



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/21/1218

Re: Property at 41 Swift Brae, Livingston, EH54 6GY (“the Property”)

Parties:

Mrs Nadia Razaq, 12 Findochty Place, Garthamloch, Glasgow, G33 5DE (“the Applicant”)

Miss Alisha Jane Scally, 41 Swift Brae, Livingston, EH54 6GY (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member) and Elaine Munroe (Ordinary Member)

- 1. The tribunal determined that an order for the eviction of the respondent from the property at 41 Swift Brae Livingston EH54 6GY be made on the basis of ground 1, that the respondent intends to sell the property and it is reasonable to grant an eviction order.**
1. This was a hearing in connection with an application for eviction in terms of s52 of the Private Housing (Tenancies)(Scotland) Act 2016 and Rule 109 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’.
2. The tribunal had before it the following copy documents: -
 - (1) Application dated 17 May 2021 and received by the tribunal on 20 May 2021.
 - (2) Private Residential Tenancy Agreement ‘PRT’ between the parties dated 24 November 2018.
 - (3) Notice to leave dated 11 November 2020.
 - (4) Proof of service of notice to leave dated 11 November 2020.
 - (5) S11 notice.

- (6) Execution of service of the application by sheriff officer dated 14 July 2021.
 - (7) Land certificate.
 - (8) Extract from the landlord register.
 - (9) Sales Contact dated 24 May 2021.
3. This was a case management discussion 'CMD' in connection with an eviction application in terms of s52 of the Private Housing (Tenancies)(Scotland) Act 2016, 'the Act' and rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. 'the rules'. The applicant was represented by Ms Antoinette Orr of Martin and Company, letting agent and estate agents. The respondent attended.

Preliminary matters

4. Miss Scally advised that she received her copy of the application via sheriff officer on 14 July 2021. She also confirmed she received the notice to leave via email on 11 November 2020. Miss Scally stated she had not sought legal advice in connection with the eviction proceedings and she did not intend to do so.
5. Ms Orr clarified that the evidence she has lodged in support of the eviction ground is a scanned copy of a sales contract between the applicant and Martin and Company dated 24 May 2021. Martin and Company have therefore been instructed to act as estate agents in the sale. She stated that a home report has not been instructed yet as the timescale for Miss Scally moving out of the property is too uncertain.

Discussion

6. Miss Scally gave evidence that she has been actively looking for a new tenancy since she received the notice to leave. She resides in the property with her three year old son. She has contacted the council and a councillor and her MP with no success. She does not consider that another private let is practicable as the rent would be unaffordable. She would prefer a council let but has been advised that an application for homeless accommodation cannot be progressed until an eviction order is granted. Miss Scally was therefore not opposed to the application, and it was her evidence that the eviction order would enable her housing application to be progressed.
7. Ms Orr stated that the applicant has rented the property via Martin and Company since 2011. Her circumstances have changed significantly since the PRT was entered into. The applicant purchased a larger property in January 2020 to accommodate her son who has autism. After the pandemic hit the applicant lost her job and her husband's income has reduced. The applicant is unable to afford

to upgrade the property and she has been struggling to pay the mortgage. The applicant has decided that she has to sell the property. Ms Orr acknowledged that Miss Scally has paid the rent and arrears have not been an issue. Ms Orr also stated that she has endeavoured to find Miss Scally a new private let but Miss Scally has asked her to discontinue this as she wishes to obtain a council property due to cost.

8. Findings in fact

- (1) The applicant is the owner of the property.
- (2) The parties entered into a PRT for let of the property on 20 November 2018.
- (3) The applicant intends to sell the property.
- (4) A valid notice to leave dated 11 November 2020 was served on the respondent on 11 November 2020.
- (5) The applicant intends to put the property up for sale within three months of the respondent ceasing to occupy it.
- (6) It is reasonable in all of the circumstances that an eviction order be granted.

Reasons

9. This was an unopposed application for eviction in connection with a PRT. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair.
10. The tribunal was satisfied that the notice to leave served on the respondent on 11 November 2020 was valid. This was served on the respondent at the email address noted in the PRT. The correct notice period is 6 months in terms of the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses)(Notice Periods) Modification Regulations 2020. The date given on the notice to leave was 14 May 2021. The tribunal was satisfied that the terms of s49 and 54 of the Act had been complied with.
11. The tribunal took into account the written documents lodged in support of the application, the submission of Ms Orr and the oral evidence of the respondent.
12. The tribunal considered the evidence in the light of the terms of ground 1 of schedule 3 of the Act which provides:

Landlord intends to sell

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

(2) The First-tier Tribunal **[F1 must]** **[F1 may]** find that the ground named by sub-paragraph (1) applies if the landlord—

(a) is entitled to sell the let property, **[F2 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 **[F3]**, and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts. **]**

(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.

13. Given the amendments of the Coronavirus (Scotland) Act 2020, the tribunal must be satisfied that the eviction ground is met and that it is reasonable in all of the circumstances to grant the eviction. The tribunal was satisfied on the evidence produced by the applicant that the eviction ground was met. The tribunal was satisfied that the applicant intends to sell the property. The applicant has already engaged an estate agent and when the timescale for the respondent moving out is known, the applicant intends to obtain a home report. The tribunal was satisfied on the evidence presented that it was likely that the property would be placed on the market for sale within three months of the respondent ceasing to occupy it.

14. The tribunal was satisfied that it is reasonable to grant the eviction order sought. Having regard to the whole circumstances of the case, the tribunal was satisfied the applicant had good reasons for wanting to sell the property. She had bought a larger property to reside in and was struggling financially due to losing her job and her husband's income also being reduced. She was not able to maintain the property beyond the minimum and she wishes to sell it. In addition, the tribunal was also satisfied that it was reasonable to grant the order given the respondent's circumstances. The granting of the order should enable the respondent to have her housing application progressed. The tribunal accordingly granted the order for eviction.

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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.

L. A. Ward

13 August 2021

Lesley A Ward Legal Member

Date