



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/20/1581

Re: Property at 109 Linnhe Crescent, Wishaw, Lanarkshire, ML2 0PH (“the Property”)

Parties:

Jecks Properties Ltd, 9 Allanton Road, Newmains, Wishaw, ML2 9QF (“the Applicant”)

Ms Devi Khadka, 109 Linnhe Crescent, Wishaw, Lanarkshire, ML2 0PH (“the Respondent”)

Tribunal Members:

Yvonne McKenna (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 under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 in respect that the Applicant intends to sell the Property.

Background

1. This is an application lodged with the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). It is an application for an eviction order.
2. The application is dated 23rd July 2020. Along with the application the Applicant lodged the following documents; -
 - Private Residential Tenancy with a start date of 9th August 2019
 - Notice to Leave dated 1st April 2020
 - Email to the Respondent with Notice to Leave dated 1st April 2020

- Section 11 Notice in terms of the Homelessness etc. (Scotland) Act 2003
 - Email to the local authority with the Section 11 Notice dated 23rd July 2020
 - Confirmation of instructions from “Your Move” to market the sale of the Property dated 1st April 2020.
3. The Respondent had made a written submission to the Tribunal namely an email dated 28th October 2020. In this e-mail she stated that she was being harassed by the Applicant. She stated that she had bought new furniture for the Property which arrived on 15th October 2020. She said that currently due to the pandemic that she does not have a job and that she suffered from extreme anxiety. She also stated that she has a one-year old child and that she had found it difficult to try and find alternative accommodation. She sought a 2-month period to find alternative accommodation.

The Case Management Discussion (CMD)

4. The CMD took place by teleconference on 30TH October 2020 at 2pm due to the disruption caused by the COVID-19 pandemic. The CMD was a conjoined CMD along with a payment action for arrears of rent under tribunal reference FTS/HPC/CV/20/1582.
5. The Applicant was represented by Ms Claire Mullen of TC Young solicitors. The Applicant’s Sole Director Mr. Kevin McAleer was present on the call supported by his wife Mrs. Janet McAleer. The Respondent did not participate.
6. The Legal Member asked Ms. Mullen whether she had sight of the written representation which had been made to the Tribunal by the Respondent and whether she had time to take instructions on this. This e-mail received by the Tribunal from the Respondent was dated 28th October 2020 at 20.38. Ms Mullen said that she had seen that submission yesterday afternoon. Ms. Mullen said that the comments detailed therein by the Respondent did not amount to a defence in relation to either this application or the payment application. Regarding the request by the Respondent for a 2-month period to find another property Ms. Mullen said that her instructions were to proceed to ask for an order for eviction today. She pointed out that the Respondent would have a 30 day appeal period and a 14 day period following service of a Charge by Sheriff Officers following the Order for Eviction being issued so the Respondent would have a period of slightly less than 2 months in practical terms to remove herself from the Property.
7. In relation to the payment application this was continued to a new CMD to allow for the Applicant to seek to increase the sum claimed and for this to be intimated on the Respondent.

Findings in Fact

8. The Applicant is the landlord, and the Respondent is the tenant of the Property under and in terms of a Private Residential Tenancy Agreement which commenced on 9th August 2019.
9. By Notice dated 1st April 2020 and served on the Respondent by email dated 1st April 2020, the Applicant gave Notice to Leave specifying, on a period of

84 days that they intended to sell the Property, and that an application for eviction would not be raised prior to 27th June 2020.

10. The Applicant intends to sell the Property.
11. The Applicant is the heritable proprietor of the Property and is entitled to sell the Property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it.
12. The Applicant has instructed "Your Move" to market the Property for sale on 1st April 2020.
13. The Applicant having served Notice to Leave on the Respondent on a period of notice of 84 days specifying, as a ground for eviction, that it intends to sell the Property, and that period of notice having expired, and the Respondent having remained in the Property, an eviction order must be granted.

Reasons for Decision

Decision

14. The Respondent has had notice of the Application and supporting documentation, and of the CMD. She has lodged submissions in which she does not dispute the Applicant's assertions in the application. Accordingly, the above findings in fact are not disputed.
15. In terms of the Private Housing (Tenancies)(Scotland)Act 2016 ("the 2016 Act")

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.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) 84 days after it begins if subsection (3) does not apply.

(3) This subsection applies if—

(a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or

(b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the tenant is not occupying the let property as the tenant's home,

(ii) that the tenant has failed to comply with an obligation under the tenancy,

(iii) that the tenant has been in rent arrears for three or more consecutive months,

(iv) that the tenant has a relevant conviction,

(v) that the tenant has engaged in relevant anti-social behaviour,

(vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.

(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

SCHEDULE 3 EVICTION GROUNDS, PARAGRAPH 1

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 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.

16. In terms of Rule 17 of the 2017 Regulations, the Tribunal can do anything at the CMD that it may do at a Hearing, including make a decision. In terms of Rule 2, the Tribunal must, when making a decision, have regard to the overriding objective to deal with proceedings justly, including by dealing with proceedings expeditiously.

17. The Notice to Leave was served in accordance with section 54(2) of the 2016 Act. The Notice to Leave gave 84 days notice and is therefore valid.

18. The Ground relied upon by the Applicant is Ground 1, which is that the Applicant intends to sell the Property and 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. This intention is not disputed by the Respondent. The Tribunal is satisfied that the ground is established.

19. Ground 1 is a mandatory ground. If established, there is no discretion. The Tribunal must grant the order. Since the Notice pre-dates the coming into force of the Coronavirus (Scotland) Act 2020, there is no requirement to consider whether it is reasonable to grant the order or not.

20. There is no need to delay these proceedings further. For the reasons set out above, the Tribunal must grant the 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.

Yvonne McKenna

30th October 2020

Legal Member/Chair

Date