



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/22/4276

Re: Property at 112 Barns Street, Clydebank, G81 1RB (“the Property”)

Parties:

Catherine Anne McDonald executor of James Joseph Polding, 19 Taylor Street, Clydebank, G81 1QT (“the Applicant”)

Miss Ashleigh Mills, Mr David Allison, 112 Barns Street, Clydebank, G81 1RB; 112 Barns Street, Clydebank, G81 1RB (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Mike Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction in favour of the Applicant of the Respondents from the Property should be granted.

1. This was a Case Management Discussion in respect of an application by the Applicant dated 29th November 2022 for an order for eviction against the Respondents. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application and afterwards in response to requests from the Tribunal:-
 - Copy death certificate of James Polding showing date of death 1st May 2022
 - Copy power of attorney dated 17th March 2017
 - Copy will of James Polding dated 17th March 2017
 - Letter of authority from Catherine Polding to Francis Polding dated 25th July 2022
 - A copy of the Tenancy Agreement dated 22nd April 2021
 - Copy Notice to Leave dated 19th May 2022
 - Evidence of sending Notice to Leave by email dated 19th May 2022
 - Copy S 11 Notice to west Dunbartonshire Council

- Copy e-mail to West Dunbartonshire Council dated
- Copy letter from Stirling and Gilmour LLP.

The Case Management Discussion (CMD)

3. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Respondents did not attend and were not represented. Papers and the invitation to dial into the teleconference were served on the Respondents by sheriff officers on 6th April 2023 and so the Tribunal was satisfied it was fair and appropriate to proceed in their absence.
4. Mr John Jarvie for the Applicant's representative advised that he was instructed to seek an order for possession of the Property today.
5. He advised that the notice to leave had been served appropriately on the tenants and the Tribunal noted the Applicant has lodged a Notice to Leave which has been served on the tenants by email on 19th May 2022. Service by email is agreed in the lease.
 - Mr Jarvie explained that the Applicant is the late owner's daughter and executor in his estate and is seeking to ingather the estate. She is in the process of applying for confirmation but could not confirm if it had been granted yet but he confirmed the Applicant is seeking the order in terms of Ground 1 of Schedule 3 of the Act to enable her to sell the property when confirmation is granted. He advised that although there has not been a lot of communication from the Respondents they have advised the letting agent that they have been offered new accommodation by the council and so for that reason and the fact they have not attended or presented any representations he submitted it would be reasonable for an order for eviction to be granted.
 - Mr Jarvie confirmed that he was not aware of when the tenants may get access to their new house and also advised that as far as he is aware there are no rent arrears.

Findings in Fact

1. The Title to the Property is registered in the name of Anne Polding and James Joseph Polding and the survivor of them as the heritable proprietors.
2. Anne Polding predeceased James Polding.
3. James Polding became the sole proprietor on Anne Polding's death.
4. James Polding granted a continuing and welfare Power of Attorney in favour of his daughter, Catherine Anne McDonald on 17th March 2017 including the power to "exchange sell or lease his property.
5. Catherine McDonald as attorney granted authority for her brother, Francis Polding, to act as landlord over the Property
6. Francis Polding acting under Catherine McDonalds instructions entered into a lease with the Respondents of the Property dated 22nd April 2021 with a date of commencement of 23rd April 2021
7. James Polding died on 1st May 2022.
8. Catherine McDonald is the executor nominate in the estate of James Polding under his will.

9. The tenancy is continuing.
10. A notice to leave dated 19th May 2022 was served on the Respondent by the Applicant by email stating that no proceedings would be raised before 14th August 2022
11. These proceedings were raised on 29th November 2022 and the application included a copy of the Notice to Leave.
12. Stirling and Gilmour solicitors have been instructed in the sale of the Property once confirmation is received.
13. A Section 11 notice has been served on West Dunbartonshire Council
14. The Applicant intend to sell the Property and wishes to do so after the Respondents leave and confirmation is granted.

Reasons for Decision

6. The Tribunal accepted from the documents lodged that the Applicant has right and title to raise this action. She has been appointed executor nominate in her father's will and as he has now passed away, she has the responsibility of winding up his estate and realising any assets including this Property.
7. The Property has been leased to the Respondents by lease which commenced on 23rd April 2022.
8. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 1 Schedule 3 of the Act as the relevant grounds of eviction.
9. The Notice to Leave was served by email which was sent by the Applicant's representative on 19th May 2022 to both Respondents email addresses.
10. The Applicant has lodged a letter from Stirling and Gilmour LLP dated 4th January 2023 confirming they are applying for confirmation and once received are instructed by the Applicant who is the late owner's executor to act in the sale of the Property.
11. Grounds 1 require 84 days' notice in terms of the Act. The Notice sets out the notice period as expiring on 14th August 2022 which meets the requirements of Section 62(4) of the Act as that subsection states that the day to be specified in accordance with Subsection 1 (b) is the day falling after the day on which the notice period defined in section 54(2) will expire.
12. The Application was lodged on 29th November 2023. It was therefore lodged after the expiry of the Notice period and before the end of 6 months after the specified date and is therefore an application that the Tribunal can consider.
13. Ground 1 of Schedule 3 of the Act is entitled "Landlord intends to sell" and states
 - i. "It is an eviction ground that the landlord intends to sell the let property.
 - ii. The First Tier Tribunal may find that the ground named by subparagraph (1) applies if the landlord-
 - a. Is entitled to sell the Property and
 - 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.

14. Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) (b) includes for example
 - 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
 - c. *And it is reasonable to do so*
15. The Tribunal accepted the verbal averments of Mr Jarvie that the Applicant's intention is to sell the Property. This is supported and evidenced by the written letter from Stirling Gilmour & Co
16. The Tribunal then had to consider if it accepts it would be reasonable to grant an action for eviction on this ground. The Tribunal heard from Mr Jarvie that the Respondents have received an offer from the council of an alternative property. He admitted that the Respondents have not contacted the applicant or himself regarding the application but they have indicated to the letting agent that they had received an offer of housing. He is not aware of when they may be able to take entry to the new property but submitted that given they have an offer, and given the notice to leave was made nearly a year ago it would be reasonable to grant the order of eviction.
- 17.. There has been no written representations made by the Respondents and they have not attended today's hearing although intimation of this has been made on both Respondents by sheriff officer. The Tribunal has no further information to consider from the Respondents. The Applicant is under a duty to wind up her father's estate and wishes to sell the Property as part of that. Weighing up the evidence and taking note that it appears the Respondents have an offer of another house, the Tribunal was satisfied that it was reasonable for an order of possession to be granted on the ground the Applicant intends to sell the Property.
18. The Tribunal is therefore satisfied in terms of S 51 (1) of the Act that the eviction ground specified in the application namely Ground 1 is met, and that it is reasonable for the Tribunal to grant the application.

Decision

The Tribunal determined that the order for eviction sought by the Applicant should be 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.

Legal Member/Chair

12th May 2023
Date