



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”)

Chamber Ref: FTS/HPC/EV/20/1192

Re: Property at 54 Denholm Crescent, East Kilbride, G75 0BU (“the Property”)

Parties:

Mr John Paul Cathcart, 9 Glen More, East Kilbride, Glasgow, G74 2AP (“the Applicant”)

Miss Sarah Danielle Wright, 54 Denholm Crescent, East Kilbride, G75 0BU (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant should be granted an order for possession of the Property under S51 and Schedule 3, Ground 1 of the Act.

Background

The Applicant was the owner of the Property. He had let it to the Respondent by way of a private residential tenancy under the terms of the Act. The Applicant alleged that he no longer wished to hold the property as available for rent and that he wished to dispose of it. He therefore applied to the Tribunal under Ground 1 of the Act for an eviction order against the Respondent in order that he could gain possession of the Property and sell it

The Tribunal had the following documentation before it:-

- The Applicant’s application to the Tribunal dated 10 May 2020;
- Confirmation from Yopa Estate Agents that a valuation with a view to sale had been carried out at the Property dated 9 December 2019;
- S11 Homelessness Notice

- Notice to Leave dated 6 April 2020
- Confirmation of service of Notice to Leave via email dated 6 April 2020
- Copy Lease dated 4 December 2019
- Land Certificate LAN196543 in the name of the Applicant

The Case Management Discussion (“CMD”)

The Tribunal held a CMD via teleconference on 17 August 2020 at 2pm. The Applicant was present on the call and represented himself. The Respondent was neither present nor represented.

The Tribunal noted that the Tribunal papers had been served on the Respondent by Sheriff Officers on 22 July 2020. The papers highlighted the date and time of the teleconference and also that a decision could be made on the day and in the absence of the Respondent. On that basis, the Tribunal saw no reason not to proceed and make a decision on the day.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property;
- The Applicant had let the Property to the Respondent under a private residential tenancy as provided for in the Act dated 4 December 2019;
- The Applicant had served a valid Notice to Leave on the Respondent;
- The Applicant had a genuine intention to sell the Property within the definition of Ground 1 of Schedule 3 to the Act.

Reasons for the Decision

The relevant test in this matter is contained within Ground 1 of Schedule 3 to the Act, which states:-

1(1)It is an eviction ground that the landlord intends to sell the let property.

(2)The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord—

(a)is entitled to sell the let 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.

(3)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.

The Tribunal noted that the Applicant had already obtained a valuation of the Property from an Estate Agent and put this forward as evidence of his intention to sell. The Tribunal noted that this was dated around the time the lease was granted. The Applicant explained at the CMD that he had purchased the Property at the height of the property boom in 2007. He had subsequently got engaged and moved in to another property with his fiancé. The financial crisis had occurred shortly after he had purchased the Property and it had fallen significantly in value. The mortgage had been greater than the value of the Property and so he had reluctantly been obliged to rent it out.

Since then the Property had gradually started to recover in value to the point that the value would be close to being sufficient to repay the amount of the mortgage. He had obtained the valuation at the end of 2019 and there was only a very small shortfall. He had entered in to the lease a little reluctantly but still needed to have an increase in the value. The Estate Agent had indicated that values should rise further. The Applicant was of the view that this had indeed occurred and he could now clear the mortgage from the sales proceeds and would no longer need to be a landlord.

He advised that he had found the lease with the Respondent to be a challenging one. Although she had taken the lease from December he alleged she had not moved in until the start of April as she was subject to a tag and could not relocate and was a drug addict. Upon first visiting the Property at the start of April to introduce himself, he alleged he found a dead body in the bed in one of the rooms - someone who had died of an overdose. The Respondent advised at the CMD that he no longer wished to rent the Property and had found this experience harrowing. On the basis the Property would have risen further in value he took the view that he could now sell. He therefore applied to the Tribunal to terminate the tenancy.

The Applicant was the owner and entitled to sell the Property. He had produced evidence that he had had a valuation from an Estate Agent. The Land Certificate confirmed his date of purchase was at the height of the property boom, which substantiated his claim that he had been in negative equity. The Applicant was credible at the CMD and gave his evidence in a measured fashion. The Tribunal had no reason to doubt him. The Tribunal was satisfied that he no longer wished to be a landlord and had a genuine intention to sell. Accordingly the test contained in Ground 1 of Schedule 3 to the Act was met. The Tribunal noted that the Notice to Leave had been served prior to the introduction of amended notice periods in terms of the Coronavirus (Scotland) Act 2020 and so granted the order sought

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.

Ewan Miller

17/08/2020

Legal Member/Chair

Date