



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 57 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/PR/20/1515

Re: Property at 48/1 Drum Street, Edinburgh, EH17 8RN (“the Property”)

Parties:

Mr Jesus Rodriguez Ortega, 13 Broomhouse Street North, Edinburgh, EH11 3RR (“the Applicant”)

Mr Cesar Felipe Dominguez Lopez, 77/6 Calder Gardens, Edinburgh, EH11 4LF (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Wrongful termination by eviction order should be made against the respondent

Background

1. The respondent is joint heritable proprietor of the property at 48/1 Drum Street, Edinburgh (“the property”). On 1 October 2018 the respondent leased the property to the applicant at a rental of £450 per month. On 18 February 2019 the respondent served a notice to leave on the applicant. On 26 March 2019 the respondent applied to the First-tier Tribunal for an eviction order relying on ground four of schedule 3 to the Private Housing (Tenancies)(Scotland) Act 2016.

2. After a hearing on 24, July 2019, the First-tier Tribunal found that the current respondent intended to live in the property, and so granted an eviction order against the current applicant. The eviction took place on 8 January 2020. The applicant vacated the premises of 7 January 2020.

3. On 4 February 2020 the current respondent entered into a new tenancy and let the property to a new tenant. The respondent has not lived in the property since at least June 2018.

4. On 14 July 2020 the applicant submitted an application for a wrongful termination by eviction order to the Tribunal.

The Hearing

5. An evidential hearing took place before the Tribunal by telephone conference at 10.00am on 5 November 2020. Both parties were present. The applicant was represented by Mr A Wilson of CHAI. The respondent is unrepresented, he was accompanied by his wife, Ms M I L Pascual. Tribunal members asked questions of both the applicant and the respondent. Both parties participated with the assistance of an interpreter. Both parties answered all questions without hesitation. There were no difficulties with linguistic interpretation or comprehension.

6. At the end of the hearing we reserved our decision. We found the following facts to be admitted or proved.

Findings in Fact

7. The respondent is joint heritable proprietor of the property at 48/1 Drum Street, Edinburgh ("the property"). On 1 October 2018 the respondent rented the property to the applicant at a rental of £450 per month. On 18 February 2019 the respondent served a notice to leave on the applicant.

8. On 26 March 2019 the respondent applied to the First-tier Tribunal for an eviction order relying on ground 4 of schedule 3 to the private housing (tenancies)(Scotland) act 2016.

9. Ground 4 of schedule 3 to the 2016 Act says

4(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.

10. At a hearing on 24 July 2019 (FTS/HPC/EV/19/0967) the First-tier Tribunal found that the current respondent intended to live in the property, and so granted an eviction order against the current applicant. The eviction took place on 8 January 2020. The applicant vacated the premises of 7 January 2020.

11. The applicant left the property in an appalling state. He filled the drawers in a chest of drawers with waste; he splattered the inside of the microwave with raw egg and smeared a substance (which might be butter) on the hob. He damaged furniture including the mattress and bed in the property; he smeared excrement on the walls.

12. The respondent recovered possession of the property on 8 January 2020. He and his wife immediately set about cleaning the property, repairing or replacing the damaged furniture and redecorating the property. The respondent instructed a plumber to carry out plumbing works.

13. On 4 February 2020 the current respondent entered into a new tenancy and let the property to a new tenant. The respondent has not lived in the property since at least June 2018.

14. Since June 2018 the respondent has lived in another property he owns in Calder Gardens, Edinburgh. That is a three-bedroom property which is occupied by the appellant, his wife and his child. The property which is the subject matter of this application is a studio flat with one bathroom.

15. At the hearing before the Tribunal on 24 July 2019 the respondent insisted that if he recovered possession of the property he intended to carry out modifications and change the layout of the property to make the accommodation suitable for the appellant, his wife and child. The Tribunal accepted that evidence, and so found that the respondent intended to live in the property and granted an eviction order.

16. The respondent misled the tribunal on 24 July 2019. The respondent continues to insist that he told the truth on 24 July 2019. The notice to leave was served on the applicant on 18 February 2019, so that since 18 February 2019 the respondent has persisted in lying about his true intentions.

17. The respondent raised an eviction application against the applicant on false premises. The respondent's intention has always been to recover possession and re-let the property.

Reasons for Decision

18. The applicant's position is that the respondent misled the tribunal when he obtained an eviction order. The earlier application for eviction proceeded on ground four of schedule 3 to the 2016 Act.

19. The respondent's position is that he did not mislead the tribunal in the earlier application for eviction. The respondent insists that it was his intention to live in the property, but when he recovered the property he found that the property had been vandalised by the applicant and excrement had been smeared across walls and

other surfaces. The respondent says that he found the cleaning and redecoration of the property so distressing that he could not face moving his family back into the property, so that his intentions were changed by the applicant's actions. His detailed and specific averments are set out in his letter dated 29 August 2020.

20. One thing of which we are certain is that neither party told this Tribunal the whole truth.

21. The applicant admits that he "exploded" an egg in the microwave before leaving the property and says he simply did not have enough time to clean the microwave before leaving. He denies damaging and dirtying the property before leaving. The applicant left the property on 7 January 2020. On 8 January 2020, sheriff officers entered the property. Those same sheriff officers report

The property is damp and dirty with faeces on the wall.

22. We place reliance on the report from sheriff officers dated 9 January 2020. Even though the applicant does not tell the whole truth, the admitted facts are that he was the tenant of the property from 1 October 2018 until 7 January 2020. The tenancy came to an end with an order for eviction. The order for eviction was granted under ground 4 of schedule 3 to the 2016 Act.

23. It is also beyond dispute that the respondent recovered possession of the property on 8 January 2020, and, by 4 February 2020, he had re-let the property to a new tenant.

24. On the facts as we find them to be, when the respondent recovered the property it was filthy and had been deliberately damaged. The respondent says that he was distressed by the damage to the property and he found cleaning the property to be so distasteful a task that the plan that he had kept alive since February 2019 to move back into the property was rapidly abandoned.

25. There are 26 days between 8 January 2020 and 4 February 2020. In that time, the respondent was able to carry out sufficient cleaning and remedial work to make the property attractive to a new tenant. The question we have to ask ourselves is whether the damaged and dirty state of the property is likely to change a plan held by the applicant for the previous 11 months.

26. Cleaning and remedial works are one of the burdens of being a landlord and maintaining property. Cleaning faeces and rotten food from the surfaces of a flat cannot be pleasant, but taking an holistic approach to each source of evidence in this case we can only find that the respondent set about cleaning and repairing the interior of the property industriously. The fact that the respondent found a new tenant and created a new lease in 26 days is entirely inconsistent with the account that the appellant gave the tribunal on 24 July 2019.

27. There is consistency in the respondent's position when he served a notice to quit in February 2019, in his pursuit of the application to evict the applicant, and in the evidence that he gave the Tribunal on 24 July 2019. A significant inconsistency

occurs when the respondent recovered possession of the property. Then, he set about cleaning the property and re-letting it immediately.

28. We find that the respondent's explanation (that he was so disgusted by the condition of the property when he recovered it that he could not live there) does not resolve the significant inconsistency. When the respondent gave evidence on 24 July 2019. He told the tribunal that since late 2018 he had wanted to move his family away from the property that he still lives in because they did not feel safe there. The respondent still lives in that same other property - even though 10 months have passed since he found a new tenant for the property which is the subject of this application. There is no reliable evidence before us that the respondent has sought alternative accommodation for his family, and so a further inconsistency is created in his evidence.

29. When we compare what the respondent told the Tribunal on 24 July 2019 with his actions since recovering possession of the property on 8 January 2020, the only realistic conclusion we can draw is that the respondent misled the tribunal on 24 July 2019. As we find that the respondent misled the tribunal, we find that the applicant is entitled to a wrongful termination by eviction order.

30. The maximum penalty which can be imposed is six times the monthly rental. The monthly rental for this property was £450. In assessing the quantum of the wrongful termination by eviction order we take account of the impact of the respondent's actions; we take account of the duration of the dishonesty; we take account of the respondent's continued adherence to that dishonesty.

31. Against those aggravating factors we balance the fact that the applicant was in arrears of rental when he vacated the property. An order for three times the monthly rental reflects the gravity of the respondent's actions.

32. The appropriate level of wrongful termination by eviction order is £1,350.00

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment to the Applicant of One Thousand Three Hundred and Fifty pounds (£1,350.00) within 14 days of service of this 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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by

upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Paul Doyle

5 November 2020

Legal Member/Chair

Date