



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/19/3532

Re: 25 Caulstram Raod, Dumfries DG2 9FJ (“the property”)

Parties:

**Dr Swanthi Tadakamalla, 47 Riseholme Road, Lincoln, LN1 3SN
 (“the applicant”)**

**GM Thomson & Co., 35 Buccleuch Street, Dumfries DG1 2AB
 (“the applicant’s representative”)**

**Miss Telea Jardine, 25 Caulstram Road, Dumfries DG2 9FJ
 (“the respondent”)**

Tribunal Member:

Adrian Stalker (Legal Member)

Decision (in absence of the respondent):

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) decided that it was not competent to grant an eviction order against one of two joint tenants, and therefore the application cannot be granted by the Tribunal, and it is refused.

Background

1. This is an application under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, and rule 109 of the schedule to First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Rules”).
2. The applicant is one of two owners of the property, the other being a Dr Jagan Rapala. On or about 21 September 2018, they let the property to the respondent and

a Mr Trevor Alexander Campbell under a private residential tenancy (“PRT”) in terms of the 2016 Act. The parties entered into a written agreement, using the Scottish Government’s Model Agreement. In terms of that agreement, both the applicant and Dr Rapala are named as the joint landlords, and both the respondent and Mr Campbell are named as the joint tenants. The applicant’s representative, GM Thomson & Co., 35 Buccleuch Street, Dumfries, is named as the landlords’ agent in the agreement.

3. By an application received by the Tribunal on 1 November 2019, the applicant sought an eviction order under section 51 of the Act, against the respondent alone. The sole ground for eviction on which the application founds is that the landlord intends to sell the property, being ground 1 in schedule 3 to the Act.

4. That is also the sole ground stated, in the copy notice to leave (under section 62 of the Act) which was produced with the application. This runs in the name of GM Thomson & Co., 35 Buccleuch Street, Dumfries, as agents for the landlord. Again, the notice to leave is addressed to the respondent alone.

5. The notice to leave, which was sent to the respondent on 10 June 2019, refers to a “contract for the sale of the property” which is attached to the notice. The contract, a copy of which is attached to the application, is in fact a contract between the property owners (being the applicant and Dr Rapala) and GM Thomson & Co., in terms of which the latter is instructed to market the property. The contract was signed by the applicant and Dr Rapala on 7 June 2019.

6. On 27 November 2019, notice of acceptance was granted by a legal member. A Case Management Discussion (“CMD”) was fixed.

7. Subsequently the applicant’s representative produced a copy of an email from Mr Trevor Campbell, dated 28 May 2019. This simply states:

This email is to confirm my removal from the tenancy of 25 Caulstran Road. Left the property on the 10th of April 2019.

This is apparently why Miss Jardine is the only respondent, in the application, and why the notice to leave was addressed to her, alone.

The CMD

8. The CMD took place at 2pm on 14 January 2019, at Lochvale House, Georgetown Road, Dumfries. The applicant did not attend, but was represented by Mrs Rebecca Reed and Miss Kirsty McBain of GM Thomson & Co. They confirmed that the current address of applicant, and Dr Rapala, is 10 St Andrews Crescent, Canning Vale, West Australia, 6155.

9. The respondent did not appear, and was not represented. She contacted the Tribunal clerk, by email, on the morning of the hearing, to indicate that she would be unable to attend, because her child was ill. She did not ask for the CMD to be adjourned or postponed. She had not made any other representations to the Tribunal, in advance of the CMD.

10. Under rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

11. Mrs Reed confirmed that an order was sought, under section 51 of the 2016 Act. The Tribunal asked her to address two issues: the fact that the application was made in the name of the applicant alone, and that an order was sought against the respondent alone, rather than both joint tenants.

Application made by only one of the joint landlords

12. Under section 52(1) of the 2016 Act, 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. Accordingly, it was competent for the application to proceed in the name of the applicant, alone.

13. However, where an application is made by only one of two joint landlords, the application should be intimated to the other joint landlord, in terms of rules 9 and 112 of the Procedure Rules. Rule 112 requires intimation on the "landlord", and where there are joint landlords, intimation must be made on all of them, given rule 46(2)(g), and section 78(2) of the 2016 Act (which is set out below).

14. In this case intimation of receipt of the application was made on GM Thomson & Co. That firm had produced a mandate signed by both the applicant, and Dr Rapala, confirming that it had their instructions to act for both of them, in pursuing this application.

15. Mrs Reed confirmed that the application running in the name of the applicant alone was an error. It ought to have been made in the joint names of both landlords. The notice to leave was issued by GM Thomson & Co, on the instructions of both of the joint landlords. As regards separate intimation of the application on Dr Rapala, the Tribunal decided that this was not necessary, as intimation was made on his agents, GM Thomson & Co, and they had produced evidence of his agreement with the application being made.

Application for an eviction order in which only one of the joint tenants is named as a respondent

16. The Tribunal also asked to be addressed on a potential objection to the competency of the application, on the basis that both the notice to leave, and the application, were directed against the respondent alone. This objection is as follows.

17. Section 78 of the 2016 Act, which is the interpretation section, provides that:

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Act to the landlord are to all of those persons unless stated otherwise.

(3) In a case where two or more persons jointly are the tenant under a tenancy, references in this Act to the tenant are to all of those persons unless stated otherwise.

18. In this case, an eviction order is sought under section 51(1), which states:

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.

19. As already mentioned, specific provision is made, in section 52(1), to the effect that, where there are joint landlords, an application for an eviction order may be made by one of them. However, there is no provision to the effect that, where there are joint tenants, an eviction order may be sought, or granted, against one of them. In the case of joint tenants, given section 78(3), "tenant" in section 51(1) means all of the joint tenants. Likewise, the requirement in section 52(3), that "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", means a notice to leave which has been given to all of the joint tenants.

20. Accordingly, it is not possible for the Tribunal to grant an order under section 51(1) against the respondent alone, if she is only one of the joint tenants under the tenancy.

21. In this case the notice to leave, and the application, were directed against the respondent alone, because Mr Campbell had intimated to GM Thomson & Co that he was no longer residing at the tenancy. However, that, in itself, does not have the effect of terminating his interest in the PRT. No evidence has been produced of any agreement, between the parties, that the respondent was to become the sole tenant.

22. In the view of the Tribunal, even if there was agreement between the parties, it would have to be an agreement that both of the joint tenants would terminate the lease

under sections 48 and 49 (which concern termination by the tenant of a PRT), and then the landlords would grant a new lease to the respondent, alone.

23. Under section 44, a PRT cannot be brought to an end “by the landlord, the tenant, nor by any agreement between them”, except in accordance with part 5 of the Act. The only mechanism, under part 5, by which a tenant can bring the tenancy (or his interest in the tenancy) to an end is under sections 48 and 49. However, given section 78(3), termination by a “tenant” under those sections means termination by all of the tenants. The PRT cannot be brought to an end by one of the joint tenants. This is confirmed by the Scottish Government’s Model PRT Agreement (p18), the Easy Read Notes (p32) and the Statutory Terms Supporting Notes (p6), all of which expressly state that the agreement of all of the joint tenants is needed to end the tenancy.

24. For these reasons, the mere ceasing of occupation by one of the joint tenants does not have the effect of terminating the PRT, or his interest in the PRT, as joint tenant. Mr Campbell could, in theory, have resumed occupation at any time after his email in May, and could still do so.

25. In relation to this issue, Mrs Reed candidly accepted that this problem had already occurred to GM Thomson & Co. She informed the Tribunal that, in recent months, since Mr Campbell left, the rent has fallen into arrears. A further notice to leave was served later in November 2019, which is addressed to both of the joint tenants, and relies on ground 12 (rent arrears). Rather than insisting on an order under ground 1, Mrs Reed suggested that it was possible for the Tribunal to grant an order under ground 12, on the basis of the second notice to leave.

26. That, however, would not be competent. It is possible, under rule 32 of the Procedure Rules, to add parties to the proceedings. It is also possible, under section 52(5) of the Act, for the Tribunal to allow the landlord to rely on eviction grounds which were not included in the original notice to leave. However, under section 52(3), the application cannot be entertained unless it is accompanied by a copy of a notice to leave which has been given to the tenant. If “tenant” means both of the joint tenants, that was not done in the case of this application, because the notice was not given to Mr Campbell before the application was submitted. Hence a fresh application is necessary.

Decision

27. For these reasons, the application is refused.

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.

A.Stalker

Signed

Date 15 January 2020