



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/21/1344

Re: Property at 11 Robert Wynd, Newmains, Wishaw, ML2 9ER (“the Property”)

Parties:

Mrs Amanda Pitt, 16 Argarmeols Road, Formby, Liverpool, L37 7BU (“the Applicant”)

Ms Natalie McMahon or Glasgow, 11 Robert Wynd, Newmains, Wishaw, ML2 9ER (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and J Taylor Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent

Background

By application, received by the Tribunal on 3 June 2021, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 1 of Schedule 3 to the 2016 Act, namely that the Applicant intends to sell the Property. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 24 May 2019, a Notice to Leave dated 6 October 2020, advising the Respondent that an application to the Tribunal for an Eviction Order under Ground 1 of Schedule 3 to the 2016 Act would not be made before 2 June 2021, with evidence of service by sheriff officer of the Notice to Leave on 7 June 2020, and an email from Your Move estate agents, Wishaw, acknowledging the Applicant’s instructions to market the Property when the Respondent vacates it and detailing their service and fees.

On 25 June 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written

representations by 16 July 2021. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 3 August 2021. The Applicant was represented by Ms Sarah Lynch of Pomphreys solicitors, Wishaw. The Respondent was not present or represented. The Applicant's representative told the Tribunal that it was still the Applicant's fixed and settled intention to sell the Property and asked the Tribunal to find that it was reasonable to issue an Eviction Order without a Hearing.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to decide the application without a Hearing.

Section 51 of the 2016 Act states that the 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.

Ground 1 of Schedule 3 to the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020, provides that it is an Eviction Ground that the landlord intends to sell the let property and that the Tribunal may find that Ground 1 applies if the landlord is entitled to sell the let property, intends to sell for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts.

Ground 1 further provides that evidence tending to show that the landlord has the intention to sell includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale of the let property.

The Tribunal had no evidence before it which would lead it to question whether the Applicant's intention to sell is fixed and settled. The Applicant had provided a copy of an emailed letter of engagement from estate agents, accepting instructions to market the Property as soon as the Respondent has vacated it and the Respondent had not participated in the Case Management Discussion or sought to challenge the statement of the Applicant's intention to sell, which was in both the Notice to Leave and in the application. Accordingly, the Tribunal decided that it was satisfied that it was reasonable to issue an Eviction Order.

The Tribunal's Decision 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.

G Clarke

Legal Member/Chair

3 August 2021

Date