



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

Chamber Ref: FTS/HPC/EV/21/2895

Re: Property at Flat 7, 49 Ferniesyde Court, Larbert, FK2 8FW (“the Property”)

Parties:

Miss Karen Simpson, Apt C28, Punta Europa, Malabo, Equatorial Guinea (“the Applicant”)

Miss Michelle Dawson, Flat 7, 49 Ferniesyde Court, Larbert, FK2 8FW (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (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 should be granted against the Respondent in favour of the Applicant.

Background

1. The Applicant seeks an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a copy private residential tenancy agreement, Notice to Leave with copy email to the Respondent, reply email from the Respondent, rent statement, notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, Marketing proposal for the property prepared by Paul Rolfe, letter to the Applicant from Paul Rolfe dated 7 December 2021 confirming up to date valuation for the property, copy letter from Ralph Hendrie Legal dated 22 November 2021 confirming that they are instructed to act in the sale of the property, letter from the Applicant to Paul Rolfe dated 22 November 2021 stating that she wishes to put the property up

for sale at the earliest opportunity and instructing Paul Rolfe to market it on her behalf, an email from Falkirk Council confirming that the Applicant is a registered private landlord, letter from Ralph Hendrie Legal dated 12 October 2021 confirming that they had verified the identity of the Applicant when she became their client, copy fee note from Ralph Hendrie for the purchase of the property addressed to the Applicant, redacted copy disposition of the property by Cala Homes, title sheet from Registers of Scotland dated 6 October 2021 stating that the Applicant's application for registration is pending and email correspondence with the Respondent. A related application under Chamber reference CV/22/2896 ("the payment application") was also lodged.

2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 2 March 2022. Both parties were notified that a case management discussion ("CMD") would take place by telephone case conference on 19 April 2022 at 10am and they were required to participate. On 19 March 2022 the Respondent submitted a letter to the Tribunal. Although previously advised that the Tribunal would only consider submissions which were crossed over to the other party the Respondent stipulated that the letter was not to be passed on to the Applicant. In any event, most of the letter was not relevant to the applications which were being considered. Prior to the CMD the Applicant's representative advised the Tribunal that no rent had been paid for February and March 2022 and that the sum now being claimed was £3000. They also submitted an unredacted copy of the disposition in favour of the Applicant, a copy of an email from the Applicant dated 27 March 2022 requesting an up-to-date valuation of the property and a copy of the updated marketing proposal prepared by the selling agent.
3. The CMD took place on 19 April 2022 at 10am by telephone conference call. The Applicant was represented by Mrs McLaughlin and Mr Neary. The related payment application also called for a CMD. The Respondent did not participate and did not contact the Tribunal in advance of the CMD.

Case Management Discussion

4. Mrs McLaughlin advised the Tribunal that there has been no contact from the Respondent since December 2021. She has failed to respond to letters and emails. She has failed to provide access for the gas safety check and boiler service, both of which are overdue, and a right of entry application is currently being considered by the Tribunal.
5. Mrs McLaughlin referred the Tribunal to the documents lodged with the application and prior to the CMD. She stated that the Applicant intends to instruct the home report and market the property for sale as soon as she has vacant possession. Prior to doing this she intends to have the boiler serviced and a gas safety check carried out to ensure everything is in working order. She has instructed the same solicitor who acted for her in relation to the purchase. The updated marketing proposal was obtained in preparation for the property going on the market. Mr Neary stated that they usually aim to get a

property on the market within 7 to 10 days.

6. Mrs McLaughlin advised the Tribunal that she has spoken to the Applicant on many occasions. The property was purchased in January 2021 and intended to be a long-term investment. However, from the very start of the Respondent's tenancy there were problems. Although she moved into the property on 26 February, she said that she was not liable for the rent until 1 March. The Applicant agreed to waive the rent due for the first few days. There were then numerous complaints and demands about the curtains and curtain poles. Although the Applicant is very reasonable, and many efforts were made to resolve all issues raised, the Respondent was never satisfied and continued to complain. She also made several complaints directly to CALA Homes about the property. Eventually the staff at CALA Homes said that were not prepared to deal directly with her because of her behaviour. She made complaints and accusations about the letting agent staff and demanded that she be allowed to deal directly with the Applicant, although they provide a full management service for the property as the Applicant spends several months a year out of the country for work. From the outset the Applicant struggled with the Respondent's demands, complaints, and accusations. She advised Mrs McLaughlin that she had made a mistake in deciding to become a landlord and that she was not suited for the role. She decided to sell the property at the earliest opportunity. In response to questions from the Tribunal Mrs McLaughlin stated that the Applicant does not own any other rental properties. She has suffered financially as a result of the Respondent's failure to pay rent since April 2021 as she has had to pay her mortgage and factoring charges throughout this time. Although a payment order was issued by the Tribunal for the rent arrears incurred between April and November 2021, the Respondent has made no payments toward the outstanding sum.
7. Mrs McLaughlin was unable to provide much information about the Respondent. She confirmed that the tenancy is a sole tenancy, and that the respondent was to be the sole occupant. She could not advise whether the Respondent is currently in employment. There has been no access to the property for some time and the Respondent may have moved out as letting agent staff have passed from time to time in the evening and noted that no lights were on. However, the Respondent has not given notice or returned the keys. Mrs McLaughlin advised the Tribunal that a company was instructed to do the pre tenancy checks prior to the Respondent being offered the property. The letting agent later reviewed the paperwork and noted that the tenancy agreement provided by the Respondent for her previous tenancy was dated 2015 but included a COVID 19 clause. This suggested that the agreement was bogus.
8. In conclusion Mrs McLaughlin advised the Tribunal that the Applicant is a reasonable person who struggled with the challenges of an unreasonable tenant who was unwilling to compromise. She confirmed that an eviction order is sought.

Findings in Fact

9. The Applicant is the owner and landlord of the property.
10. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
11. The Applicant is entitled to sell the property.
12. The Applicant intends to sell the property.

Reasons for Decision

13. The application to the Tribunal was submitted with a copy of a private residential tenancy agreement dated 22 February 2021 and a Notice to Leave dated 30 April 2021. The Applicant also submitted a copy of an email from Paul Rolfe Letting dated 30 April 2021, addressed to the email address of the Respondent specified in the tenancy agreement. The Notice to Leave is attached to the email. The Notice states that an application to the Tribunal is to be made on ground 1, landlord intends to sell the let property. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 6 November 2021. The application to the Tribunal was made after expiry of the notice period. The Legal Member is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority by email. The Legal Member is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
14. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 1 of Schedule 3 (as amended by the Coronavirus (Scotland) Act 2020) states "(1) It is an eviction ground that the landlord intends to sell the let property. (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord – (a) is entitled to sell the let property, (b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts "
15. The Applicant submitted evidence that she is the current owner of the property. This included a copy of the disposition in her favour from CALA Homes, a copy of the title sheet showing that the application to the Registers of Scotland is pending, correspondence with the Local Authority confirming that she is the registered landlord of the property and letters from her solicitor confirming that they acted in the purchase of the property and verified her identity when she became a client. The Tribunal is satisfied that the Applicant, as owner of the property, is entitled to sell same. The Tribunal is also satisfied, from the documents submitted with the application and the information provided at the

CMD, that the Applicant intends to put the property on the market for sale when she has recovered possession of same. The Tribunal therefore concludes that the eviction ground has been established.

16. The Tribunal notes that the Applicant decided to re-sell the property three months after the purchase. She had purchased it as an investment and intended to let it out on a long-term basis. However, she very quickly concluded that she found being a landlord too challenging. The Respondent was a difficult tenant who made numerous demands in connection with the property. The Applicant and her agents attempted to accommodate these demands, but the Respondent remained dissatisfied with these efforts and made complaints and accusations about the letting agent staff who were endeavouring to assist her. The Applicant decided that she found being a landlord too stressful and that she had made a mistake. She decided to sell the property. Following service of the Notice to leave, the issues with the Respondent escalated. She stopped paying rent and has not allowed access for essential purposes such as a boiler service and gas safety check. The Applicant has suffered financially as a result of rent arrears which are now in excess of £8000. In the meantime, the Applicant has had to make mortgage and other payments for the property. She does not own any other rental properties. Although the keys remain in the possession of the Respondent the letting agent has noted that the property may currently be unoccupied as there have been no lights on at the property during the evenings when they have driven past.
17. The Respondent did not participate in the CMD. The only written representations which were lodged were not to be passed over to the Applicant. In any event these were largely irrelevant to the application and did not provide any information about the Respondent's personal circumstances other than an indication that mail sent to the property was being forwarded to her, which suggests that she may have moved out. The Applicant and her agent have no information about the Respondent's personal circumstances or employment status but believe that she lives or lived at the property alone.
18. In the circumstances and having regard to the documents lodged and the information provided at the CMD, the Tribunal is satisfied that it would be reasonable to grant the eviction order.
19. The Tribunal therefore concludes that the Applicant has complied with the requirements of the 2016 Act, that the eviction ground has been established and that it would be reasonable to grant the eviction order.

Decision

20. The Tribunal determines that an eviction order should be granted against the Respondent.

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.



Josephine Bonnar, Legal Member
Date: 22 April 2022