



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/22/0139

Re: Property at 31 Evelyn Terrace, Kilwinning, KA13 6JH (“the Property”)

Parties:

Mr Leslie Crawford, Mr Kenneth Crawford, 97b Queen Steet, Ballymena, co antrim (“the Applicants”)

Miss Kathleen Mcmail, 31 Evelyn Terrace, Kilwinning, KA13 6JH (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Ms J Heppenstall (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.

Background

1. This is an application received in the period between 19th January and 18th May 2022 and made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’). The Applicants are the landlord of the Property, and the Respondent is the tenant, in terms of a private residential tenancy agreement that commenced on 10th March 2020.
2. The Applicants’ representative lodged a copy of the tenancy agreement, copy Notice to Leave dated 14th June 2021 stating that an application for an eviction order under ground 10 (which was later corrected to ground 1) would not be submitted before 16th December 2021, with evidence of email service, copy section 11 notice with evidence of service, and email correspondence regarding sale of the Property from a letting and sales agent.
3. Service of the application and notification of a Case Management Discussion was served upon the Respondent by Sheriff Officers on 30th June 2022.

4. A Case Management Discussion (“CMD”) took place by telephone conference on 10th August 2022. The Applicants were represented by Miss Meaghan McDiarmid, Hove Lettings Ltd. The Respondent was not in attendance.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the Hearing, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent upon the representations of the Applicants and the material before the Tribunal.
6. Ms McDiarmid said there had been no recent communication from the Respondent. The Applicants are hoping for an eviction order so they can sell the Property. They have been landlords for twenty years and now wish to reduce their portfolio. This was explained to the Respondent prior to the service of the Notice to Leave.
7. Responding to questions from the Tribunal regarding the Applicants’ intention to sell, Ms McDiarmid said the Applicants had been told to progress matters in relation to a sale when the Property was vacant. This was set out in an email dated 9th March 2022 from Glow Homes Letting and Sales. The Applicants were not sure what state the Property would be in and whether it would be ready to market immediately. Ms McDiarmid said there was no reason to believe it would be in a condition that would prevent the Applicants from marketing for sale within three months as required by the legislation.
8. Responding to questions from the Tribunal regarding the Respondent’s circumstances, Ms McDiarmid confirmed that the Respondent has a nine-year-old son. She is receipt of Universal Credit and gets a full housing allowance. There are some historical rent arrears. As far as Ms McDiarmid is aware, the Respondent is not in employment. The Respondent indicated that she would explore her housing options when the matter was discussed. The Respondent was vague about her intentions and has recently been uncommunicative in this regard.
9. Responding to questions from the Tribunal regarding the fact that the Notice to Leave was served at a different email address from that provided for in the tenancy agreement, Ms McDiarmid was unable to confirm how the letting agents became aware of the change in email address. She said this could have been by email or telephone, or given verbally at an inspection. Ms McDiarmid said there had been discussion with the Respondent before and after service of the Notice to Leave and the Respondent was aware that the next stage would be to seek an order from the Tribunal.
10. The Tribunal adjourned to consider matters. Upon reconvening, the Tribunal indicated that it was not prepared to grant the order on the information before it. The Tribunal was concerned about the following issues:

- (i) The lack of evidence that the Respondent changed her email address from that in the tenancy agreement. The Tribunal required further evidence to indicate when the Respondent made this request, in order to be certain that the Respondent had been properly served with the Notice to Leave.
- (ii) The Tribunal was not persuaded that the evidence lodged showed the Applicants' intention to sell the Property within a period of three months of the Respondent ceasing to occupy the Property. The email dated 9th March 2022 appeared to be no more than a response to a hypothetical query regarding the sale of the Property. The 2016 Act mentions the following as the kind of evidence tending to show the required intention:
 - (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,
 - (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

While the Tribunal could understand the reluctance to have a Home Report carried out in the circumstances, it felt that the evidence provided was not sufficient in terms of the 2016 Act to indicate an intention to sell the Property for market value or at least put it up for sale within three months of the Respondent ceasing to occupy the Property.

- 11. The CMD was continued to a further CMD, to allow the Applicants to address the above issues and lodge further documentation or evidence.
- 12. By email dated 29th August 2022, the Applicants' representative lodged an email dated 25th July 2022 from the Respondent to the Applicants' representative using the email address to which the Notice to Leave had been served. This appeared to have been sent by the Respondent in response to an email from the letting agent sent in January 2022. The Applicants' representative also lodged a solicitor's letter dated 12th August 2022, stating that the firm had been instructed to market the Property after the tenant had vacated.
- 13. Parties were notified by letter dated 30th September 2022 of a CMD set down for 8th November 2022.

The Case Management Discussion

- 14. A CMD took place by telephone conference on 8th November 2022. The Applicant was represented by Miss Meaghan McDiarmid, Hove Lettings Ltd. The Respondent was not in attendance.

15. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the Hearing, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent upon the representations of the Applicants and the material before the Tribunal.
16. Ms McDiarmid said there had been no contact with the Respondent since the last CMD. There had been an attempt made by telephone call to ascertain whether the Respondent was seeking alternative housing, but the Respondent had not answered the call.
17. Ms McDiarmid explained that she had been unable to find any evidence on the letting agent's system of the Respondent notifying the letting agent of her change of address. The letting agent has updated their software. The previous software did not show when the email address was changed. It may have been changed during a telephone call or inspection. There was no email showing that it had been changed. Ms McDiarmid said the Respondent is now using this email address.
18. Responding to questions from the Tribunal concerning the letter from the solicitor and whether this met with the type of evidence that was required by the 2016 Act, Ms McDiarmid said she had passed the Tribunal's comments on what was required to the Applicants, and they had provided this letter. Their intention has not changed. Ms McDiarmid said she would take on board for future applications that a home report or a letter of engagement may be more appropriate.
19. Responding to questions from the Tribunal, Ms McDiarmid said the letting agent had provided a tenancy reference to the local authority for the Respondent but there had been no further contact with the local authority.

Findings in Fact and Law

20.
 - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 10th March 2020.
 - (ii) Notice to Leave has been served upon the Respondent.
 - (iii) The Applicants are entitled to sell the Property.
 - (iv) The Applicants intend to sell the Property for market value or at least put it up for sale within three months of the Respondent ceasing to occupy the Property.
 - (v) It is reasonable to grant an eviction order.

Reasons for Decision

21. Ground 1 of Schedule 3 of the Act provides that it is an eviction ground if the Landlord intends to sell the let property. The Tribunal may find the ground met if the Landlord is entitled to sell the Property and intends to do so for market value, or at least put it up for sale within three months of the Respondent ceasing to occupy it. The Tribunal took into account the solicitor's letter dated 12th August 2022, stating that the solicitor had been instructed to act in the sale of the Property.
22. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act, and that the correct email address was used in this regard.
23. The Tribunal is satisfied that Ground 1 has been established.
24. In considering whether it was reasonable to grant the eviction order, the Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicants.
25. The Respondent was not in attendance to put forward any reasons why it would not be reasonable to grant the order, despite having been notified of the application and both CMDs.
26. The Tribunal took into account the representations made regarding the circumstances of both parties. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

27. An eviction order is granted.

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.

**Helen Forbes
Legal Member/Chair**

**8th November 2022
Date**