

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PR/22/1002

Re: Property at 11 Wellside Road, Kingswell, Aberdeen, AB15 8EE (“the Property”)

Parties:

Ms Linzi Catto, 26A Netherhills Avenue, Bucksburn, Aberdeen, AB21 9DE (“the Applicant”)

Mrs Oroma Olivia Joe, 42 Cobbetts Walk, Surrey, Bidley, Woking, GU24 9DU (“the Respondent”)

Tribunal Members:

Karen Moore (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 for payment of FOUR THOUSAND EIGHT HUNDRED POUNDS (£4,800.00) sterling be granted.

Background

1. By application received between 6 and 13 April 2022 (“the Application”), the Applicant applied to the Tribunal for a wrongful termination order requiring the Respondent to pay six times the amount of rent of £800.00. The Application comprised a copy of a private residential tenancy agreement between the Parties showing a monthly rent of £800.00, copy Notice to Leave dated 25 August 2021 citing Ground 1 of Schedule 3 to the Act with an effective date of 28 February 2022 and copy advertisements dated April 2022 showing the Property to be available for rent at £1,200.00 per calendar month. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 29 June 2022 at 14.00 by telephone conference. The CMD was adjourned at the request of the Respondent due to her illness. A fresh CMD was

fixed for 1 September 2022 at 10.00 by telephone conference. This CMD was intimated to the Parties.

2. Prior to the original CMD, the Respondent submitted written representations setting out that she had relocated from Aberdeen in 2018 for reasons of employment, that she rented out the Property which had been the family home at that time, that there is mortgage of £918.00 per month secured against the Property, that she had expected a rent of £1,000.00 per month for the Property but accepted £800.00 per month from the Applicant, that during August 2021 she visited three property agents in Aberdeen with a view to selling the Property and served the Notice to Leave in respect of her intention to sell. She explained that ill-health of her son and her deteriorating health caused her to pause her intention to sell and she advertised the Property for rent as a “stop gap” solution. Along with the written submission, the Respondent lodged a medical report in respect of her son, a bank statement showing a payment of £918.58 to Natwest bank, an advertisement for rent of the Property, an EPC for the property dated May 2015, a market research document in respect of rental rates for Aberdeen, letter from Alex Hutcheon & Company, solicitors and estate agents providing a quote for fees for the sale of the Property dated 22 June 2022, email from Gavin Bain & co. providing a quote for fees for the sale of the Property dated 17 August 2021, emails between the Parties dated January 2022 indicating that the rent did not cover the running costs incurred by the Respondent and that the Applicant could remain the Property as “we go through the process of marketing the house”, copy correspondence between the Parties in respect of the condition of the Property at the end of the tenancy and screen shots of messages between the Parties in respect of the Applicant vacating the Property.

CMD

3. The CMD took place on 1 September 2022 at 10.00 by telephone. The Applicant took part. The Respondent did not take part and was not represented.
4. The Applicant advised the Tribunal that her view was that much of the Respondent’s written submissions was not relevant, that the Respondent had never had a real intention to sell the Property and that it was her belief that the Property would be sold at a loss due to the drop in house prices in Aberdeen. She stated that the Respondent had accepted her tenancy at a rent of £800.00 and was not able to increase the rent lawfully to the amount required by the Respondent. She stated that there had been no contact from selling agents to value the Property or to prepare a Home Report during the Notice to Leave period and that the Property had been advertised for rent shortly after she vacated the Property. Her firm view was that the Respondent had always intended to re-let the Property at a higher rent. Ms. Catto stated that she understood that the Property has been re-let.
5. With regard to her personal circumstances, Ms, Catto advised that she was a single parent with a professional position in the public sector. She did not accept that her single parent status influenced the Respondent to rent to her at £800.00 per month as this is a considerable sum and that the rent was a fair market rent when she took up the tenancy. She stated that she would have remained in the Property had the Notice

to Leave not been given and that she had been unable to find accommodation in the Kingswells area and so she and her 12 year old daughter had to relocate to another area, causing them distress and inconvenience.

Findings in Fact

6. From the Application and the CMD, the Tribunal made the following findings in fact, and that on the balance of probabilities: -
 - i) There had been a tenancy of the Property between the Parties at a monthly rent of £800.00;
 - ii) A competent Notice to Leave citing Ground 1 of Schedule 3 to the Act was sent to the Applicant on 25 August 2021;
 - iii) The effect of the Notice to Leave was that the Applicant sought and obtained alternative accommodation;
 - iv) The Applicant would not have vacated the Property had it not been for the Notice to Leave;
 - v) The Applicant was caused distress and inconvenience by having to find alternative accommodation outside the Kingswell area;
 - vi) The Respondent did not take steps to market the Property for sale during the period of the Notice to Leave;
 - vii) The Respondent did not market the Property for sale following the Applicant vacating the Property;
 - viii) The Respondent marketed the Property for rent shortly after the Applicant vacated the Property;
 - ix) The Property is currently let by the Respondent to a third party.

Decision

7. The Tribunal had regard to Section 58 (3) of the Act which states: *“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.”* The Tribunal took the view that the only reason the Applicant sought and obtained alternative accommodation was because the Respondent issued the Notice to Leave. The Tribunal took the view that, on the balance of probabilities and on the evidence before it, the Respondent did not intend to sell the Property but intended to re-let it at a higher rent, and, did so when the Property became free of the Applicant. Accordingly, the Tribunal intended to make a wrongful termination order.
8. The Tribunal had regard to Section 59(1) of the Act which states that a wrongful termination order *“means an order requiring the person who was the landlord under the tenancy immediately before it ended to pay the person who made the application for the wrongful-termination order an amount not exceeding six months’ rent”*. The Applicant sought the full amount of six months’ rent in the Application. The Respondent made no comment on the sum sought in her written submissions, which were lengthy and had regard to the fact that she made no significant attempt to market the Property for sale during or after the period of the Notice to Leave. The Tribunal had regard to the distressing effect of the Notice to Leave on the Applicant and her daughter. The Tribunal took the view that , in all the circumstances, and in

absence of any evidence to the contrary, that it was reasonable and appropriate to make the order for the sum requested by the Applicant.

9. The Tribunal then had regard to Rule 17(4) of the Rules which states that the Tribunal “may do anything at a case management discussionincluding making a decision” and so proceeded to make an order for payment in the sum of £4,800.00.

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.

Karen Moore

Legal Member/Chair

____1 September 2022
Date