



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/22/3581

Re: Property at 6 Regents Place, Kirkcaldy, Fife, KY2 5HE ("the Property")

Parties:

Sinclair Homes Limited, Towngate House, 2-8 Parkstone Road, Poole, Dorset, England, BH15 2PW ("the Applicant")

Miss Caryn Johnstone, 6 Regents Place, Kirkcaldy, Fife, KY2 5HE ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion ("CMD"), which took place by telephone conference on 7 March 2023, the Applicant was represented by Ms Jemma Forbes of Innes Johnston LLP, Solicitors. The Respondent was neither present nor represented and had lodged no written representations.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 20 November 2018.
- ii. The rent payable in terms of the PRT is £375 per month.

- iii. On 29 June 2022, the Applicant's agent served on the Respondent by email a Notice to Leave requiring the Respondent remove from the Property by 25 September 2022 on the basis that the Applicant intended to sell the Property.
- iv. The Applicant's agent has served on Fife Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the CMD Ms Forbes for the Applicant made the following representations:-

- i. That during the morning of the CMD the Respondent returned the keys for the Property to the Applicant's Letting Agent, Fife Letting Services. There has been no opportunity for a check-out process to be carried out.
- ii. The Respondent's non-attendance at the CMD is likely explained by her removal as above.
- iii. The Respondent was not keen to sign any documentation relative to her removal or provide a forwarding address.
- iv. Notwithstanding the Respondent's apparent removal from the Property an eviction order is still sought.
- v. The Property is owned by the Applicant, a company previously run by David Sinclair and his wife, Rachel Hadfield, both Directors. Mr Sinclair took his own life in February 2019.
- vi. Mr Sinclair's death highlighted financial difficulties. During the course of the administration of Mr Sinclair's executry it became apparent that the Property and all other properties owned by the Applicant required to be sold.
- vii. The sale of the properties will allow sums due to heritable creditors to be repaid.
- viii. The sale of the properties to FCE Group Limited ("FCE") is a private sale. The properties were not placed on the open market.
- ix. There is no connection between the Applicant and FCE. FCE was introduced by the Applicant's Letting Agent.
- x. Ms Forbes had served a notice to remove another tenant relative to another property being sold by the Applicant to FCE but believed the rest of the properties being sold to FCE (other than the Property) to be empty.
- xi. The price being paid by FCE reflects the market value of the properties with vacant possession.
- xii. Missives are not yet concluded. If an eviction order is granted the sale could complete as early as 10 March 2023.
- xiii. Ms Forbes is unaware of the intentions of FCE relative to the properties.
- xiv. The Applicant seeks an eviction order.

Findings in Fact

- i. The Applicant leased the Property to the Respondent in terms of the PRT that commenced on 20 November 2018.
- ii. The rent payable in terms of the PRT is £375 per month.
- iii. On 29 June 2022, the Applicant's agent served on the Respondent by email a Notice to Leave requiring the Respondent remove from the Property by 25 September 2022 on the basis that the Applicant intended to sell the Property.
- iv. The Applicant's agent served on Fife Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- v. That on 7 March 2023 the Respondent returned the keys for the Property to the Applicant's Letting Agent, Fife Letting Services.
- vi. The Property is owned by the Applicant, a company previously run by David Sinclair and his wife, Rachel Hadfield, both Directors.

- vii. Mr Sinclair took his own life in February 2019.
- viii. Mr Sinclair's death highlighted financial difficulties.
- ix. During the course of the administration of Mr Sinclair's executry it became apparent that the Property and all other properties owned by the Applicant required to be sold.
- x. The sale of the properties will allow sums due to heritable creditors to be repaid.
- xi. The sale of the properties to FCE Group Limited ("FCE") is a private sale.
- xii. The properties were not placed on the open market.
- xiii. There is no connection between the Applicant and FCE.
- xiv. FCE was introduced by the Applicant's Letting Agent.
- xv. The price being paid by FCE reflects the market value of the properties with vacant possession.
- xvi. Missives are not yet concluded.
- xvii. If an eviction order is granted the sale could complete as early as 10 March 2023.
- xviii. It is reasonable that an eviction order be granted.

Reasons for Decision

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicant within the application papers and orally on its behalf at the CMD was not challenged and was accepted by the Tribunal.

The Tribunal considered whether or not it would be reasonable to grant an eviction order. The Tribunal took into account, in particular, the apparent removal of the Respondent from the Property and determined that, having regard to all the circumstances, it is reasonable to grant an eviction order under Ground 1 of Schedule 3 of the 2016 Act.

Decision

The Tribunal grants an order for the Respondent's eviction from the Property.

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.

G. Buchanan

Legal Member/Chair

7 March 2023
Date