



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/22/0050

Re: Property at 14 Roman Drive, Bellshill, Lanarkshire, ML4 2JQ (“the Property”)

Parties:

Mr Andrew Sommerville, Mrs Kim Sommerville, 120 Douglas St, Uddingston (“the Applicant”)

Mr John Reid, Mrs Sharon Reid nee Ward, 14 Roman Drive, Bellshill, Lanarkshire, ML4 2JQ (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The application is dismissed with consent of both parties as the order is no longer required. The decision is unanimous.

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicants on 6.1.22 (although it was dated 8.10.21) and after correspondence with the First-tier Tribunal for Scotland Housing and Property Chamber (the tribunal) and lodging of further documents accepted on 16.2.22.
2. The application is made on ground 1 of schedule 3 of the Act on the basis that the Applicants require to sell the property to divide their assets.
3. The Applicant ultimately provided the following documents: a copy Private Residential Tenancy Agreement between the parties over the property commencing 11.11.19, Notice to Leave dated 7.4.21, hand delivered, S 11 Notice and email serving same as well as an copy interim separation agreement between the Applicants. The case documents are referred to for their terms and held to be incorporated herein.

4. A Case Management Discussion (CMD) was scheduled for 25.4.22 at 2pm and both parties were notified of the date, time and joining instructions for the CMD.
5. The Respondent had lodged an email dated 25.3.22 to the tribunal stating " I do object to the eviction of the property but want to take matters further with regards to the state of the property of which we had to live in. " The email does not explain on what basis there would be an objection to the order. The Respondent raised various issues with the tenancy in said email.
6. On 15.4.22 the Applicants wrote to the tribunal stating the tenants had left as the Local Authority had sent a Council Tax invoice commencing 26.3.22 to the property owners and had stated to the Applicants that the tenant had advised the Council of the change of address and end of tenancy on 25.3.22. With the email the Applicants made various further claims regarding arrears of rent and the state of the property.
7. The tribunal tried to clarify with the Applicants whether the CMD would be required as they seemed to say that the tenant had left. The matter was insisted upon in a further email by the Applicant's representatives on 22.4.22.
8. On 22.4.22 the Respondent advised in an email that she had tested positive for Covid but did not make a specific postponement request.
9. At the CMD the Applicant Ms Sommerville attended for both Applicants together with her representative from the CAB Ms Young. Ms Reid attended for both Respondents and confirmed that she was well enough to participate.
10. The legal member, following general introductions, established with Ms Reid that there had been a typographical error in her email of 25.3.22 in that this should have read "I do not object to the eviction of the property but want to take matters further with regards to the state of the property of which we had to live in" She confirmed that the tenants left the property on 25.3.22 and had in fact signed a tenancy agreement for another property at the beginning of March 22. She confirmed that the tenants no longer lived at the address.
11. Ms Young and Ms Sommerville confirmed that if that had been made clear by the Respondent earlier there would not have been any requirement for the CMD as the application was solely for the purpose of recovering the property. Any other matters would in due course be covered by a separate application.
12. The legal member advised both parties of the wording of S 50 of the Act and asked both parties if they agreed that in fact a Notice to Leave had been issued and the tenants had moved out. Both parties agreed.
13. The application was made on ground 1 of schedule 3 of the Act. This is a discretionary ground for eviction.
14. Both parties agree that the application can be dismissed on the basis that the tenancy came to an end on 25.3.22 because the landlord had issued a Notice to Leave and the tenants had left.

B Findings in Fact

Based on the documentation submitted by both parties and the information provided to the tribunal at the CMD the tribunal finds the following facts:

15. The parties entered into a Private Residential Tenancy over the property on 11.11.2019
16. On 7.4.22 Notice to Leave was given to the tenants on ground 1 of schedule 3 of the Act.
17. On 25.3.22 the tenants left the property and moved to new accommodation.

18. The tenants advised the local authority that their Council Tax liability for the property would end on 25.3.22.
19. In terms of S 50 of the Private Housing (Tenancies) (Scotland) Act 2016 the tenancy came to an end on 25.3.22.

C. Reasons for Decision

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—
(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

3. S 50 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) states: 50 Termination by notice to leave and tenant leaving

(1) A tenancy which is a private residential tenancy comes to an end if—

- (a) the tenant has received a notice to leave from the landlord, and
- (b) the tenant has ceased to occupy the let property.

(2) A tenancy comes to an end under subsection (1) on the later of—

- (a) the day specified in the notice to leave in accordance with section 62(1)(b), or
- (b) the day on which the tenant ceases to occupy the let property.

(3) For the avoidance of doubt, a tenancy which is to come to an end under subsection (1) may be brought to an end earlier in accordance with section 48.

4. The tribunal considered that the relevant facts in the case were not in dispute, namely that the parties had entered into a Private Residential Tenancy over the property and that the Applicants had issued the tenants with a valid Notice to Leave on ground 1 in order to divide their assets as stated in the Interim Separation Order lodged. The tenants had now moved out of the property and had advised the Local Authority of their move and the end of their Council Tax liability as of 25.3.22.
2. The only reason why the application had been insisted upon had been the email of the Respondent dated 25.3.22 which had stated that the eviction application was opposed, although no reasons were given. Due to the dubiety of that email the Applicants felt it necessary to receive clarification that the Private Residential Tenancy had in fact come to an end.
3. At the CMD the Respondent Ms Reid confirmed on behalf of the Respondents that they had moved out of the property and had notified the Council of this.
4. On that basis the tribunal dismisses the application as no longer necessary. The tenancy had come to an end in terms of S 50 of the Act on 23.3.22 by the Notice to Leave having been previously issued and the tenant leaving and thus an eviction order was no longer necessary. In those circumstances it would not be reasonable to grant an eviction order for the property, because the purpose of the application had already been achieved by the tenants moving out and confirming to the tribunal that they were no longer living at the property and had moved out.
5. For the avoidance of doubt, any issues apart from the very narrow matter of the current eviction application would require the parties to make separate applications if they so wished.

D Decision:

The application is dismissed with consent of both parties as the order is no longer required. The decision is unanimous.

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.

Petra Hennig McFatridge

25.4.22

Legal Member/Chair

Date