



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/22/0991

Re: Property at 1 Orchard Gardens, Strathaven, ML10 6UN (“the Property”)

Parties:

Mrs Lynne Cox, Mr Jason Cox, 5 Orchard Gardens, Strathaven, ML10 6UN (“the Applicants”)

Ms Aisling McKee, Ms Carla Walker, 1 Orchard Gardens, Strathaven, ML10 6UN (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused and dismissed as the tenancy had ended and that the Applicants request for expenses should also be refused.

Background

1. By application dated 4 April 2022 the Applicants applied to the Tribunal for an order for the eviction of the Respondents from the property under Ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicants submitted copy text messages between the parties, copy Notice to Leave, copy Section 11 Notice and copy tenancy agreement in support of the application.
2. By Notice of Acceptance dated 12 May 2022 a legal member of the Tribunal with delegated powers accepted the Application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 24 May 2022.
4. By email dated 8 July 2022 the Respondents advised the tribunal administration that they had vacated the property and returned the keys to the Applicants.
5. By email dated 12 July 2022 the Applicants advised the Tribunal that the Respondents had returned a key to the property on 11 July 2022.
6. By email dated 14 July 2022 the Applicants submitted further written representations to the Tribunal.
7. By email dated 15 July 2022 the Tribunal received written representations from Stephen Wishart of Shelter, Glasgow on behalf of the Respondents.
8. By email dated 19 July 2022 the Tribunal received further written representations on behalf of the Respondents from Mr Wishart.

The Case Management Discussion

9. A CMD was held by teleconference on 25 July 2022. The Applicants were represented by Mrs Lynne Cox. The Respondents did not attend but were represented by Mr Stephen Wishart.
10. The parties agreed that although the tenancy agreement signed by the parties purported to be an Assured Shorthold Tenancy the actual tenancy that had been created had been a Private Residential Tenancy under the 2016 Act.
11. The parties were also agreed that the tenancy had commenced on 16 December 2018 at a rent of £750.00 per calendar month. They further agreed that the Respondents had been served by email and personally on 2 January 2022 with a Notice to Leave in which the Applicants were seeking to end the tenancy under Ground 4 of Schedule 3 of the 2016 Act namely that the first Applicant intended to live in the property.
12. There was some discussion as to when the Respondents had removed themselves from the property. The Tribunal noted that the Respondents had advised the Tribunal by email dated 8 July 2022 that they had moved out and returned the keys. This was disputed by Mrs Cox who said a single key had been returned on 11 July although she did agree that the Respondents had by that date moved out of the property. For the Respondents, Mr Wishart said that he would not argue over four days and was prepared to accept that the Respondents had vacated the property by 11 July 2022. He went on to refer the Tribunal to the terms of Section 50(1) of the 2016 Act which stated that a tenancy came to an end if a tenant had received a Notice to Leave and had ceased to occupy the property. That was what had happened here, he said, and therefore the tenancy had ended and there was no need for the application to continue. For her part Mrs Cox said she would be happy if that were the case but the Respondents had challenged the validity of the Notice to Leave and so

she thought if the Notice was invalid the Tribunal would have to make a determination.

13. The Tribunal indicated to the parties that although there appeared to be potentially some issues as to whether the Applicants actually intended to live in the property or sell it that might affect the validity of the Notice to Leave the Tribunal was not required to consider these as the Respondents had vacated the property by 11 July 2022 and returned a key to the property to the Applicants and the Applicants had taken entry to the property. The tenancy had therefore been terminated following the Service of a Notice to Leave on the Respondents and the Respondents ceasing to occupy the property prior to the CMD.
14. The Tribunal noted that the Applicants were seeking the expenses of the application and asked Mrs Cox for her submissions in this regard. Mrs Cox explained that following service of the Notice to Leave she had entered into discussions with the Respondents about them purchasing the property and had engaged an estate agent who lived in the same street to organise a Home Report at a cost of £540.00. She explained this had only been done because the Respondents had raised the possibility of purchasing the property. When they were unable to obtain a mortgage, the Applicants had been left with the unnecessary cost of a home report they could not use.
15. For the Respondents, Mr Wishart compared the Respondents to any other potential purchaser of a property. It was not the purchasers who paid for a Home Report it was the seller. If a sale did not proceed the cost of the Home Report still had to be met by the seller not the purchaser.

Findings in Fact and Law

16. The parties entered into a Private Residential Tenancy that commenced on 16 December 2018 at a rent of £750.00 per calendar month.
17. The Applicants served a Notice to Leave under Ground 4 of Schedule 3 of the 2016 Act on the Respondents personally and by email on 2 January 2022.
18. The Applicants intimated the Application to South Lanarkshire Council by a Section 11 notice on 5 April 2022.
19. The Respondents ceased to occupy the property by 11 July 2022 and the tenancy was terminated in terms of Section 50(1) at that date.
20. The parties entered into discussions in about February 2022 regarding the Respondents purchasing the property and the Applicants incurred the cost of a Home Report in the sum of £540.00.

Reasons for Decision

21. Although there may have been issues for the Tribunal to consider had the Respondents remained in the property the tenancy ended when the

Respondents ceased to occupy the property following service upon them of a Notice to Leave. Section 50(1) of the 2016 Act applies in this case. It therefore follows that the principal application has to be refused and dismissed as there is no longer any proceedings for the Tribunal to determine.

22. With regards to the Applicants request for the expenses of the application the Tribunal considers this to be entirely misconceived. Rule 40 of the First-tier Tribunal for Scotland Housing and Property Procedure Regulations 2017 provides for the Tribunal awarding expenses against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense. This was an application by the Applicants raised under Ground 4 of Schedule 3 in which it was claimed that Mrs Cox required the property to live in herself. Whatever other negotiations may have taken place between the parties regarding the possibility of the Respondents or indeed any other parties purchasing the property do not form part of these proceedings. Furthermore, it is well established that a Tribunal will only award expenses against a party that has caused delay or acted unreasonably during the course of the proceedings rather than any alleged behaviour during the course of a tenancy. The Tribunal is therefore satisfied that no award of expenses is justified in this case.

Decision

23. The Tribunal having carefully considered the facts before it and being satisfied that it can make a decision without the need for a hearing determined that the application should be refused and dismissed and that the Applicants request for expenses should also be refused.

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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**25 July 2022
Date**

