



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/21/2373

Re: Property at 8 G/R Fullarton Street, Dundee, DD3 6DF (“the Property”)

Parties:

Miss Theresa Rennie, 53 Penneld Road, Glasgow, G52 2QF (“the Applicant”)

Mr Neil Nixon, 8 G/R Fullarton Street, Dundee, DD3 6DF (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Melanie Booth (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 having determined that the Applicant is entitled to sell the property and intends to put the property up for sale within three months of the Respondent ceasing to occupy it and it is reasonable to grant the order.

The Decision of the Tribunal was unanimous.

Background

1.This application is for an eviction order and is made in terms of Rule 109 of the Tribunal rules of procedure. The Application was made on 1st October 2021 and accepted by the Tribunal on 21st January 2022. A case management discussion was fixed for 1st April 2022 at 10am to take place by teleconference.

Case Management Discussions

2.On 1st April 2022 the Applicant attended the teleconference and represented herself. The Respondent did not attend and was not represented but the tribunal was able to

proceed in his absence as the application and papers had been served on him personally by Sheriff officers.

3.The Tribunal had sight of the Application, a tenancy agreement, a Notice to Leave, a letter from the Applicant to the Respondent, a track and trace document, a letter regarding redundancy, a letter to Dundee City Council and an invoice for renovation work not yet carried out at the property. The Tribunal members also had sight during the discussion of a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003.

4.The parties had entered into a private residential tenancy at the property with effect from 1st June 2020. A Notice to Leave had been sent by post to the Respondent and was dated 25th February 2021.The tribunal was provided with proof of delivery of that notice. The Applicant indicated that she had posted a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 through a letter box at the offices of Dundee City Council housing department on 25th February 2021.

5.The Applicant had been made redundant in 2021 from a job she had held for 20 years and was seeking to sell the property. She had considered selling before she was made redundant, but her financial situation was far more acute now and she required to sell. She now works part time for Royal Mail but her monthly mortgage payments of £411 exceed the monthly rent of £230 which she receives in terms of the tenancy agreement for the property, and she is struggling to make the mortgage payments. She said her intention to sell was not personal to the tenant who had been a good tenant. She had been unable to access the property as the locks had been changed and unable to contact the Respondent by phone to access the property, so this was why she had not yet approached a solicitor or estate agent regarding the sale of the property. She could not instruct a Home Report given that she could not access the property. She indicated that she needed to assess the condition of the property and what it required in terms of renovation before sale, but she believed certain work would be required and she had obtained and lodged quotations for that work. She had bought the property in 2007 and had initially lived in it herself. She intends to use her redundancy payment towards required renovations before the property is sold.

6.The Tribunal requested further information to support the suggestion that the Applicant intended to sell the property and also confirmation of service of the notice in terms of S 11 of the Homelessness etc (Scotland) Act 2003.

7.At the next case management discussion which took place on 13th May 2022 the Applicant attended again and represented herself. The Respondent attended and represented himself. What had taken place at the first case management discussion was explained to the Respondent who had received all the relevant papers. He also confirmed that he had known of the proposed eviction for some time.

8.At this case management discussion the Tribunal had sight of additional papers from the Applicant in the form of an email dated 11th April 2022 to Dundee City Council intimating a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and a letter from Jewel Homes confirming that they would be happy to market the property for the Applicant and giving an approximate valuation.

9.The Applicant confirmed that if an order was granted, she intended to complete renovation work at the property within 2 to 3 months after the property was vacant with a view to having the property on the market within that timescale. She understood that the tradesperson she would likely use would be available within that period and she might obtain other quotes. The timescale she gave she considered generous and was confident that the timescale could be achieved. She intended to market the property using Jewel Homes.

10. The Respondent confirmed that he had received the relevant papers. He understood why the Applicant was wishing to sell the property but was concerned that he had sufficient time to find alternative housing. He had been a tenant for 12 years and always paid his rent on time. The Applicant stressed that the application was not a decision she had made which was personal to him and the Respondent indicated that he understood that.

11. At the first case management discussion on 1st April 2022 the Tribunal raised the issue of the Notice to Leave lodged and the date given in Part 4 which appeared to be a date one day earlier than the required date. This was discussed and it appeared that the Applicant had made an error in the date and had failed to take proper account of the changes set out in paragraphs 1 to 9 of Schedule 1 of the Coronavirus (Scotland) Act 2020. She had however given more notice than the notice period originally set out in the 2016 Act for the eviction ground being used and had not applied to the Tribunal during the notice period itself, so the Tribunal was able to be satisfied in terms of Paragraph 10 of Schedule 1 of the 2020 Act that the Notice to Leave appeared valid on this basis.

12. This matter was raised with the Respondent at the second case management discussion on 13th May. He did not take any issue with the Tribunal's interpretation of the matter regarding the Notice to Leave but explained that he intended to take legal advice and had an appointment with a solicitor the following week. He requested time to take legal advice on the application. This request was opposed by the Applicant who was keen to have matters dealt with but having regard to the overriding objective the Tribunal allowed an adjournment for this purpose.

13. A further case management discussion was fixed for 6th June 2022 at 2pm. At this discussion both parties attended, and the Respondent indicated that he had taken legal advice and that he had been advised that all seemed fine with the matter. He understood that the Applicant was entitled to seek to sell the property and he indicated that he did not wish to object to the order being made and did not wish to suggest that the making of an order would be unreasonable. He was attempting to find other accommodation.

14. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the Notice to Leave produced was valid, appropriately, and timeously served and that a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 had been intimated to the local authority.

Findings in Fact and Law

15. The Applicant is the owner of the property and entered into a private residential tenancy with the Respondent for the property with effect from 1st June 2020.

16. A Notice to Leave in terms of Ground 1 of the 2016 Act which was in proper order and gave the appropriate period of notice was posted to the Respondent on 25th February 2021.

17. The date in part 4 of the Notice to Leave was one day before the correct date to be given in the Notice.

18. Paragraph 10 of Schedule 1 of the Coronavirus (Scotland) Act 2020 applies to this Notice to Leave and the error in the date in Part 4 of the Notice does not affect its validity.

19. A Notice in terms of the Homelessness etc (Scotland) Act 2033 was posted by hand by the Applicant to Dundee City Council on 25th February 2021 and sent again to the council by email on 11th April 2022.

20. The Applicant was made redundant in 2021 from a job she had held for over 20 years.

21. The Applicant is struggling to afford to keep the property and the mortgage payments exceed the rent paid in terms of the tenancy.

22. The Applicant intends to sell the property due to her financial situation.

23. The Applicant intends to use her redundancy money to renovate the property when it is vacant and put it up for sale within three months of the Respondent ceasing to occupy it.

24. The Applicant has obtained quotes for renovation of the property and produced a letter from a firm which she had consulted to value and market the property in due course.

25. The Respondent does not object to an eviction order being granted and is seeking other accommodation.

26. In all of the circumstances it is reasonable to grant an eviction order at the property.

Reasons for Decision

The Tribunal was satisfied that the Notice to Leave produced in this application was valid despite the error in the date in part 4. The Tribunal took the view that the Applicant had simply failed to take proper account of the changes in paragraphs 1 – 9 of Schedule 1 of the Coronavirus (Scotland) Act 2020 and that the notice period given was in excess of the original notice period set out in the 2016 Act. The Application to the tribunal had not been made during the notice period. On that basis the error did not affect the validity of the notice.

As far as the Section 11 Notice was concerned there was no proof that it had been received by the local authority when posted by the Applicant in February 2021, but it had been resent by email on 11th April 2022 and the Tribunal was satisfied that the requirements of the Act had been met in relation to this notice.

The information provided by the Applicant to support the eviction ground appeared sufficient in the circumstances, given that she had been unable to access the property to have a Home Report or an accurate valuation carried out. The tribunal accepted that she was entitled to sell the property and that she intended to put it up for sale within 3 months of the Respondent ceasing to occupy it. The Respondent did not object to the making of an order and on the basis that the Tribunal found the ground to be established and there was no objection to the application it appeared reasonable to grant the order requested.

Decision

The Tribunal granted an eviction order in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 having determined that the Applicant is entitled to sell the property and intends to put the property up for sale within three months of the Respondent ceasing to occupy it and it is reasonable to 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.

Valerie Bremner

Legal Member/Chair

6/6/22

Date