



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/21/2580

Re: Property at 36 Wallace Street, Galston, Ayrshire, KA4 8HR (“the Property”)

Parties:

Miss Niamh White, High Burnhouse, Galston, Ayrshire, KA4 8LJ (“the Applicant”)

Mr Raymond Stewart, 36 Wallace Street, Galston, Ayrshire, KA4 8HR (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application

Introduction

1. This is an application under rule 109 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application seeks an Eviction Order.
2. A Case Management Discussion (CMD) took place by teleconference on 10 March 2022 at 10.00 am. The respondent did not participate personally in that CMD. His interests were represented by his daughter, Miss Janet White. She advised the Tribunal of a number health conditions and disabilities which the

respondent has and further advised that he was awaiting the completion of an adapted house being made available from North Ayrshire Council in respect of which there was a formal offer of a tenancy. In all of the circumstances, the Tribunal continued consideration of the application to an evidential hearing and issued a Direction requiring the production of additional documental evidence from both parties.

3. The evidential hearing took place by teleconference on 18 May 2022 at 10.00 am. The applicant joined personally and represented her own interests. She was accompanied by Mr Alastair Dale for support. Ms Janet White, the respondent's daughter, joined the call timeously. She advised that she had received a message from her mobile network company that she was liable to be cut off due to work being undertaken in her local area. She advised that the same issue had arisen the day before. Before the tribunal could formally commence, she was, in fact, cut off. The Tribunal delayed matters until 11.00 am to afford her the fair opportunity of making alternate arrangements to call into the teleconference.
4. The Tribunal reviewed matters at 11.00 am. The respondent and his daughter, who is his representative, both remained absent. The applicant was keen to proceed. The Tribunal had reservations about doing so in the absence of the respondent and his representative but concluded that none of the material facts were in dispute. In the circumstances, the Tribunal made some further enquiries with the applicant for clarification. Oral evidence was taken from the applicant and she was also offered the opportunity to make oral submissions. The Tribunal reserved its decision.

Findings and Reasons

5. The property is 36 Wallace Street, Galston, Ayrshire KA4 8LJ.
6. The applicant is Miss Niamh White who is the heritable proprietor of the property and the landlord. The respondent is Mr Raymond Stewart who is the tenant.
7. The parties entered into a private residential tenancy in respect of the property which commenced on 11 June 2021. The rent was stipulated at £525 per month.
8. The originating written application for eviction submitted to the Tribunal refers to two separate grounds – both grounds 3 and 4, contained within Part 1, Schedule 3 to the 2016 Act. Ground 3 is that the landlord intends to refurbish the let property and ground 4 is that the landlord intends to live in the let

property. The Notice to Leave served upon the respondent only refers to ground 4. No notice was given to the respondent of a wish to evict on the basis of proposed refurbishment. Following clarification with the applicant, at the administrative stage of this legal process, she confirmed that there was to be no insistence upon ground 3 and an amended written application was submitted.

9. Ground 4 was originally drafted as a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020 all eviction grounds are discretionary. Additionally the notice periods have been extended by virtue of the 2020 Act.
10. The relevant notice period under ground 4 was previously one of 84 days and is now one of 3 months.
11. The Notice to Leave relied upon in the eviction application was not prepared in accordance with the provisions of Section 62 of the Act. This requires an additional two days to be added on for deemed service of the notice and an additional one day at the end. The date specified in the Notice to Leave, being the earliest day of the relevant proceedings being initiated to the Tribunal, should therefore be calculated at a total of 3 months plus 3 days from the date of completion.
12. The Notice to Leave relied upon in this case is dated 16 July 2021 and stipulates that the earliest an application be submitted to the Tribunal would be 18 October 2021. The Notice, as drafted, was one day short.
13. The Tribunal is satisfied however that service of the Notice to Leave upon the respondent took place by personal service on 17 July 2021. The applicant submitted that she has video evidence of the service but the Tribunal deemed that it was disproportionate and unnecessary to consider that video evidence. A Direction was issued dated 28 January 2022 which required the applicant to specify the date, time and location, of the personal service. The respondent was afforded a period of 7 days from receiving notice of those details to confirm whether or not he accepted that the mechanism of service had taken place as described by the applicant. She clarified that the personal service took place on 17 July 2021 at 16.20 hours at the let property. The respondent has not challenged this and the Tribunal finds that personal service of the Notice to Leave was effected then.
14. On the basis that personal service took place on 17 July 2021, the relevant notice given to the respondent in the Notice to Leave was not in fact short. The assumption regarding the deemed 2 days for service under Section 62 of the Act is rebuttable in accordance with the decision of Sheriff Fleming in the Upper

Tribunal – [2021] UT20 UTS/AP/20/0029. The Tribunal accepted that the Notice was received by the respondent on 17 July 2021. The 3 month notice period commenced then and therefore expired on 17 October 2021. The additional one day required under Section 62 of the Act means that the Notice required to specify 18 October 2021 as the earliest day upon which relevant proceedings before the Tribunal could be commenced. This is the day which was specified. The Notice to Leave is valid and can be founded upon.

15. The Tribunal was satisfied that the applicant has the genuine intention to take up occupation of the property and to reside in it permanently as her principal home for at least 3 months. The Tribunal accordingly found that ground 4 was established.
16. The Tribunal proceeded to consider the issue of reasonableness of making an Eviction Order. The Tribunal weighed up all circumstances and the respective circumstances and needs of the parties.
17. The applicant is 24 years of age. She has no health difficulties. She is employed as a primary school teacher. She is currently residing with her parents. The let property was historically owned by the applicant's late grandmother. The applicant purchased the property in December 2020. It is the only property which she owns. The applicant has historical relationships with neighbours and it is a familiar environment for her with numerous happy memories.
18. The respondent has a number of disabilities and vulnerabilities. He is a double lower limb amputee, has prostate cancer, a kidney problem, a twisted spine, vascular dementia, has breathing problems as a consequence of stage 4 COPD and high blood pressure. Whilst there is no independent medical confirmation of these conditions the broad nature of respondent's extensive medical conditions were not disputed by the applicant.
19. The respondent has lived in the property for more than 5 years. He had a previous short assured tenancy agreement in place with the former owner of the property. The applicant purchased the property in December 2020. She was aware at that time that the respondent occupied the property was a sitting tenant with rights. She was aware that he had a number of health conditions and that he had previously given verbal notice to his then landlord, the former owner, in July 2019 that he would be moving out the following Spring of 2020. She was aware however that there was nothing legally obligating the respondent to vacate the property. The impact of the Covid-19 pandemic thereafter had a significant impact upon the respondent's ability to move home.
20. The applicant chose to enter into a private residential tenancy, in terms of the 2016 Act, with the respondent which commenced on 11 June 2021. She

received legal advice at that time and knew that all eviction grounds were by that time discretionary due to the introduction of the coronavirus regulations. Only after five weeks after entering into this tenancy agreement she served the Notice to Leave upon the respondent.

21. The applicant wishes to live in North Ayrshire to be closer to family members who can support him given his multiple health conditions. He has received a formal written offer of a tenancy, which will be an adapted home to meet his disabilities, at 28 Beach Drive, Harbourside, Irvine. He received the formal offer of this tenancy by way of correspondence dated 15 October 2021 from North Ayrshire Council. This is a legally binding offer. There have been understandable and typical delays in the completion of the development by the builders. It had been expected at the time that this formal offer was made in October 2021 that the completion date of the property would be early Spring 2022. In terms of more recent communications from North Ayrshire Council, a Housing Officer has confirmed, by email dated 20 April 2022, that it is expected that the respondent's new tenancy will become available on 17 July 2022. This is 2 months' time.
22. Even in the event of the Tribunal granting an Eviction Order, this could not be implemented for at least 30 days after the date of the Order being made.
23. The respondent is highly vulnerable. There is no doubt that he has the firm offer of another home and the delay in that becoming available has been, and is, entirely outwith his own control. The applicant stated that she is fed up waiting for the respondent to move and feels that if the completion date of 17 July 2022 is not fulfilled then the respondent should be evicted anyway to take up other accommodation.
24. The Tribunal finds that it would be grossly unfair and unreasonable to evict the respondent, who is highly vulnerable and who has complex care needs, from his current tenancy where he has lived for a number of years to seek to have him take up temporary occupation of an unidentified homeless property for a brief duration of time before he can enter his new adapted tenancy offered by North Ayrshire Council. By comparison there is little inconvenience to the applicant by waiting until the respondent's new home is available. She continues to live with her parents and her continued residence there is not in jeopardy. There is no suggestion that the respondent is defaulting on his rent payments or is in any other way in breach of the tenancy agreement.
25. The applicant has known throughout the entire duration of time that she has owned the property that all eviction grounds are discretionary and there has never been any guarantee that she could remove the respondent.

26. Weighing up all factors and the respective circumstances of the parties, the Tribunal concluded that it was not reasonable to grant the Eviction Order. The applicant is not entitled to the order sought and the application is dismissed.

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.



18 May 2022

Legal Member/Chair

Date