



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/24/0759

Re: Property at Flat 1/1, 39 Dudley Drive, Hyndland, Glasgow, G12 9RP (“the Property”)

Parties:

Mr Poonkumara Doraiswamy, 31 Craighton Gardens, Milngavie, Glasgow, G62 7BB (“the Applicant”)

Miss Melissa Campbell, Flat 1/1, 39 Dudley Drive, Hyndland, Glasgow, G12 9RP (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at Flat 1/1, 39 Dudley Drive, Hyndland, Glasgow, G12 9RP under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees, and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The application is based

on Ground 1 (Landlord intends to sell the Property) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

2. The application was accompanied by a Private Residential Tenancy Agreement dated 1 September 2020, a Notice to Leave dated 5 October 2023, emails between Clyde Property and Aberdeen Considine & Co, a statement from the Applicant, valuations of the Property from Clyde Property and Corum and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 to Glasgow City Council dated 12 February 2024.
3. On 11 April 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 5 July 2024 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 13 August 2024. The Respondent required to lodge written submissions by 26 July 2024. This paperwork was served on the Respondent by Chelsea Murray, Sheriff Officer, Glasgow on 8 July 2024 and the Execution of Service was received by the Tribunal administration.
5. On 26 July 2024 the Respondent lodged written submissions.

Case Management Discussion

6. The Tribunal proceeded with the CMD on 13 August 2024 by way of teleconference. Mr O'Donnell from Aberdeen Considine & Co, solicitors appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondent despite the CMD starting 5 minutes late to allow her plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
7. The Tribunal had before it the Private Residential Tenancy Agreement dated 1 September 2020, the Notice to Leave dated 5 October 2023, the emails between Clyde Property and Aberdeen Considine & Co, the statement from the Applicant the valuations of the Property from Clyde Property and Corum, the Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 to Glasgow City Council dated 12 February 2024 and the Respondent's email of 26 July 2024. The Tribunal noted the terms of these documents.
8. Mr O'Donnell submitted that the Applicant was seeking an order to evict as the Applicant wanted to sell the Property. The tenancy was a Private Residential Tenancy agreement which started on 3 September 2020 and a

Notice to Leave was served on 5 October 2024. He advised the Applicant had given the Respondent extra time to vacate, but she had failed to vacate. He submitted the application was necessary as the Applicant had lost his employment and had not been able to secure alternative employment. He had a high level of unsecured debt and there was a standard security over the Property. He needed to sell the Property to clear these debts and referred to the valuations of the Property lodged.

9. He went on to explain that the Respondent had emailed Clyde Property on 15 July 2024 to advise she was vacating the Property on 18 August 2024. On 30 July 2024 the Respondent emailed Clyde Property to advise she was no longer vacating the Property. On being questioned by the Tribunal Mr O'Donnell advised that the Respondent had given no indication in her emails to Clyde Property that she had alternative accommodation and why, when she had originally indicated she was removing on 18 August 2024, she was no longer moving out. Mr O'Donnell confirmed there had been no further correspondence with the Respondent other than the email she had sent to the Tribunal on 26 July 2024.
10. Mr O'Donnell submitted that in all the circumstances it was reasonable to evict. The S11 Notice had been served.

Findings in Fact

11. The Applicant and the Respondent entered into a Private Residential Tenancy in relation to the Property on 1 September 2020, commencing on 3 September 2020.
12. The Applicant lost his job in or around October 2023 and has not been able to secure alternative accommodation. There is a standard security over the Property. The Applicant has accrued a large amount of personal unsecured debt in respect of credit cards and loans. He intends to sell the Property to clear this debt.
13. The Applicant's letting agent Clyde Property served a Notice to Leave on the Respondent by email on 5 October 2023. The Notice to Leave required the Respondent to leave the Property by 31 December 2023. The Notice to Leave relied on Ground 1(Landlord intends to sell) of Schedule 3 to the 2016 Act.
14. Through correspondence between Clyde Property and Aberdeen Considine & Co the Applicant agreed to allow the Respondent to remain in the Property until 31 January 2024.

15. The Respondent indicated by email of 15 July 2024 to Clyde Property that she was vacating the Property on 18 August 2024. By email of 30 July 2024 the Respondent advised that she was no longer vacating the Property.
16. The Applicant's solicitors Aberdeen Considine & Co served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Glasgow City Council on 12 February 2024.
17. The Respondent lives in the Property with two children

Reasons for Decision

18. The Tribunal considered the issues set out in the application together with the documents lodged in support including the email from the Respondent of 26 July 2024.
19. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1, namely the Landlord intends to sell the Property. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the grounds, the Tribunal has to be satisfied that it is reasonable to evict
20. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
21. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to sell the Property at Part 2 of the Notice in terms of Ground 1 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 31 December 2023. The Notice to Leave was served on the Respondent by email on 5 October 2023. In terms of Section 54 the notice period of the Notice to Leave is 84 days. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 31 December 2023. In the circumstances the Tribunal is satisfied the Respondent has been

given sufficient notice. Accordingly, the Notice to Leave complies with Section 62.

22. The Tribunal considered the submissions made by Mr O'Donnell and by the Respondent in her email. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by parties, that the factual basis of the application had been established in relation to Ground 1 and was satisfied the Applicant intended to sell the Property as soon as he regained possession.
23. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to sell the Property when he obtained possession of it. He had clearly explained his reasons for doing so, namely unemployment and a large amount of unsecured and secure debt. The Respondent had not disputed the application. She had indicated that she was seeking help from local housing associations which the Tribunal gave weight to. Whilst the Tribunal gave some weight to the fact that the Respondent had two young children, the Tribunal had no information before it that explained more of her personal circumstances and where she was in relation to alternative accommodation, particularly as she had indicated she had been in a position to move on 18 August 2024. The Tribunal considered that the Respondent had had over ten months to find alternative accommodation which the Tribunal considered was a reasonable time to do so. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
24. In the circumstances the Tribunal considered that in terms of Ground 1 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

25. The Tribunal granted an order for repossession. The decision of the Tribunal was 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.

Shirley Evans

13 August 2024

Legal Chair

Date