



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

Chamber Ref: FTS/HPC/EV/20/0891

Re: Property at 12 Mayfield Boulevard, East Kilbride, G75 9QD (“the Property”)

Parties:

Mr Faisal Mahmood, 3 Canford Close, Enfield, EN2 8QN (“the Applicant”)

Mr Zaighum Ahmad, Mr Ali Zafar, Ms Madiha Saher, 12 Mayfield Boulevard, East Kilbride, G75 9QD; 12 Mayfield Boulevard, East Kilbride, G75 9QD; 12 Mayfield Boulevard, East Kilbride, G75 9QD (“the Respondents”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondents Ali Zafar and Madiha Saher)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Eviction Order in terms of Ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 should be made against the Respondents.

Background

This is an application for an eviction order first lodged with the Tribunal on 12 March 2020. The Application was accepted by the Tribunal on 15 April 2020 and a case management discussion was fixed for 7 August 2020.

The application called for a case management discussion along with a related application (HPC/CV/20/0895). The case management discussion was held by remote teleconference. The teleconference was attended on behalf of the Applicant by Miss Caldwell from TC Young solicitors and Mr Coyle, solicitor of Austin Lafferty Solicitors for the Respondent Zaighum Ahmad. There was no appearance by the two remaining Respondents Ali Zafar and Madiha Saher, nor were they represented. The Tribunal had sight of executions of service of all the papers relating to the application which had been served by sheriff officers on July 6th 2020, by leaving the papers in the hands of the Respondent Madiha Saher. Miss Caldwell for the Applicant moved the

Tribunal to proceed in the absence of the respondents Ali Zafar and Madiha Saher. The Tribunal was prepared to proceed in their absence given that all of the papers had been properly served on the Respondents and given that the tribunal rules of procedure allowed for this.

The Tribunal had sight of the application, a paper apart, the private residential tenancy agreement, a Notice to Leave, recorded delivery receipts, track and trace receipts, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, an email to the local authority together with two emails from the Applicant dated 2 August 2019. The Tribunal also had sight of an email received from Mr Coyle on behalf of the Respondent Zaighum Ahmad which had called for the Applicant to submit further evidence to support the ground for eviction.

Mr Coyle moved that the application be continued to allow his client the Respondent Mr Ahmad to find alternative accommodation. He advised that whilst the Respondent had been looking for alternative accommodation he had not yet been successful in that search. His 16-year-old daughter lived at the property and suffered from severe allergies and was struggling in the current pandemic situation and there were concerns for her. Miss Caldwell opposed the motion for a continuation indicating that the Notice to Leave had been served by the landlord as far back as November 2019, and she indicated that this would have been sufficient time for the Respondents to seek alternative accommodation.

It became clear in the course of this discussion that on behalf of the Applicant Miss Caldwell had lodged an affidavit from him in support of the eviction ground. She indicated this had been lodged with the Tribunal on 5 August 2020. At that time neither the Tribunal nor Mr Coyle the solicitor for Mr Ahmad had had sight of the affidavit. The Tribunal was adjourned around 10:30 am in order to ensure that both the Tribunal and Mr Coyle had sight of the affidavit. At 1045am the Tribunal reconvened having had sight of the affidavit in support of the eviction ground. Mr Coyle on behalf of Mr Ahmad had also had sight of the affidavit at that stage.

The Tribunal was not prepared to continue the matter to allow the Respondent Mr Ahmad and his family to find new accommodation. Although the affidavit in support of the eviction ground had been lodged at a relatively late stage, the papers before the Tribunal revealed that the Respondents, the three tenants named in the tenancy agreement, had had notification of the landlord's intention to return to the property as far back as 14 November 2019 in terms of the Notice to Leave and an email from the landlord dated 2 August 2019 sent with the Notice to Leave, which stated that intention. There was no dispute regarding the timing of receipt of the Notice to Leave and associated papers. Even allowing for the Covid 19 pandemic situation the Respondents appeared to have had some months to find accommodation since mid November 2019 when they first became aware of the landlord's intention to move back into the let property. The motion to continue the application was therefore refused.

The Tribunal then considered the merits of the application for an eviction order. Miss Caldwell sought the order on the basis that sufficient evidence to constitute an eviction ground, that is Ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 had been lodged, in that she had recently lodged an affidavit from the

Applicant stating his intention to return to reside at the let property and to live there as his principal home for at least three months. This affidavit was sworn on 4 August 2020. Miss Caldwell also pointed to the evidence of emails which had been lodged both dated 2 August 2019, which appeared to be addressed by the Applicant to letting agents and requested that tenants be given notice to leave the let property as the Applicant was intending to relocate to the UK from Qatar in order to move back into the property. Mr Coyle's position on the affidavit was that it was a matter for the Tribunal to be satisfied that sufficient evidence to support the eviction ground had been presented or not.

There was discussion of the Notice to Leave which had been served on the Respondents in this application. The Tribunal had initially raised the possibility that there may be an error in the date on which the Notice to Leave indicated the earliest date on which an application for an eviction order could be made to the Tribunal. After discussion it appeared that there was no error and the correct date had been entered. This was not disputed by Mr Coyle on behalf of Mr Ahmad.

Having considered matters the Tribunal was of the view that it could consider the eviction order given that a properly constituted Notice to Leave had been appropriately served on the Respondents and the correct notice period had been given in terms of section 54 of the 2016 Act. In addition the Tribunal had sight of a notice to the local authority in terms of section 11 of the 2003 Act, together with proof that this notice had been sent to the local authority.

The Tribunal was satisfied that it had sufficient information to allow an eviction order to be made and that the procedure had been fair. The Tribunal considered that the Respondents Ali Zafar and Madiha Saher had not seen the affidavit from the Applicant which had been intimated just two days before the Case Management Discussion. However the Tribunal was of the view that an eviction order could be considered in spite of this as they had chosen for whatever reason not to attend the teleconference and had known of the Landlord's intentions as regards the let property since November 2019.

Findings in Fact

1. The Applicant entered into a private residential tenancy with the Respondents at the property with effect from 16 November 2018.
2. On 12 November 2019 the Applicant served by recorded delivery post a Notice to Leave and email on all three Respondents, indicating that it was his intention to return to the property and that he was terminating the tenancy for this reason.
3. The Notice to Leave was received by the Respondents by 14 November 2019.
4. The Notice to Leave was served on the Respondents in accordance with the agreed communication method set out in the tenancy agreement and is properly constituted in terms of sections 54 and 62 of the Private Housing (Tenancies) (Scotland) Act 2016.
5. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 in relation to all of the Respondents was served on the local authority in relation to the Notice to Leave.
6. On 2 August 2019 the Applicant had emailed his letting agent indicating that he was moving back into the let property as he was moving back to the United Kingdom from

Qatar for personal reasons. This e mail was sent to the Respondents along with the Notice to Leave.

7. On 4 August 2020 the Applicant signed an affidavit in Qatar confirming that he intended to occupy the let property as his principal home for a period of at least 3 months and as a result he required to bring the tenancy to an end.

Reasons for Decision

The Tribunal was satisfied that the Notice to Leave served on the Respondents was properly constituted and served in terms of the 2016 Act and the appropriate notice had been served on the local authority in terms of section 11 of the Homelessness (Scotland) Act 2000. In addition although the affidavit from the Applicant had only come to the Tribunal's attention after the start of the case management discussion the Tribunal was prepared to accept this as evidence tending to show that the landlord has the intention to occupy the let property as his only or principal home for at least 3 months, in accordance with Ground 4(4) of Schedule 3 of the 2016 Act. Having accepted that affidavit as sufficient evidence of that intention and all material requirements of the Act having been satisfied the Tribunal was required to grant an eviction order as Ground 4 is a mandatory eviction ground.

Decision

The Tribunal granted an eviction order against the Respondents in terms of Ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 having been satisfied that the landlord has the intention to occupy the let property as his only or principal home for at least 3 months.

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.

Valerie Bremner

7th August 2020

Legal Member/Chair

Date

