



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/1034

Re: Property at 12 Dalswinton Village, Dumfries, DG2 0XU (“the Property”)

Parties:

Landale & Co, Dalswinton Estate Office, Dalswinton, Dumfries, DG2 0XZ (“the Applicant”)

Mr Kevin Platt, 12 Dalswinton Village, Dumfries, DG2 0XU (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be made in terms of Ground 6 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Applicant intends to use the property for a purpose other than for providing a person with a home and it is reasonable on account of that fact to issue an eviction order.

The Tribunal decision was unanimous.

Background

1. This application for an eviction order in terms of rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 8th April 2022 and accepted by the Tribunal on 1st June 2022. A case management discussion was fixed for 19th August 2022 at 2pm.

2. The Applicant did not attend that case management discussion and were represented by Ms Davies, Lettings Manager of Savills UK Ltd who represent the Applicants in this matter. There was no appearance by or on behalf of the Respondent and the Tribunal members noted that the Application and papers had been served on

the Respondent by Sheriff Officers putting these through the letterbox at the property on 21st July 2022. The Tribunal was satisfied that proper service of the application and papers had taken place and that the Respondent had been given fair notice of the date of the case management discussion and that it was appropriate to proceed in his absence.

3.The Tribunal members as sight of the application, letters regarding ownership and the right to lease the property, a Notice to Leave, an execution of service of the Notice to Leave, a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, and an email intimating this to Dumfries and Galloway Council.

4.The Tribunal also had sight of an application for planning permission, a grant of planning permission (change of use), Notices of initiation and Completion of Development, documentation in relation to Council Tax banding, and a letter from Savills UK Ltd setting out the history and nature of the property.

5.The property is part of a land holding known as Dalswinton Estate and is one of a number of residential properties there. The estate is owned by Charles Landale and there is a tenancy agreement between him and the Applicants who are a partnership between Peter and Sarah Landale, and this agreement gives them the right to sublet the residential properties on the estate. As such this partnership is the landlord in terms of a tenancy agreement at the property with the Respondent Kevin Platt.

6.The parties entered into a private residential tenancy at the property with effect from 1st May 2019.

7.The property and what is referred to as the store, which is part of the leased property, have always been connected to each other internally. Up to 2006 this was operated as a residential property with a village shop and post office. The post office closed in 2006. At the time the residential part of the property, a house, was on the Council Tax roll and the shop was assessed on non-domestic rates. There was then a change of use from commercial to residential to integrate the whole property into one entity and the property was then assessed for Council Tax as one entity and removed from non-domestic rates. These changes were made in November 2006.

8.The internal layout of the property is such that the store has internal access directly from the house part of the property and up to now has always shared all the services such as electricity, water, and heating, some of which are in the part which is a house and some in what is intended to become office accommodation.

9.Planning permission was applied for and granted in March 2022 to convert the store part of the property, part of the let property in terms of the tenancy agreement to additional required office accommodation. As the services are interlinked and the whole building is currently let out under the tenancy, Ms Davies indicated in her written representations to the Tribunal that the tenancy requires to be brought to an end to allow for the alteration and conversion of part of the let property into offices.

10.The Respondent is known to live alone at the rented property. It is known that he has some health issues but is able to work in a self-employed capacity. Ms Davies spoke to him when the Tribunal application stage had been reached and her position

was that he appeared accepting of the facts regarding what was intended for part of the property and was trying to find other accommodation.

11.The Tribunal legal member raised an issue with the Notice to Leave which had been personally served by Sheriff Officers by placing this through the letterbox at the property on 28th September 2021. The date in Part 4 of the notice appeared to be incorrect in that it gave a date of 31st March 2022 as the first date that an application could be made to the Tribunal. Given that service by Sheriff Officers of the Notice to Leave was effected on 28th September 2022, the 6-month notice period ran until 28th March 2022 and the next day is the first date when the application could have been made i.e., 29th March 2022. The date in Part 4 gave two extra days ie 31st March 2022 and in fact gave a longer period than should have been the case. No application had been made during the notice period. Ms Davies requested that the Tribunal treat this as a minor error which did not affect the validity of the Notice to Leave in terms of Section 73 of the 2016 Act.

12.The Tribunal considered that it had sufficient information upon which to make a decision and the proceedings had been fair.

Findings in Fact

13.The owner of Dalswinton estate has entered into a tenancy agreement with the Applicants which allows them to sublet residential properties on the estate as landlords of these properties.

14.The Applicants entered into a private residential tenancy with the Respondent for the residential property forming 12 Dalswinton Village which is on the Dalswinton estate with effect from 1st May 2019.

15.The property was operated previously as a residential property with a shop and post office.

16.In 2007 change of use was granted to allow the entire property to become a residential property and it is this entire property which is rented out to the Respondent in terms of the tenancy agreement, and this includes a domestic store area.

17.The domestic store area at the property has internal access from the house part of the property and shares all services electricity, water, and heating with the rest of the leased property.

18.In March 2022 planning permission was granted by Dumfries and Galloway Council to change the use of the domestic store which forms part of the leased property to office accommodation.

19.As the building is currently let as one property the Landlords require to terminate the tenancy to convert part of the premises into offices and separate the buildings and services.

20.The landlord intends to use part of the current leased property for a purpose other than providing a home for a person, i.e., required office accommodation.

21.The Applicants served a Notice to leave on the Respondent giving appropriate notice on 28th September 2021.

22.There was a minor error in that Notice which does not affect the validity of the notice in terms of section 73 of the Private Housing (Tenancies) (Scotland) Act 2016.

23.A notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was intimated to Dumfries and Galloway Council in respect of this application.

Reasons for Decision

24.In this application it is intended to use part of the leased property for offices and change of use has been granted for this purpose in terms of planning regulations. The entire property is currently let out so in order to convert part of it to offices the Tribunal accepted that the tenancy requires to be terminated and alterations carried out to split the services which are currently shared across the parts of the property. It was clear on the information provided to the Tribunal that part of the let property is to be used for a non-residential purpose and the Tribunal found that the eviction ground was made out and it appeared necessary to grant an eviction order to achieve this purpose.

25.The tribunal considered the papers lodged along with the application and it appeared that appropriate notice had been given and the documents were in proper form. There did appear to be an error in the date in part 4 of the Notice to Leave but since days beyond the date required by section 62 of the Act had been given and no application had been made during the notice period then the error could be regarded as one which did not affect the validity of the notice in line with the decision in *Holleran v McAlister FTS/HPC//EV/18/2321*.

26.The Respondent had not entered appearance in the application and the Tribunal found that the eviction ground was made out and it was reasonable to grant the order in the circumstances before it. The Tribunal followed the approach set out in ***Glasgow Council v Erhaiganoma 1992 SCLR 592***, which stated that once a statutory ground is established and a case for reasonableness is made out it is for the Respondent to put matters before the court or Tribunal to show why an order should not be granted. In this application the Tribunal accepted that the Applicants require to use part of the leased property for offices and there appeared to be no other way to achieve this than to terminate the tenancy in order to carry out the required alterations and to separate the buildings and services. It is therefore reasonable to grant the order requested.

Decision

27.The Tribunal granted an eviction order in terms of Ground 6 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Applicant intends to use

the property for a purpose other than for providing a person with a home and it is reasonable on account of that fact to issue an eviction 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.

Valerie Bremner

Legal Member/Chair

19.8.22
Date