



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/23/0200

Re: Property at 3 Ashdale Drive, Glasgow, G52 1NN (“the Property”)

Parties:

Mrs Shameem Raza, Mr Naeem Raza, 82 Parkmanor Avenue, Glasgow, G53 7ZD; 82 Parkmanor Avenue, Glasgow, G53 7ZD (“the Applicant”)

Mrs Fozia Mansoor, Mr Mansoor Ahmed, 3 Ashdale Drive, Glasgow, G52 1NN (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction in favour of the Applicant of the Respondents from the Property should be granted.

1. This was a Case Management Discussion in respect of an application by the Applicant dated 20th January 2023 for an order for eviction against the Respondents. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application and afterwards in response to requests from the Tribunal:-
 - A copy of the Tenancy Agreement dated 19th April 2018
 - Copy Notice to Leave dated 26th April 2022
 - Evidence of sending Notice to Leave by email dated 26th April 2022
 - Copy S 11 Notice to Glasgow City Council
 - Copy e-mail to Glasgow city council dated 20th January 2023
 - Copy estimate of costs for selling property and valuation from Martin & Co dated 11th March 2022.

The Case Management Discussion (CMD)

3. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Respondents both attended at the start of the teleconference but were not represented initially. During the call their daughter Ms Ahma Ahmed took over at the request of her father to act as representative.
4. Mr Atif Ahmed from The Property Store attended as the Applicant's representative and advised that he was instructed to seek an order for possession of the Property today.
5. Mr Atif Ahmed advised that the notice to leave had been served appropriately on the tenants and the Tribunal noted the Applicant has lodged a Notice to Leave which has been served on the tenants by email on 26th April 2023. Service by email is agreed in the lease.
 - Mr Atif Ahmed confirmed the Applicant is seeking the order in terms of Ground 1 of Schedule 3 of the Act namely that the applicant wishes to sell the Property and advised that they wished to sell to pay off the mortgage on the Property and if possible pay off the mortgage on their own property as well. He advised that the notice to leave was sent over a year ago and the Respondents have not yet moved out. He confirmed that he believed they have a place to go at the start of August.
 - Mr Mansoor Ahmed spoke initially on behalf of both respondents and confirmed that they had been looking for other properties but had not found one yet. He indicated that a friend may be able to allow them to have one but not for 2 or 3 months and Mr Mansoor Ahmed confirmed they needed more time before they could move.
 - The Legal Member explained that as the Cost of Living Act 2022 applied to this application as it had been lodged after the 2022 Act came into force any order issued by the Tribunal today would not be able to be enforced by the Applicants until 6 months had elapsed or until or unless the Scottish Government made an amendment to the delay on enforcing evictions. Mr Mansoor Ahmed then indicated that would be good. At that point his daughter who introduced herself as Ms Ahma Ahmed came onto the line and asked if she could speak for them. She advised she had only just come into the room and thought her parents could do with help. The Tribunal asked Mr Ahmed to confirm this was his daughter and he was happy for her to represent them on the teleconference he said he was. Ms Ahmed explained that her parents are looking for somewhere else and the more time they could have the better. She advised that there are 5 people staying in the Property, her parents the Respondents and herself and a brother and sister. She confirmed no-one was under 18. She also advised that her parents were happy to leave because they had the notice but just needed some more time.
 - Mr Atif Ahmed indicated he was not prepared for someone walking into the room and taking over as a representative and objected to that. He then advised that he understood, as the letting agent, that the Respondents had a friend who is willing to give them accommodation on or around 1st August and he did not see why they needed to stay any longer although he accepted that the 2022 Act did apply to this case. Mr Atif Ahmed also indicated that he did not believe that the Respondents have done everything to look for a property as they have not approached the local authority.

Findings in Fact

1. The Applicant and the Respondents entered into a lease of the Property with the Respondents which commenced on 19th April 2018.
2. The tenancy is continuing.
3. A notice to leave dated 26th April 2022 was served on the Respondent by email stating that no proceedings would be raised before 22nd July 2022
4. These proceedings were raised on 20th January 2023 and the application included a copy of the Notice to Leave.
5. The application is timeous.
6. A Section 11 notice has been served on Glasgow Council
7. The Applicant intends to sell the Property and arranged for quotes to do so last year.

Reasons for Decision

6. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.
7. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 1 Schedule 3 of the Act as the relevant grounds of eviction.
8. The Notice to Leave was served by email which was sent by the Applicant's representative on 26th April to both Respondents email addresses The Application was also accompanied by evidence of how the ground was met namely by lodging a valuation and estimate of fees for selling which was instructed for the Property.
9. Grounds 1 require 84 days' notice in terms of the Act. The Notice sets out the notice period as expiring on 22nd July 2022 which meets the requirements of Section 62(4) of the Act as that subsection states that the day to be specified in accordance with Subsection 1 (b) is the day falling after the day on which the notice period defined in section 54(2) will expire.
10. The Application was lodged on 20th January 2023. It was therefore lodged after the expiry of the Notice period and before the end of 6 months after the specified date and is therefore an application that the Tribunal can consider.
11. Ground 1 of Schedule 3 of the Act is entitled "Landlord intends to sell" and states
 - i. " It is an eviction ground that the landlord intends to sell the let property.
 - ii. The First Tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord-
 - a. Is entitled to sell the Property and
 - 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.
12. 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
 - c. *And it is reasonable to do so*
13. The Tribunal accepted the verbal averments of Mr Atif Ahmed that the Applicant's intention is to sell the Property. This is supported and evidenced by the written statements valuation and quotation of fees lodged from Martin & Co
 14. The Tribunal then had to consider if it accepts it would be reasonable to grant an action for eviction on this ground. The Tribunal heard from Mr Atif Ahmed that the Applicants wish to sell the Property to clear their mortgage and other debts and to prepare for retirement. They have given notice to the Respondents in April last year but the Respondents have not yet left.
 15. The Respondents confirmed they wish to leave but have not found anywhere yet although they have advised they have not spoken or sought assistance from the local authority. The Respondents indicated they just needed more time
 16. Weighing up the evidence, noting that the landlords wish to sell the property reduce or clear their mortgage debt and considering that the Respondents appear to wish to leave and possibly have somewhere to go in 2/3 months the Tribunal was satisfied that it was reasonable for an order of possession to be granted on the ground the landlord intends to sell the Property.
 17. The Tribunal notes that the Cost of Living (Protection for Tenants) (Scotland) Act 2022 applies to this case and currently that means no order of eviction can be enforced for 6 months or until or unless the law on this matter is changed. This gives the Respondents further time to move out of the property.
 18. The Tribunal is therefore satisfied in terms of S 51 (1) of the Act that the eviction ground specified in the application namely Ground 1 is met, and that it is reasonable for the Tribunal to grant the application.

Decision

The Tribunal determined that the order for eviction sought by the Applicant should be granted

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.

Jan Todd

10 May 2023

Legal Member/Chair

Date