



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/23/3689

Re: Property at 36 Provost Kay Park, Kirkcaldy, Fife, KY1 2RD (“the Property”)

Parties:

Mr Nick Dodsley and Mrs Joyce Dodsley, Hamlyn, Fountain Lane, St Saviour, Jersey, JE2 7RL (“the Applicants”)

Mr Wojciech Stepski and Mrs Malgorzata Stepska, 36 Provost Kay Park, Kirkcaldy, Fife, KY1 2RD (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 36 Provost Kay Park, Kirkcaldy, Fife, KY1 2RD under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicants 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 Respondents. The order will include a power to Officers of Court to eject the Respondents 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 Applicants or others in their 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”) dated 18 October 2023. The Applicants’ case 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 with a start date of 1 March 2018, an undated email with a form of a Notice to Leave which was undated and unsigned and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 to Fife Council with an undated covering email from McLaughlin and Company, solicitors. .
3. On 25 February the Tribunal issued a Notice of Direction in the following terms to the Applicants–

“1. In respect that the Notice to Leave lodged with the application is neither dated nor signed, a signed and dated copy of the Notice to Leave. Further in respect that the Applicant has advised that the original email showing proof of service has been lodged, a clear copy of that email to identify the recipients of the email and the date of the email. These should be lodged with the Chamber no later than close of business on 4 March 2024.

2. A letter of engagement from a solicitor or an estate agent concerning the sale of the Property or a copy of a Home Report in respect of the Property or other evidence such as a sworn affidavit from the Applicants to show or tending to show that the Applicants intend to sell the Property for market value or at least put it up for sale within three months of the Respondents ceasing to occupy it in satisfaction of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. These should be lodged with the Chamber no later than close of business on 4 March 2024.”

This Notice was sent to the Applicants on 27 February 2024.

4. On 29 February 2024 the Applicants sent a copy letter of engagement from FDL Solicitors and Estate Agents dated 28 February 2024 in response to the second paragraph of the Notice of Direction. In response to the first paragraph of the Notice of Direction the Applicants stated that *“As mentioned and without the benefit of any "amicus curae" to assist us and provide us with advice as to Scottish Law we previously advised that the notice was given to the tenants by email and dated email acknowledged by the tenants. The lease, according to our agents, provide for all notice to be provided by email, so we are unable to assist the tribunal further than with the information we have already supplied.”*
5. The Tribunal proceeded with the Case Management Discussion (“CMD”) on 11 March 2024. Both Applicants and Respondents were in attendance. An interpreter was also in attendance to translate for the Respondents. Mr Dodsley thought the Notice to Leave had been served in May or July 2023 but could not advise as to the exact date. The Tribunal explained it had no evidence before it as to when any Notice to Leave had been served. As there was no information before the Tribunal to ascertain whether the Applicants

had complied with the terms of the Private Housing (Tenancies) (Scotland) Act 2016 with regard to any Notice to Leave with due regard to the Interpretation and Legislative Reform (Scotland) Act 2010, the Tribunal continued the CMD. This continuation would give the Applicants a further opportunity to respond to the Notice of Direction in full and in particular to provide the Tribunal with information as to when any Notice to Leave was served on the Respondents and to seek legal advice.

6. On 11 March 2024 after the CMD the Applicants forwarded a copy of a Notice to Leave dated 13 July 2023 and signed by their letting agents Fife Letting Service together with an email dated 12 July 2023 from the letting agents to the Respondents attaching the Notice to Leave.

Continued Case Management Discussion.

7. After an earlier CMD being postponed due to the Respondents' holiday commitments, the Tribunal proceeded to a CMD on 25 October 2024 by teleconference call. Both Applicants were in attendance. Mr Dodsley advised he would speak on behalf of both himself and his wife. Both Respondents were in attendance. Ms Fasula was also in attendance to act as interpreter for the Respondents. Mrs Stepska advised she would speak on behalf of herself and her husband.
8. The Tribunal confirmed that it was satisfied that a valid Notice to Leave had been served on the Respondents and invited Mr Dodsley to address the Tribunal. He confirmed he and his wife wanted to sell the Property. They had a mortgage on the Property, which was due to expire in a few years and they had to sell the Property to clear the mortgage. He had lived in Jersey all his life and they no longer wanted to be Landlords. The Property was the only Property they had in Scotland.
9. In reply Mrs Stepska explained they did not want to leave the Property. Despite checking various websites just about every day, the Respondents had not been able to find another Property. They had contacted the Council but had only been given 10 points on their homelessness application out of a possible 100. They had heard nothing more from the Council and had last been in contact with them at some point in the summer. They were struggling to find a property that they could afford. Both Respondents worked. She explained they had a 13 year old daughter who lived with them and who attended the local high school.

Findings in Fact

10. The Applicants and the Respondents entered into a Private Residential Tenancy in relation to the Property on 27 February 2018 and commencing on 1 March 2018.
11. The Applicants live in Jersey. There is a mortgage over the Property which is due to end. They wish to sell the Property to clear the mortgage. The Applicants no longer wish to be Landlords.

12. The Applicants' letting agent Fife Letting Service served a Notice to Leave on the Respondents by email on 12 July 2023. The Notice to Leave was dated 13 July 2023 and required the Respondents to leave the Property by 8 October 2023. The Notice to Leave relied on Ground 1 (Landlord intends to sell) of Schedule 3 to the 2016 Act.
13. The Applicants' solicitors McLaughlin and Company served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Fife Council.
14. The Respondents live in the Property with their 13 year old daughter who attends the local high school. The Respondents both work.

Reasons for Decision

15. The Tribunal considered the issues set out in the application together with the documents lodged in support. 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
16. 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.
17. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicants' 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 8 October 2023. The Notice to Leave was served on the Respondents by email on 12 July 2023, although it is dated 13 July 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 Applicants could apply to the Tribunal was 8 October 2023. In the circumstances the Tribunal is satisfied the Respondents have been given sufficient notice. Accordingly, the Notice to Leave complies with Section 62.
18. The Tribunal considered the submissions made by Mr Dodsley and by the Mrs Stepska. 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 Applicants intended to sell the Property as soon as they regained possession.

19. 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 Applicants' intention was to sell the Property when they obtained possession of it. Mr Dodsley had clearly explained his reasons for doing so, namely that the Applicants' life was in Jersey, that they no longer wanted to be Landlords, and the mortgage term was due to end in the near future and that they needed to sell the Property to clear the mortgage. The Respondents had indicated that they were seeking help from the local Council which the Tribunal gave weight to. The Tribunal gave some weight to the fact that the Respondents had a teenage daughter who attended the local high school. The Tribunal were conscious that the Respondents were finding it difficult to find affordable, alternative accommodation. However, on balance the Tribunal considered the balance of reasonableness in this case weighted towards the Applicants. The Tribunal find it would be reasonable to grant the order. Due to the difficulties the Respondents were facing in finding alternative, affordable accommodation and to allow them time to seek further help from the Council and to make arrangements for their daughter to move school if that proves necessary, the Tribunal determined the order should be suspended for three months.

20. 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

21. 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

26 October 2024

Legal Member

Date

