



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/20/1268

Re: Property at Mylnefield Lodge, Invergowrie, DD2 5EH (“the Property”)

Parties:

Sarkar (Dev) Ltd, 10 Cairnie Road, Arbroath, DD11 3DY (“the Applicant”)

Ms Tracy Wilson, Mylnefield Lodge, Invergowrie, DD2 5EH (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.

FINDINGS IN FACT

1. The Applicant is the landlord, and the Respondent the tenant, of the property at Mylnefield Lodge, Invergowrie (“the Property”) under and in terms of a Private Residential Tenancy.
2. The monthly rent is £700.
3. The Applicant served Notice to Leave on the Respondent by hand delivery on 16 March 2020, specifying three grounds for eviction:-
 - a. The landlord intends to sell the Property;
 - b. The tenant has breached a term of her tenancy agreement; and
 - c. The tenant was in rent arrears for a continuous period of over three months.

4. The Notice to Leave gave a period of notice of 84 days.
5. The Applicant intends to sell the property.
6. The Respondent is in breach of her tenancy agreement by keeping a dog at the property.
7. The Respondent is in rent arrears, and has been since December 2018.
8. The current rent arrears are in excess of £3,400, which is in excess of one month's rent.

FINDINGS IN FACT AND LAW

1. In respect that the Applicant intends to sell the Property and has specified that as a ground for eviction in a Notice to Leave served on the Respondent giving a sufficient period of notice, the eviction order must be granted.
2. In respect that the Respondent has been in rent arrears for a continuous period in excess of three months and is currently in arrears of a sum in excess of one month's rent, and the Applicant has specified that as a ground for eviction in a Notice to Leave served on the Respondent giving a sufficient period of notice, the eviction order must be granted.

STATEMENT OF REASONS

1. This application called before me for a Case Management Discussion by teleconference on 25 August 2018. The Applicant was represented by a Mr Harris. The Respondent did not participate in the teleconference, and was not represented.
2. The Application seeks the grant of an eviction order. It provides that:-
 - a. The Applicant is the landlord, and the Respondent the tenant, of the property at Mylnefield Lodge, Invergowrie ("the Property") under and in terms of a Private Residential Tenancy.
 - b. The monthly rent is £700.
 - c. The Applicant served Notice to Leave on the Respondent by hand delivery on 16 March 2020, specifying three grounds for eviction:-

- i. The landlord intends to sell the Property;
 - ii. The tenant has breached a term of her tenancy agreement; and
 - iii. The tenant was in rent arrears for a continuous period of over three months.
 - d. The Notice to Leave gave a period of notice of 84 days.
 - e. The Applicant intends to sell the property.
 - f. The Respondent is in breach of her tenancy agreement by keeping a dog at the property.
 - g. The Respondent is in rent arrears, and has been since December 2018.
3. A copy of the Application was served on the Respondent, giving notice of the Case Management Discussion. She has therefore been afforded an opportunity to dispute any of those assertions and oppose this Application. She has chosen not to do so. I therefore determine that those facts as specified in the Application are not in dispute.
4. Mr Harris advised that the Respondent's rent arrears are in excess of £3,400. That is a sum in excess of one month's rent.
5. In terms of the Private Housing (Tenancies) (Scotland) Act 2016:-

“51 First-tier Tribunal's power to issue an eviction order

- (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.
- (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.
- (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

- (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

...

Schedule 3

1 Landlord intends to sell

- (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.

...

11 Breach of tenancy agreement

- (1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—
 - (a) the tenant has failed to comply with a term of the tenancy, and
 - (b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

12 Rent arrears

- (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
- (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—
 - (a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

- (i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and
 - (ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and
 - (b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- (3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—
 - (a) for three or more consecutive months the tenant has been in arrears of rent, and
 - (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.”
- 6. Rule 17 of the Tribunal Rules of Procedure permits the Tribunal to do anything at a Case Management Discussion that it may do at a Hearing, including make a decision. In considering this Application, I am also obliged to have regard to the overriding objective in Rule 2 of the Tribunal Rules of Procedure; including to deal with applications justly and expeditiously.
- 7. Ground 1 provides that where the landlord intends to sell the property, that is a mandatory ground for eviction. The Applicant has produced a home report for the property, indicating an intention to sell. That is an intention that was reiterated by Mr Harris at the CMD. I am satisfied that Ground 1 applies. That being so, I must grant the order for eviction.
- 8. Ground 12 provides that where the tenant has been in arrears for a continuous period of three months or more, and the arrears at the date of consideration of the Application by the Tribunal exceed one month's arrears,

then that is a mandatory ground for eviction. I am satisfied that Ground 12 applies. That being so, I must grant the order for eviction.

9. Ground 11 provides that where the tenant is in breach of a term of her tenancy, that is a discretionary ground for eviction. The Tribunal may only grant the order if it is reasonable to do so. The breach here relates to the Respondent allowing a dog to live in the Property. Mr Harris advised that the Property is “dog friendly”, but the tenant did not have permission to keep the animal and that it was being allowed to roam the development unattended. Given that there are established mandatory grounds for eviction, I do not need to consider whether Ground 11 is established. I therefore make no decision in that respect.

10. Accordingly, I granted the eviction order.

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.

Andrew Upton

25 August 2020

Legal Member/Chair

Date