



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 (Act)

Chamber Ref: FTS/HPC/EV/18/2542

Re: Property at 99 Glencairn Street, Stevenson, KA20 3BL (“the Property”)

Parties:

Ms Yan Li, 32 Kirkgate, Irvine, KA12 0DG (“the Applicant”)

Mr Robert Tonner, 99 Glencairn Street, Stevenson, KA20 3BL (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application be refused.

Background

This is an application for eviction and recovery of possession in terms of Grounds 1 and 11 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 25 September 2018;
2. Tenancy Agreement commencing 14 June 2018;
3. Notice to Leave dated 6 July 2018;
4. Proof of Service of Notice to Leave dated 7 July 2018;
5. Letters from Managing Agents;
6. Section 11 Notice;
7. Letter from Mackenzie Way dated 9 November 2018 stating they had been instructed to market the Property;
8. Letter from Applicant to Tribunal dated 9 November 2018;

9. Emails from the Applicant of 21/25 January 2019 advising that she was not going to attend the Hearing and that the Hearing should proceed in her absence;
10. Written Representations and enclosures from the Respondent dated 22 January 2019;
11. Letter from Europe and Jersey Estates dated 13 December 2018 confirming Ms Louise Mooney her tenancy of another property;
12. Letter from Mackenzie Way to the Respondent dated 18 December 2018 confirming that they had been appointed Managing Agents on behalf of the Applicant;
13. Letter from Mackenzie Way to Applicant dated 17 January 2019 stating that if the Applicant was unable to put the Property on the rental market then she should sell it.

Hearing

The case called for a Hearing on 28 January 2019. The Respondent was present. The Applicant was neither present nor represented.

The Tribunal considered the Applicant's emails of 21-25 January and determined that the Hearing should proceed. The Tribunal then heard evidence from the Respondent, considered the written submissions and documentary evidence that had been submitted by the Parties.

The Tribunal, so far as material, made the following findings in fact:

1. The Parties had entered in to a Tenancy Agreement commencing 14 June 2018;
2. The Applicant had served a Notice to Leave asserting Grounds 1 and 11 on 7 July 2018;
3. The Applicant had served a section 11 Notice on the local authority;
4. The Applicant had lodged the eviction application on 25 September 2018;
5. The Applicant had not produced satisfactory evidence to establish that she intended to sell the Property;
6. Ms Louise Mooney did not reside with the Respondent and had a tenancy elsewhere;
7. The Respondent did not have anyone staying with him in breach of the Tenancy Agreement.

Reasons

Ground 1

The Tribunal considered the terms of Schedule 3 of the Act and in particular Part 1, Ground 1. The Tribunal did not consider the evidence produced by the Applicant tended to show that the Applicant intended to sell the Property. The Respondent asserted that the Applicant had made such threats before.

The Tribunal considered that the terms of the letters of 18 December 2018 to the Respondent advising they had been appointed Managing Agents were inconsistent with the assertion that they had been appointed to market the Property. Whilst the letter of 9 November 2018 stated they had been appointed it did not include terms of

engagement, Property Particulars, Sales Valuation or a Home Report. There were no details of a marketing plan or timescale.

The Tribunal also considered that the letter of 17 January from the Managing Agents recommending that the Property should be put up for sale showed that the Applicant had not yet reached a decision on whether or not to market the Property for sale.

The Tribunal considered the evidence that had been lodged by the Applicant to be insufficient to establish that she intended to sell the Property.

The Tribunal accepted the evidence of the Respondent that this was a threat which the Applicant had used before.

Ground 11

The Tribunal then considered Ground 11 and whether or not the Respondent had failed to comply with an obligation under the tenancy. The Respondent asserted that the breach was constituted by the fact that Ms Louise Mooney was residing at the Property. The Tribunal had regard to the letter from Ms Mooney's letting agents confirming her tenancy elsewhere. The Tribunal accepted this evidence and the oral evidence of the Respondent that she was not living with him and was a tenant elsewhere.

The Grounds not having been made out the Tribunal refused the application. The Decision of the Tribunal was unanimous.

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.

Alan Strain

Legal Member/Chair

4 February 2019

Date