

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/20/1891

Re: 62A Union Street, Greenock, PA16 8BL ("the Property")

Parties:

Mrs Patricia Campbell residing at 5A Margaret Street, Greenock, PA16 8AS ("the Applicant")

Kenneth Caldwell, Patten & Prentice, Solicitors, 2 Ardgowan Square, Greenock, PA16 8PP ('The Applicant's Representative')

Ms Monica Burleigh, 62A Union Street, Greenock, PA16 8BL ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Member: Jacqui Taylor (Legal Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the order for possession of the Property be granted.

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application (FTS/HPC/EV/20/1891) was dated 7th September 2020. The application states that the ground for eviction was as follows:

Ground 1: The Landlord intends to sell the Property.

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 18th November 2017. The commencement date of the tenancy was 11th December 2017.

- A letter from Blair and Bryden Solicitors to the Applicant's Solicitor dated 21st February 2020 advising that they have been instructed to act in connection with the conveyancing associated with the sale.
- Notice to Leave dated 6th March 2020 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 31st May 2020.
- Certificate of Service by Graeme Kirk, Sheriff Officer dated 6th March 2020 confirming that the Notice to Leave had been served on the Tenant on 6th March 2020.
- Section 11 Notice addressed to Inverclyde Homelessness Department.
- Affidavit by the Applicant dated 2nd October 2020.

2. Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 10.00 on 8th October 2020.

The Applicant did not attend the CMD but her representative Kenneth Caldwell, Solicitor, attended on her behalf.

The Respondent did not attend in the CMD. The Respondent had been served with notice of the CMD by Damian Cusick, Sheriff Officer on 11th September 2020.

No written responses had been received from the Respondent.

3. The Tribunal identified with the applicant's representative the following agreed facts:

3.1. The Respondent is Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy was 11th December 2017.

3.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

3.3. The Applicant is Landlord of the Property. The Tribunal had a copy of the Applicants' title deeds being Land Certificate REN24223. Section B of the Land Certificate confirmed that the Applicant purchased the Property on 3rd November 2017.

4. Oral Evidence

Kenneth Caldwell, the Applicant's solicitor advised the Tribunal that as far as he was aware the Respondent still resided in the Property.

The Applicant is mother of the Respondent. The Applicant cares for the Respondent's three children. The Applicant intends to sell the Property so that she can buy another property to house herself and the three children. The Respondent has an addiction problem. The Applicant had lodged with the Tribunal a signed affidavit dated 2nd October 2020 setting out the full circumstances. The Applicant has instructed Blair and Bryden to act for her in connection with the conveyancing required for the sale and she will instruct their estate agency department to market the property for sale when she gains possession. He has provided the Tribunal with the letter from Blair and Bryden dated 21st February 2020 which confirms this.

5. Requirements of Section 109 of the Procedure Rules.

(a) The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenant.
- (iv) the ground of eviction. The ground stated in the application is that the Applicant intends to sell the Property.

The Tribunal accepted that this is Ground 1 of Schedule 3 of the 2016 Act.

(b) The Tribunal confirmed that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

(i) evidence showing that the eviction ground or grounds had been met.

The copy letter from Blair and Bryden dated 21st February 2020 and the Affidavit by the Applicant dated 2nd October 2020 was evidence that the Applicant had started the sale process and that she needed to sell the Property.

(ii) a copy of the notice to leave given given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 6th March 2019 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 31st May 2020.

The Tenancy commenced on 11th December 2017. As at 6th March 2020 (the date of the Notice to Leave) the Tenant had resided in the Property for more than six months and the application for eviction was based on the fault ground 1 of Schedule 3 of the 2016 Act and therefore 84 days notice was required. The Landlord served the Notice to Leave on the Tenant by Sheriff Officer on 6th March 2020.

In terms of section 54(2) of the 2016 Act the Notice begins on the day the Tenant received the Notice and expires on the day falling 84 days after it begins. The date it expired was 29th May 2020. The Notice to Leave correctly gave the Tenants a minimum of the required 84 days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords' representatives as required by Section 109(c) of the Procedure Rules.

6. Decision

6.1 The Tribunal found that the Applicant had met the requirements of Ground 1 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 for the following reasons:

6.1.1 The Tribunal had a copy of the Landlord's title REN24223 and established that the Applicant was heritable proprietor of the Property and she is entitled to sell the Property.

6.1.2 Evidence had been provided that the Applicant intended to sell the Property. The Tribunal accepted the evidence contained in the Applicant's affidavit dated 2nd October 2020 which explained that she needed to sell the Property due to the fact that she is caring for the Respondent's three children and she needs to buy a property for the four of them to live in together. The Tribunal also accepted that the letter from Blair and Bryden dated 21st February 2020 was sufficient evidence that she had instructed them to act for her in connection with the conveyancing, that she had started the sale process and that she intends to place the property on the market when she regains possession.

6.2 Coronavirus Act 2020

The Tribunal acknowledged that the Coronavirus Act came into force on 7th April 2020 and the Two Notices to Leave had been served on the Tenant on 6th March 2020 being a date before 7th April 2020 and therefore the provisions of the Coronavirus Act do not apply to these applications.

Consequently the Tribunal determined that the order for possession of the Property be granted as Ground 1 of Schedule 3 of the 2016 Act had been met.

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.

Jacqueline Taylor



8th October 2020

Legal Member