



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/20/2591

Re: Property at 4 Dunavon Gardens, Dundee, DD3 9RA (“the Property”)

Parties:

Mr Neil Caldwell, Mrs Tracey Caldwell, 3 Pitreavie Place, Dundee, DD3 9ED (“the Applicant”)

Mrs Pauline Bell, 4 Dunavon Gardens, Dundee, DD3 9RA (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted on ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 was lodged with the Tribunal on 15 December 2020.
2. The following documents were lodged to support the application prior to the Case Management Discussion:
 - a. Copy S 11 Notice
 - b. Copy Notice to Leave dated 1 March 2020 together with email from Applicant and from Respondent that this had been hand delivered to the Respondent by the Applicant on 1 March 2020
 - c. Email from The Chamber Practice dated 7 January 2021 confirming instructions by the Applicant to sell the property.
3. On 2 February 2021 the Respondent was served by Sheriff Officers with the case papers and the notification for the Case Management Discussion (CMD) on 3

March 2021. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.

4. The Tribunal had obtained a printout from the landlord register and a copy of the title deeds for the property.
5. All documents are referred to for their terms and are held to be incorporated herein.
6. No representations from the Respondent were received by the Tribunal.

B: The Case Management Discussion:

1. The CMD took place on 3 March 2021 by telephone conference call.
2. Only Mr Neil Caldwell on behalf of both applicants took part.
3. He confirmed that when he had last spoken to the Respondent a couple of weeks prior to the CMD she had advised him she received the notification for the CMD but had not told him whether she would be participating. She stated she was still in discussions for re-housing with the local authority.
4. Mr Caldwell further stated that both the Applicants and the Respondent had agreed after the coming into force of the Act that the tenancy, which had been in place since 2009 should be converted to a Private Residential Tenancy as the terms of this new type of tenancy suited both parties better. A new Private Residential Tenancy had then been entered into on 1 March 2018 for the property with the Applicants as landlords and the Respondent as tenant with a monthly rent of £600.
5. The relationship between the parties is good and the Respondent had been a great tenant for 12 years.
6. Mr Caldwell advised that the property is the property the Applicants lived in previously and that the sale of the property had been initially contemplated when the Applicants moved but the housing market had been poor at the time and they had decided to get a mortgage and rent the property out. Now the housing market is in a much better position. The Applicants had been contemplating selling the property for over a year as the Applicants now wish to pay off their own mortgage for the property they live in with the proceeds of the sale and because they find renting out property is becoming increasingly difficult with all the changing requirements on landlords. They are not getting any younger and wish to sell the property and pay off the mortgage on their own property. They have already given instructions to do so to the Chamber Practice.
7. Mr Caldwell further advised that about 2 weeks prior to serving the notice to leave he had spoken to the Respondent about their intention to sell the property in a telephone call. He had then hand delivered the notice to leave on 1 March 2020 as confirmed by the Respondent's email. The Applicants erred in favour of the tenant by giving more notice than required.
8. Because of the pandemic the matter had then not been pursued further to give the Respondent ample opportunity to find alternative accommodation.
9. He moved for the application to be granted.

C: Findings in Fact

1. The property was let on a Private Residential Tenancy Agreement commencing on 1 March 2018.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. Both Applicants are the registered landlords for the property and are the joint owners for the property.
4. The tenancy is ongoing and the Respondent still occupies the property.

5. On 1 March 2020 the Applicant served a Notice to Leave on the Respondent by personal service through Mr Neil Caldwell.
6. The Notice to Leave states as the date when proceedings can be raised the date of 1 July 2020 and as the ground for the Notice that "your landlord intends to sell the property".
7. The Respondent had been advised of the intention of the Applicants to sell the property in the weeks prior to the notice being served.
8. The Applicants have instructed The Chamber Practice in Dundee to sell the property and The Chamber Practice confirmed in an email of 7 January 2021 that an estate agent member of staff will prepare the schedule as soon as the property is vacant.
9. The notice required under S 56 of the Act was issued to the local authority.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
 - (i) correcting; or
 - (ii) reviewing on a point of law,
 a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Grounds under Schedule 3 of the 2016 Act

Landlord intends to sell

1(1) It is an eviction ground that the landlord intends to sell the let property.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord—

(a) is entitled to sell the let 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.

(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.

2. The Respondent has not made any representations and did not attend the CMD. The facts of the case are not disputed. There was no opposition to the order being granted. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

3. The Tribunal was satisfied by the information provided by the Applicant in the application and at the CMD that the tenancy in place is a Private Residential Tenancy commencing on 1 March 2018 with a monthly rental charge of £600 monthly. In terms of S 46 (A) of the Housing (Scotland) Act 1988 the parties had agreed to convert the previous tenancy which had been in place since 2009 to a Private Residential Tenancy.

4. As the Notice to Leave was served prior to 7 April 2020 the case is not subject to the provisions of the Coronavirus (Scotland) Act 2020. The Notice was delivered personally which is a valid method of service in terms of S 26 of the Interpretation and Legislative Reform (Scotland) Act 2010. In terms of S 54 (2) and (3) of the Act a 84 day notice period applied to ground 1 of schedule 3 of the Act prior to 7 April 2020. The notice period given in the notice exceeded 84 days. The Tribunal considered whether giving more than the required notice period in this case should render the Notice to Leave invalid. The error in the provision of a notice period which exceeded the statutory period had the effect that the Applicants would not have been able to raise proceedings prior to the date stated in the notice to leave when relying on that notice. Prior to that date the notice would not have expired. Thus the purpose of the

provision of stating the date in S 62 (2) (b) of the Act, namely to advise the tenant with certainty of the date before which proceedings could not be raised, was still achieved. The error was in favour of the tenant, providing additional time. The Tribunal considered that the error could be remedied with the provision in S 73 of the Act as the error did not materially affect the effect of the document, which still provided the essential information as to when proceedings could commence. In all the circumstances Tribunal considered the Notice to Leave should not be considered invalid due to the error in the calculation of the notice period.

6. The Tribunal found that Ground 1 of Schedule 3 of the 2016 Act applies in this case. This is a mandatory ground of eviction. The Respondent has not made any representations in the matter. The Applicants have instructed a firm of solicitors and estate agents to sell the property and provided the email confirming the instructions for the sale. They have provided credible information as to why this is now their genuine intention to sell it on the open market, namely that they wish to pay off their mortgage on the property they live in. They own the property and are entitled to sell it.

7. The Tribunal accordingly must issue an order for eviction in terms of S 51(1) of the Act. The Tribunal, having regard to the appeal period, determines that in terms of S 54(4) of the Act the tenancy ends on 3 April 2021.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 1 of Schedule 3 of the 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.

Petra Hennig McFatridge

3 March 2021

Legal Member/Chair

Date