



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/21/0479

Re: Property at 61 Mossbank, Ladwell, Livingston, EH54 6DZ (“the Property”)

Parties:

Mrs Jennifer Gerling, 4/21-23 Nolan Avenue, Engadine, NSW 2233, Australia (“the Applicant”)

Miss Anastasia Hall, 61 Mossbank, Ladywell, Livingston, EH54 6DZ (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Possession should be granted against the Respondent

Introduction

1. This is an application under Rule 65 and Section 18 of the Housing (Scotland) Act 1988. The application seeks an Eviction Order in respect of a short assured tenancy.
2. Service of the application and notice of the Case Management Discussion (CMD) was made upon the respondent personally by Sheriff Officers for delivery on 6 May 2021.
3. The Case Management Discussion (CMD) took place by teleconference on 3 June 2021 at 10.00 am. The applicant joined the hearing and represented her own interests. She was supported by her husband. The respondent joined the hearing and represented her own interests. She was supported by her partner.

Findings and Reasons

4. The property is 61 Mossbank, Ladywell, Livingston EH54 6DZ.
5. The applicant is Mrs Jennifer Gerling. She is the heritable proprietor of the property and the landlord. She resides in Australia with her husband.
6. The respondent is Miss Anastasia Hall. She is the tenant She resides in the property with her partner and three children who are aged 14, 13 and 12.
7. The parties entered into a short assured tenancy which commenced on 18 August 2012. The lease was for an initial period of one year. The rent was stipulated at a rate of £600 per month. A relevant notice under Section 33 of the Act in Form AT5 was issued to the respondent in advance of the tenancy commencing, which is evidenced. This has been produced together with a copy of the tenancy agreement.
8. The application to the Tribunal is dated 3 March 2021. The written application relies upon Grounds 1, 6, 10, 11, 12, 13 and 14 of Schedule 5 to the 1988 Act.
9. The Coronavirus (Scotland) Act 2020, which came into effect on 7 April 2020 extends the notice periods required to be given to tenants to bring tenancies to an end and furthermore makes all eviction grounds discretionary (grounds 1 and 6 were formerly mandatory).
10. On 10 November 2020, by way of email, a Notice to Quit was issued to the respondent. This referred to all the Grounds which the applicant wished to rely upon. 3 months' notice was given requiring her to vacate the property no later than 12 February 2021. Also sent was a section 19 (AT6) Notice and section 33 Notice. The respondent accepts that she received these documents on the day the email was sent, namely 10 November 2021. A hard copy of the documents was thereafter provided to the respondent personally by the applicant's niece.
11. The copy section 19 (AT6) Notice, stating an intention to raise proceedings for possession was the correct pre-formatted up to date prescribed form which takes account of the Coronavirus (Scotland) Act 2020. The Notice referred to the numerous Grounds to be relied upon. The pre-formatted AT6 clearly states that 3 months' notice is required for Ground 1 and that 6 months' notice is required for all other Grounds relied upon. Nonetheless only 3 months' notice was provided despite numerous '6 month' grounds being relied upon. 6 months' notice ought to have been provided not 3. This is the case where any 6 month notice ground is relied upon even if a 3 month ground is also relied upon.

12. The Tribunal proceeded to consider the validity of the Notice to Leave with reference to the amendments brought about by the Coronavirus (Scotland) Act 2020. Paragraph 10 of Schedule 1 to the 2020 Act is in the following terms:
 10. Errors in notices
 1. Where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1 to 9 –
 - (a) the notice is not invalid by reason of that error, but
 - (b) it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been properly completed.
13. The Tribunal concluded that the right of relief available under paragraph 10 of schedule 1 to the 2020 Act applies to this application. The error in the Notice to Leave is one which arises due to the amendments brought about by the Coronavirus (Scotland) Act 2020. 6 months have passed since the Notice to Quit was served upon the respondent. The respondent accepts this and accepts that she was provided with the required notice.
14. The respondent made it explicitly clear from the outset of the hearing that she wishes to leave the property. She does not wish to occupy the property. She is seeking alternative accommodation and stated that she wished the Tribunal to make the Order for Possession so she could evidence this to the local authority to secure alternate housing.
15. Despite originally relying upon numerous Grounds the applicant indicated that she only wished to pursue the application with reference to Ground 6, which is a no fault ground. This applies where the landlord intends to demolish or reconstruct the whole or substantial part of the house or to carry out substantial works on the house or any part thereof. The applicant has evidenced her intention to do so. This is in the form of correspondence from Mr Gary White of Super-dry Heating and Plumbing Ltd and Mr John Wilson of JJW Electrical which specifies the substantial works proposed. The tribunal relied upon this documentary evidence which was unchallenged by the respondent. She accepted that the applicant intends to carry out the substantial works which are vouched. The tribunal found that Ground 6 was established.
16. The tribunal considered the issue of reasonableness of making the Order for Possession sought. The respondent wishes to leave the property. She is

seeking alternate accommodation. She was unopposed the application. In such circumstances the tribunal found that the making of the order was reasonable.

17. The tribunal records that the applicant conceded that no application will be made to the tribunal to recover any rent arrears. Both parties expressed a wish to bring an end to all of their contractual relationships and move on.

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.

Richard Mill

3 June 2021

Legal Member/Chair

Date