



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/22/2751

Re: Property at 91 Birkenside, Gorebridge, EH23 4JF (“the Property”)

Parties:

Magnapark Properties Limited, Lochcote Lodge, Linlithgow, EH49 6QE (“the Applicant”)

Ms Tracey Johnston, Ms Charlie Johnston, Ms Ashleigh Johnston, 91 Birkenside, Gorebridge, EH23 4JF; 91 Birkenside, Gorebridge, EH23 4JF; 91 Birkenside, Gorebridge, EH23 4JF (“the Respondents”)

Tribunal Members:

Valerie Bremner (Legal Member) and Melanie Booth (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondents under Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 as the landlord intends to sell the let property for market value or at least put it up for sale within three months of the Respondents ceasing to occupy it and it is reasonable to issue an eviction order on account of those facts.

The decision of the Tribunal was unanimous.

Background

1. This application for an Eviction Order in terms of Rule 1 of the Tribunal Rules of procedure was first lodged with the Tribunal on 8th August 2022 and accepted by the Tribunal on 5th September 2022. A case management discussion was fixed for 18th November 2022 at 2pm.

The Case Management Discussion

2.The case management discussion was attended by Ms Donnelly of TC Young solicitors and by all of the Respondents. Ms Ashleigh Johnston was supported by her partner Ms Thomson and Mr Mark Napier, the husband of the Respondent Charlie Johnston or Napier represented all the Respondents.

3.The Tribunal had sight of the Application, a paper apart, a tenancy agreement, a Notice to leave, emails intimating the Notice to Leave to the Respondents, a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, an email to Midlothian Council in relation to this notice and a Best Price Guide prepared by Ninety Property, Bonnyrigg.

4.Ms Donnelly submitted that it was reasonable to grant an eviction order under Ground 1 of Schedule 3 of the 2016 Act given that the landlord wished to sell the property to realise capital in the current financial situation. The parties had entered into a tenancy agreement at the property with effect from 30th November 2018. The landlord company also owned 92 Birkenside, a neighbouring property and this had recently been sold for the same reason. Ms Donnelly also submitted that the Respondents had failed to maintain the interior and exterior of the property.

5.Ms Donnelly submitted that the application had been submitted against all three tenants on the agreement as this was what the law required in order to properly bring the tenancy to an end. It was her understanding that the Respondents were family, with Ms Tracey Johnston still living at the property and her two adult daughters, Ashleigh and Charlie Johnston or Napier now living elsewhere.

6.On behalf of the Respondents Mr Napier confirmed there was no objection to the eviction order and that Ms Tracey Johnston was seeking assistance from the local council to obtain another property. Mr Napier indicated that both Ashleigh Johnston and Charlie Johnston or Napier had attempted to have their names removed from the tenancy agreement at an earlier stage, but this had not been permitted. They no longer lived at the property and Ms Tracey Johnson, their mother, still lived there. There was a discussion to confirm that all the Respondents understood the consequences if an order was made. The fact that Tribunal decisions are posted on the website which is public was raised by the Tribunal Legal Member, but Ms Donnelly pointed out that if an eviction order was granted it would be reflected in the decision that the eviction was granted not through the fault of the Respondents but because the Landlord wished to sell the property. Ms Donnelly had no instructions on the issue of two of the Respondents wishing to have their names removed from the tenancy and why that had not been permitted earlier.

7.Mr Napier was able to confirm after the discussion that the Respondents were aware of the consequences of an eviction order and did not object to it being granted. This was confirmed directly with all three Respondents by the Tribunal.

8.The Tribunal considered the Notice to Leave which appeared to be in proper form and served with the appropriate notice period. The Section 11 Notice also appeared to be in proper form.

9.The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

10.The Applicant company is the owner of the property at 91 Birkenstone, Gorebridge EH23 4JF.

11.The Applicant company entered into a tenancy agreement at the property with all three Respondents with effect from 30th November 2018.

12.The Applicant company wishes to sell the property as soon as possible in order to realise capital and has already sold the neighbouring property for the same reason.

13.The Applicant company obtained a "Best Price" guide from a local company in order to assist with putting the property on the market for sale.

14.The Respondent Ms Tracey Johnston currently occupies the let property in terms of the tenancy agreement but the Respondents Ashleigh Johnston and Charlie Johnston or Napier no longer occupy the property.

15.The Applicant company served a Notice to Leave in proper form and giving appropriate Notice to each of the three Respondents.

16.A Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 has been sent to Midlothian Council in respect of this application.

17.The Respondents are aware of the consequences of an eviction order being made and do not object to an order being granted.

Reasons for Decision

18.The Tribunal was satisfied that the eviction ground had been made out and that the Landlord intended to sell the property as soon as possible to realise capital. The Respondents raised no objection to an order being granted and did not suggest it would be unreasonable to make an eviction order. In the circumstances of this application the Tribunal considered it was appropriate to make the order against all three Respondents in order to properly achieve the aims of the order and bring the tenancy to an end. The Tribunal considered that it was reasonable to grant the order in the circumstances of this application.

Decision

The Tribunal determined that an eviction order be granted against the Respondents under Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 as the landlord intends to sell the let property for market value or at least put it up for

sale within three months of the Respondents ceasing to occupy it and it is reasonable to issue an eviction order on account of those facts.

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.

Valerie Bremner

Legal Member/Chair

18.11.22

Date