



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/22/1604

Re: Property at 29 Barlandfauld Street, Kilsyth, Glasgow, G65 0BT (“the Property”)

Parties:

Leslie Miller, 9c Old Bothwell Road, Bothwell, G71 8AW; 9c Old Bothwell Road, Bothwell, G71 8AW (“the Applicant”)

Jodie Sinclair, 29 Barlandfauld Street, Kilsyth, Glasgow, G65 0BT (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The PRT in question was by the Applicant and Manvir Singh to the Respondent commencing on 6 September 2021 (though there was reference in the Notice to Leave of an earlier PRT being in place since 28 December 2020).
2. The application was dated 26 May 2022 and lodged with the Tribunal on or around that date. The application was in the name of the Applicant and Manvir Singh as we discuss below.

3. The application relied upon a Notice to Leave dated 19 October 2021 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, served upon the Respondent by email on 19 October 2021 in accordance with the provisions of the PRT. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of the notice simply stated “The landlord intends to sell the property”. (The application papers did, however, include a Home Report for the Property dated 15 November 2021.) The Notice intimated that an application to the Tribunal would not be made before 21 April 2022.
4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon North Lanarkshire Council on 19 October 2021 though within the notice the landlord was stated to be Manvir Singh.

The Hearing

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 14 September 2022. We were addressed by the Applicant’s agent Stewart Matheson of Jewel Homes.
6. There was no appearance for the Respondent and no correspondence had been sent by her to the Tribunal. The Applicant’s agent stated that he had spoken with the Respondent that morning and that she said she would try and call in but had been unwell that morning. (Further medical details were provided to us but are not repeated here.)
7. We asked the Applicant’s agent what he believed the Respondent wished to have said to the Tribunal. He said that he believed that the Respondent wished to speak in favour of the application, as she was seeking to be rehoused in public sector housing and so the grant of an order to evict under ground 1 would be of assistance to her in her application. We had already held back commencement of the CMD until 10:05 but the Respondent, nor anyone on her behalf, dialled in (nor did anyone do so prior to the conclusion at around 10:25). In all the circumstances we were satisfied to consider the application in the absence of the Respondent.
8. At the CMD, the Applicant’s agent confirmed that the application for eviction was insisted upon. He explained that the Applicant and her husband Mr Singh had a portfolio of properties of which Jewel Homes managed the majority. They were now selling a minority of their portfolio due to a change in circumstances, though he was not aware of the full details of their change in circumstances. In regard to the Respondent and the Property, he submitted that: the Respondent lived alone; it was an upper flat that was not specially adapted; and that he knew of no reason for the Property being specially required by the Respondent due to its nature or location. (Further, he had already provided submissions that the Respondent was seeking rehousing already.) He stated that the Respondent was not in arrears.
9. No motion was made for expenses.

10. We sought the Applicant's agent's clarification in regard to the landlord of the Property. The Tenancy Agreement was in the name of both the Applicant and Mr Singh, as was the Application. (The Notice to Leave referred only to Jewel Homes as agents.) The Landlord Registration database listed Mr Singh as the sole landlord. The section 11 notice referred to Mr Singh as the sole landlord. The Title Sheet showed the Applicant as the sole owner.
11. The Applicant's agent confirmed that Mr Singh attended to most of the property matters for the portfolio that he and the Applicant owned. The Applicant's agent had no information to suggest that the Title Sheet was inaccurate nor that it was subject to any pending registration application. In all the circumstances, we were satisfied that – despite the terms of the Tenancy Agreement and the Landlord Registration database – the sole landlord was the applicant. Further we did not hold that the error in section 11 notice rendered it invalid, given that – despite the terms of the Title Sheet – the Tenancy Agreement listed him as a co-landlord. On our own motion we deleted Manvir Singh as an applicant and considered the application in the name of Lesley Miller as sole Applicant.

Findings in Fact

12. On 13 and 14 October 2021, the Applicant and the Respondent entered into a Private Residential Tenancy agreement documenting the terms under which a Private Residential Tenancy of the Property had been in place with the Respondent as tenant since 6 September 2021 (“the Tenancy”).
13. On 19 October 2021, the Applicant's agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicant wished to sell the Property.
14. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 21 April 2022.
15. The Applicant's agent emailed the Respondent a copy of the Notice to Leave on 19 October 2021 to the email address within the Tenancy Agreement, all in terms of clause 4 of the Tenancy Agreement.
16. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 1 of Schedule 3 Part 1 of the 2016 Act.
17. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon North Lanarkshire Council on 19 October 2021 stating the Landlord as Manvir Singh.
18. Mr Singh obtained a Home Report for the Property on 15 November 2021 for which the Applicant had the benefit.

19. The Applicant instructed Jewel Homes to market the Property and they corresponded with the Respondent regarding viewing arrangements on 19 October 2021.
20. The Applicant and her husband are seeking to reduce their property portfolio and wish to sell the Property.
21. On 26 July 2022, a Sheriff Officer acting for the Tribunal intimated the CMD of 14 September 2022 upon the Respondent.

Reasons for Decision

22. The application was in terms of rule 109, being an order for eviction of a PRT. The Tenancy Agreement specified that any Notice to Leave could be served personally or by email and there was no reason to doubt that the Notice to Leave, served by email, was received by the Respondent. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
23. Ground 1 of Schedule 3 to the 2016 Act (as temporarily amended) applies if:
 - (1) *...the landlord intends to sell the let property.*
 - (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*
 - (a) *is entitled to sell the let property,*
 - (b) *intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and*
 - (c) *the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*
 - (3) *Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*
 - (a) *a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*
 - (b) *a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.*
24. The Home Report and letter by Jewel Homes to the Respondent constitute evidence under paragraph (3) and, combined with the submissions by the Applicant's agent on the Applicant and her husband seeking to reduce their portfolio, we agreed that paragraphs (2)(a) and (b) were satisfied.
25. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We were satisfied that the Applicant's reasons for seeking eviction were just sufficient given the lack of any opposition from the Respondent, though further information would have been desirable and would certainly have been needed if there had been opposition.

26. In considering a counter-argument, none was advanced and the Applicant provided submissions that he had inferred that the Respondent was in favour of the application being granted. In any event, no submissions were provided that suggested any special reason why it would be unreasonable to evict, and we could discern none from the papers nor from the information we sought from the Applicant's agent.
27. In all the circumstances before us, we were satisfied that Ground 1 was founded by the Applicant and reasonable to grant. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we were thus satisfied to grant an order for eviction at this time.

Postscript on errors within the documentation

28. The confusion between whether or not Mr Singh was landlord or co-landlord, and should have been included in the application, as well as the Applicant's absence from the section 11 notice and Landlord Registration, did not present a reason to decline the application or delay it in these specific circumstances.
29. This does not mean that accuracy is unnecessary. A tenant is entitled to know who their landlord is (and who is not their landlord) and, given the regulation of landlords through Landlord Registration, the correct landlord (and only the correct landlord) should be registered. A land registered title, such as for the Property, is easily obtained and understood. There is no reason why Mr Singh should be incorrectly included anywhere as a landlord in regard to the Property, and certainly no reason why the Applicant should not be registered as landlord and included in all relevant documentation.
30. Given that we have granted the order to evict, and the Applicant should soon no longer be the landlord of the Property, we are not taking steps to inform the local authority of the failure in registration in this case but the Applicant and her husband should take steps in regard to their portfolio to ensure that all Landlord Registration entries are correct and seek for greater accuracy in documentation in future.

Decision

31. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, further to ground 1 of Schedule 3 of that Act.

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.

Joel Conn

14 September 2022

Legal Member/Chair

Date