



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/20/0408

Re: Property at 86 Inchview Crescent, Wallyford, Edinburgh, EH21 8LS (“the Property”)

Parties:

Mr Alexander Hyslop, 4/2 Saughtonhall Avenue West, Edinburgh, EH12 5JT (“the Applicant”)

Mr Mohammed Waseem Khan-Raja, Ms Nicola Khan, 86 Inchview Crescent, Wallyford, Edinburgh, EH21 8LS (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision

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

Background:

1. The application was made on 6 February 2020. The application asked for eviction of the Respondent on the basis of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).
2. Attached to the application were:
 - a) the Private Rented Tenancy Agreement for the property commencing 1 June 2019
 - b) Copy Notice to Leave dated 7 October 2019 with the date on which proceedings could first be raised stated as 4 January 2020 and execution of service by Sheriff Officers dated 9 October 2020,
 - c) Copy S 11 Notice,
 - d) Letter to Applicant by Beveridge & Kellas Estate Agents confirming instructions of Applicant to deal with the legal aspects of the sale of the property.

3. A Case Management Discussion (CMD) was originally scheduled for 1 April 2020 and both parties advised of the date, time and venue. Due to the lockdown provisions under Covid - 19 restrictions this had to be postponed. A new date of 17 July 2020 was intimated to the parties on 15 June 2020. The intimation to the Respondents was done by recorded delivery post in terms of Rules 6 (1) (a) (ii) and 17 (2) of the Procedural Rules. In terms of Rule 17 (1) (a) of the Procedural Rules a CMD may be held by conference call.
4. The Tribunal thus considers that the appropriate notice period has been given to the Respondent. The Tribunal was satisfied that he had been appropriately notified of the application and the CMD.
5. No representations were received from the Respondent. The Respondent had not contacted the Tribunal prior to the CMD.
6. The title deeds show Mr Alexander Hyslop as the registered owner of the property.

The Case Management Discussion

1. The CMD was held by telephone conference call in terms of Rule. The Respondents both participated. Ms Morrison of T C Young Solicitors participated as legal representative of the Applicant. The Applicant did not participate. The Respondents advised that there was no opposition to the application and that the Applicant had made them aware of the intention to sell the property prior to giving them Notice to Leave. Ms Morrison advised that the Respondents had occupied the property under a Short Assured Tenancy prior to the new tenancy agreement being entered into in June 2019. Because of this the notice period of 84 days had been given in terms of S 54 of the 2016 Act. The letter of engagement is the evidence of the intention to sell.
2. The decision is made on the basis of the information provided at the CMD, the written representations and the documents lodged in evidence, which are referred to for their terms and held to be incorporated herein.

Findings in Fact:

1. **The parties entered into a Private Residential Tenancy for the property with a start date of 1 June 2019 (clause 5).**
2. **The Respondents had occupied the property previously under a Short Assured Tenancy since 2011.**
3. **Prior to serving a Notice to Leave the Applicant had advised the Respondents of his intention to sell the property.**
4. **Notice to Leave was sent on the Respondents by service by Sheriff Officers on 9 October 2019.**
5. **In terms of S 64 (5) of the Act is held to have been received on 11 October 2019. It states as the relevant date in part 4 4th January 2020.**
6. **It advised the Respondent of the ground for the Notice to Leave and of the reasons why the ground is established namely that the Applicant intends to sell the property.**
7. **The Applicant is the owner of the heritable proprietor of the property.**

8. The Applicant is entitled to and intends to sell the property and has given instructions according to the letter of engagement of 3 February 2020.

Reasons for the Decision:

1. Relevant legislation:

a) In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

b) However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

c) S 51 of the Act states:

Eviction order

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

d) 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.

e) Ground 1 in Schedule 3 of the Act states

Landlord intends to sell

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

(2)The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord—

(a)is entitled to sell the let property, and

(b)intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it.

(3)Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

(a)a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b)a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

2. Reasons:

a) The Respondent did not make any written representations and did not attend the CMD. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

b) The Notice to Leave complies with the statutory requirements and gave the required 84 day notice period. There was no valid defence to the action. It is not disputed that the Respondents had been advised of the intention of the Applicant to sell the property even before Notice to Leave was given. The Applicant has engaged te firm of Beveridge & Kellas SSC to deal with the sale of the property and a letter of engagement was lodged. Title information ordered by the Tribunal show the Applicant as the heritable proprietor of the property. The Tribunal could consider the case on its merits and make a decision at the

CMD as the matter was not opposed, the evidence was sufficient and no hearing was necessary. No defence was lodged to the application. The Tribunal on the basis of the tenancy agreement, title deed records and the letter of engagement lodged with the application accepted that the Applicant was entitled to sell the property and has already started that process. A letter of engagement as suggested as evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) (b) of paragraph 1 of schedule 3 of the 2016 Act has been lodged.

- c) The changes to the Act introduced by Schedule 1 paragraphs 3 and 4 of the Coronavirus (Scotland) Act 2020 do not apply to this case as the notice issued in this case was issued before the Coronavirus (Scotland) Act 2020 came into force on 7 April 2020.
- d) The Tribunal thus considered that in terms of Ground 1 of Schedule 3 of the Act the Tribunal must find that the ground applies and thus in terms of S 51(1) must issue an order for eviction.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 1 of Schedule 3 of the Act

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.

**Petra Hennig McFatridge
Legal Member/Chair**

**17 July 2020
Date**