



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/21/2222

Re: Property at 9 Springburn Place, Elgin, IV30 6EY (“the Property”)

Parties:

Allied Western Consultants LTD., 3 Donaldson Crescent, Kirkintilloch, Glasgow, G66 3XF (“the Applicant”)

Mrs Evelyn Fordyce, Mr Harry Fordyce, 9 Springburn Place, Elgin, IV30 6EY (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondents from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”)

Background

1. By application dated 10 September 2021 the Applicant’s representatives, Cluny Estate Agents, Elgin, applied to the Tribunal for an order for eviction of the Respondents from the property under Ground 1 of schedule 3 of the 2016 Act. The Applicant’s representatives submitted a copy of the Notice to Leave and Section 11 Notice along with the application and subsequently submitted a copy of the tenancy agreement and confirmation from the Applicant’s representatives that they were instructed in the sale of the property.
2. By notice of Acceptance dated 15 November 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned. Intimation of the CMD was

sent to the Applicant's representatives by post and was served on the Respondents by Sheriff Officers.

3. The Applicant submitted written representations to the Tribunal by email dated 14 December 2021.
4. The Applicant's representatives submitted further written representations by email dated 22 December 2021.
5. The Respondents submitted written representations by email dated 3 January 2022.

The Case Management Discussion

6. A CMD was held by teleconference on 20 January 2022. The Applicant was represented by one of its directors, Mr Graeme Miller and Mr Charles Beck from the Applicant's representatives. The Respondents attended in person.
7. Mr Fordyce confirmed that the parties had entered into a Private Residential tenancy that had commenced on 1 December 2020. Mrs Fordyce explained that prior to that the Respondents had occupied the property under a Short Assured Tenancy agreement since 2 July 2014.
8. In response to a query from the Tribunal, Mr Miller explained that a new tenancy had been necessary as he had previously owned the property personally but title had been transferred into the name of the Applicant and therefore a new tenancy agreement was appropriate.
9. Mr Fordyce confirmed that he and his wife had received the Notice to Leave by recorded delivery post in March 2021. He did not take any issue with the terms of the Notice as he did not feel qualified to do so.
10. Mr Beck confirmed that a Section 11 Notice had been sent by email to Moray Council on 10 September 2021. He also confirmed that his firm had been instructed by the Applicant in the sale of the property.
11. Mr Fordyce explained that he had tried to find alternative accommodation in the area since being served with the Notice to Leave but without success. He said he had contacted 12 local land agents as well as Moray Estates and had been told that there were as many as 150 people on waiting lists for properties. He explained that he had contacted the Local Authority but had been advised that they would not provide assistance unless and until the Tribunal granted an order for eviction and then it would depend on the Respondents' circumstances as to the type of accommodation that might be offered. Mr Fordyce spoke of one property that they had been shown by Mr Beck shortly before they had been going on holiday. He explained they had told Mr Beck they would be away for two weeks and by the time they completed an application form the Landlord had rented the property himself to someone else. Mr Fordyce went on to say that having a dog was proving to be a major issue as was being the only driver

in the household as his wife and daughter could not drive for medical reasons. This restricted the location and type of properties that were suitable. He said that because of the high demand for properties the rent for those with gardens were becoming too high and many landlords did not want to rent flats to tenants with dogs. Mr Fordyce advised the Tribunal that he was in employment and aged 63 but was not in a position to purchase the property.

12. Mr Miller advised the Tribunal that he was a Director of the Applicant but not a shareholder but had a director's loan due by the company. He required payment of the loan to use to pay a debt to HMRC owed by another company in which he was a director and shareholder. He explained that he had tried other avenues to raise funds to clear the debt including seeking bank loans without success and the only remaining option was for the property to be sold.
13. He said that the Covid pandemic had impacted on his business for the past two years and it had proved impossible to persuade the bank to lend £50000. He explained that the debt to HMRC had been outstanding for over a year and that penalties and interest were being applied. Although no steps had yet been taken by HMRC and he had been in discussions with them he thought they would not wait for ever and further action was likely in the next 3-6 months.
14. Mr Beck indicated that it might take about 3-4 months from commencing marketing the property to completion of a sale.
15. Mr Miller advised the Tribunal that he wished to make it clear that he had kept the Respondents aware of properties that were available but they had not followed them up.
16. Mr Fordyce advised the Tribunal that he was now looking for a property on a daily basis although he was concerned that suitable properties were falling outwith the range of being affordable.
17. Mr Beck referred the Tribunal to the property that he had earmarked for the Respondents prior to them going on holiday in September and to the fact that they had not returned the forms. Mrs Fordyce explained that they had not been told before going on holiday that the forms had to be returned immediately and Mr Fordyce said it had been his understanding that the Landlord himself had found a tenant for the property.
18. Mr Beck went on to say that his firm had two properties that would be coming on the market in the next few days at a rent of about £600.00 per month that he thought would be suitable for the Respondents and undertook to discuss these with the Respondents after the CMD ended.

Findings in Fact

19. The parties entered into a Private Residential tenancy Agreement that commenced on 1 December 2020.
20. The Respondents have lived in the property since 2 July 2014 in terms of a Short Assured Tenancy.
21. The Applicant intends to sell the property.
22. A valid Notice to Leave was served by Recorded Delivery post on the Respondents on 6 March 2021.
23. A Section 11 notice was sent to Moray Council by email on 10 September 2021.
24. Mr Graeme Miller, a director of the Applicant is also a director and shareholder of McGregor McLeod Ltd. That company has a substantial debt owed to HMRC that it is unable to pay without the funds to be obtained from the sale of the property.
25. Properties in the area that meet the needs and resources of the Respondents and their adult daughter are in short supply.

Reasons for Decision

26. The Tribunal was satisfied from the written and oral submissions that although the Respondents had previously been party to the terms of a Short Assured Tenancy that commenced in July 2014, they entered into a new Private Residential Tenancy agreement in December 2020 following a change in ownership of the property from Mr Graeme Miller to the Applicant.
27. The Tribunal was also satisfied that the Notice to Leave was properly served on the Respondents by recorded delivery post and was in the correct form and complied with all the statutory requirements.
28. The Tribunal was satisfied that proper intimation of the proceedings had been given to Moray Council by way of a Section 11 Notice.
29. The Tribunal was satisfied that it was the Applicant's intention to sell the property once it gained vacant possession of the property given that there was a Sale Agreement in place between the Applicant and Cluny Estate Agents.
30. Were it not for the provisions of the Coronavirus (Scotland) Act 2020 the terms of Ground 1 of Schedule 3 of the 2016 Act would have been met without further consideration. However, the Tribunal also had to consider whether in the circumstances it was reasonable to grant the order sought. In so doing the Tribunal had to balance the needs of both parties. It accepted that there was a close connection between the Applicant, its director Mr Graeme Miller and his other company and that in order to pay off that company's debt to HMRC it was necessary to release funds from the Applicant and the only way to do that was through the sale of the property.

31. On the other hand, the property has been the Respondents' home for some seven years and similar properties in the area at an affordable rent are in short supply. Furthermore, although the Respondents did not provide any medical certificate to support their claims regarding Mrs Fordyce's health these were not challenged and might further restrict the type of property that might be considered suitable. The Tribunal was unable to say with any degree of certainty that the Respondents failed to give looking for a new property the priority it deserved but it did appear that the Respondents were now actively trying to find another home. The Tribunal also took account of the fact that the Local Authority had indicated to the Respondents that they would only provide assistance once an order for eviction had been granted as at that point it does have a statutory duty to provide accommodation.
32. On balance and taking the needs and resources of both parties into account the Tribunal was satisfied that the order for eviction should be granted. However, it was of the view that it would be appropriate to delay implementation of the order for a period of about one month beyond the usual 30-day appeal period to give the Respondents some additional time to find a suitable property. Of course, it may be that the properties identified by Mr Beck as being suitable will meet with the Respondents' approval in which case the order will not be required.

Decision

33. Having carefully considered the written and oral submissions the Tribunal finds the Applicant entitled to an order for the eviction of the Respondents from the property under Ground 1 of Schedule 3 of the 2016 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.

G. H

Graham Harding
Legal Member/Chair

20 January 2022
Date

