another property to buy, and the Respondent was concerned that they might withdraw from the sale. In consequence, the Respondent moved into the Property with her youngest child on 1st October 2021, and resided there until 8th October 2021 when she moved into 41 South Beach Lane. The Respondent agreed to rent the Property from 8th October 2021 to the sellers of 41 South Beach Lane at a reduced monthly rental in order to allow the sale and purchase of 41 South Beach Lane to proceed.
- j) The sellers of 41 South Beach Lane resided at the Property for approximately five months until they were able to find another property to purchase. Thereafter, the Respondent relet the Property.

Findings in fact and law

[12] The Tribunal found in fact and law:

- a) That the Applicant was not misled by the Respondent into ceasing to occupy the Property immediately before it was brought to an end.
- b) That at the time that the Respondent gave the Applicant notice to leave she intended to live in the Property and intended to occupy it as her only or principal home for at least three months.

The Evidence

[13] The Tribunal heard evidence from the Applicant. She explained that she had rented the Property and was very happy there. She was contacted by the Respondent's letting agent in late June 2021 who explained that the Respondent need to move into the Property as she was selling her own home, and that the Applicant would need to leave the Property.

[14] The Respondent set about seeking a new tenancy after receiving notice to leave the Property. She was unable to find anything suitable to rent in Troon, and had to move to a property a little further away from there. She moved out of the Property on 17th August 2021.

[15] The Applicant considered that she had been misled by the Respondent, as she subsequently discovered that the Respondent moved into the Property on 1st October 2021 and only stayed for a week before moving out again to her new home on 8th October 2021, at which point she let the Property to the sellers of her new home.

[16] The Respondent gave evidence that her eldest child was residing in halls at university, and the Respondent's second child was due to reside in halls at a different university from the autumn of 2021. As a result of the costs of paying for accommodation for both children in halls, she realised that she needed to sell her family home as she could no longer afford to stay there.

[17] She wished to remain in Troon as her youngest child was still at secondary school and she wished to reside at a location which was not too far away from the school. The Respondent put her property on the market for sale, and received an offer dated 17th June 2021. On 5th July 2021, the purchasers requested a date of entry of 1st October 2021. By that time, the Respondent had had one offer to purchase a property rejected and there was nothing else on the market which was suitable and in her price range.

[18] There were very few properties available to purchase or let in central Troon in 2021. The Respondent concluded that it might take many months for her to succeed with the purchase of another property, and that she and her youngest child would need to move into the Property (which the Respondent managed on behalf of her three children who were the proprietors), and served notice to leave dated 29th June 2021 ending the tenancy on 30th September 2021.

[19] The Applicant sought alternative accommodation, and moved out of the Property on 17th August 2021. On 25th August 2021, the Respondent concluded missives for the sale of her house with a date of entry of 1st October 2021.

[20] On 30th August 2021, the Respondent offered to purchase 41 South Beach Lane, Troon. That offer was accepted in principle with a date of entry to be agreed.

On 10th September 2021, the seller's solicitor proposed a date of entry of 8th October 2021, to which the Respondent agreed, and missives were concluded on 27th September 2021 with that date of entry.

[21] The sellers of 41 South Beach Lane were unable to find another property to buy, and the Respondent was concerned that they might withdraw from the sale. In consequence, the Respondent moved into the Property with her youngest child on 1st October 2021, and resided there until 8th October 2021 when she moved into 41 South Beach Lane.

[22] The Respondent agreed to rent the Property from 8th October 2021 to the sellers of 41 South Beach Lane at a reduced monthly rental in order to allow the sale and purchase of 41 South Beach Lane to proceed. The sellers of 41 South Beach Lane resided at the Property for approximately five months until they were able to find another property to purchase.

[23] The Respondent expressed her regret for the effect that these events had on the Applicant. However, she considered that what she did was reasonable to look after her own interests and that of her children. She considered that there had been a change of circumstance between when she served notice to leave on the Applicant, and after the Applicant left and she and her daughter moved into the Property for only one week.

[24] The Respondent stated that at the time the notice to leave was served, she genuinely believed that she would have to move back into the Property whilst she sought to purchase a home in Troon, and that it would take many months for her to succeed in so doing.

[25] She did not anticipate that she would succeed in finding a suitable property to purchase so quickly, nor that she would achieve such an early date of entry after having her offer accepted.

[26] Finally, the Tribunal heard evidence from Mr Stuart Paterson, the Respondent's conveyancing solicitor. He confirmed the progress of the Respondent's sale of her home, and subsequent purchase of her new home. He explained and confirmed the timeline which the Respondent had given evidence about.

[27] Mr Paterson explained that in 2021, and indeed to the present, there were very few properties coming onto the market for sale or let in central Troon, which was the area in which the Respondent sought to continue to reside. He noted that he had several clients who had started to seek similar properties to that the Respondent purchased and in the same price bracket, who were currently still seeking to purchase. It was a seller's market, and it remains so. Purchasers might take many months to succeed in purchasing a property.

[28] Mr Paterson explained that in his experience, a seller proposing an entry date only just over four weeks ahead was highly unusual. Generally, he would have expected a far longer period between acceptance of an offer and a date of entry which would typically extend to several months.

Submission on behalf of the Applicant

[29] The Applicant submitted that she was misled by the Respondent into ceasing to occupy the Property immediately before it was brought to an end. The notice to leave relied upon the ground that the Respondent intended to live in the Property and intended to occupy it as her only or principal home for at least three months. The Respondent only occupied the Property for one week, before she let it out to the sellers of the property which she had purchased, which the Applicant argued demonstrated that she only intended to occupy the Property for a short period as a “stop gap” whilst moving house.

Submission on behalf of the Respondent

[30] The Respondent submitted that she had not misled the Applicant into ceasing to occupy the Property immediately before it was brought to an end. The notice to leave relied upon the ground that the Respondent intended to live in the Property and intended to occupy it as her only or principal home for at least three months. At the time she served that notice, that was her intention. She anticipated that she would require to reside in the Property for many months after selling her house. Unexpectedly, she had succeeded in purchasing a replacement property much more quickly than she or her solicitor had anticipated, and with an unusually early date of entry. That was a material change in circumstance since the notice was given.

Statement of Reasons

[31] Section 58 of the *Private Housing (Tenancies) (Scotland) Act 2016* provides as follows:

“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.”

[32] Section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016* provides as follows:

“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.”.

[33] It is not in dispute that the tenancy was ended in terms of section 50 by the Applicant receiving a notice to leave from the Respondent, which caused the Applicant to cease to occupy the Property.

[34] The question for the Tribunal is whether or not the Applicant was misled into ceasing to occupy Property by the Respondent immediately before it was brought to an end. To answer that question, it is important to consider the ground relied upon by the Respondent in the notice to leave, namely ground 4.

[35] Section 62 of the *Private Housing (Tenancies) (Scotland) Act 2016* provides as follows:

“62 Meaning of notice to leave and stated eviction ground

- (1) References in this Part to a notice to leave are to a notice which—
 - (a) is in writing,
 - (b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,
 - (c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and
 - (d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.
- (2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.
- (3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.”.

[36] The eviction grounds which a landlord may rely upon are to be found in Schedule 3 of the *Private Housing (Tenancies) (Scotland) Act 2016*. Ground 4, upon which the Respondent relied, provides:

“4 Landlord intends to live in property

(1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.”.

[37] The question, therefore, is whether the Respondent at the time when she gave the Applicant notice to leave intended to occupy the Property as her only or principal home for at least 3 months. The Tribunal concluded that she did have that intention, and therefore that she did not mislead the Applicant into ceasing to occupy the Property immediately before it was brought to an end.

[38] The Tribunal found all three witnesses to be credible and reliable in their accounts. The Tribunal would note that it had great sympathy for the Applicant's disappointment at leaving the Property and then discovering that the Respondent only occupied it for one week.

[39] However, the Tribunal accepted the evidence of the Respondent, which was supported by Mr Paterson, that at the time she served the notice to leave upon the Applicant she thought that she would require to move into the Property with her daughter and reside there for many months before she succeeded in purchasing a new home. The fact that after the Applicant ceased to occupy the Property, she unexpectedly secured a purchase with an unusually swift date of entry, and was able to reside in the Property for a much shorter period than she reasonably anticipated, does not mean that she misled the Applicant at the time she gave her notice.

[40] The Tribunal accepted that an unexpected turn of events, which the Respondent did not anticipate, caused matters to work out differently to how she anticipated at the time she gave the notice to leave to the Applicant. The Respondent had been unsuccessful with a previous offer to purchase, and there was very little property on

the market in the area she wished to purchase and in her price bracket. Mr Paterson confirmed that it was a “seller’s market”, and that he had a number of other clients who were also looking for property in the same area and in the same price bracket as the Respondent at the same time, who had still not succeeded in concluding a purchase as of the date of the Hearing.

[41] The facts that the Applicant was unable to find a property to let in central Troon and had to move further away, and that the sellers of 41 South Beach Lane were also unable to find another property in central Troon to purchase in a similar price bracket to the property they sold and had to rent the Property for approximately five months, both support the reasonableness of the Respondent’s view that she would have to reside at the Property for many months before finding a suitable alternative property to purchase.

[42] Mr Paterson also confirmed that a seller proposing an entry date only just over four weeks ahead was highly unusual, and that he would generally have expected a far longer period between acceptance of an offer and a date of entry which would typically extend to several months.

[43] All of that being the case, the Tribunal did not consider that the Respondent misled the Applicant into ceasing to occupy the Property immediately before the tenancy was brought to an end, and accordingly the Tribunal dismissed the application.

Decision

[44] For the above reasons, the Tribunal dismissed 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.

Neil Kinnear

Legal Member/Chair

19 April 2022
Date