



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) 2016

Chamber Ref: FTS/HPC/EV/20/0342

Re: Property at 15 Drumoyne Place, Glasgow, G51 4DQ (“the Property”)

Parties:

Par Residential Investments III Fieldoak, 3A Dublin Meuse, Edinburgh, EH3 6NW (“the Applicant”)

Miss Frances McBride, 15 Drumoyne Place, Glasgow, G51 4DQ (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

Background

The Applicant lodged an application with the Tribunal on 31st January 2020 under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 “the Procedure Rules”), seeking an order for eviction under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.

Lodged with the Application were:

1. Copy Tenancy Agreement
2. Copy Notice To Leave with proof of service
3. Section 11 Notice
4. Email from the respondent confirming the intention to sell

On 9th March 2020 Miss McKellar of the Govan Law Centre sent an email to the Tribunal on behalf of the Respondent in which she conceded that there did not appear to be any defence to the action as the notice had been correctly served, but asked that the eviction order be delayed for a period of 12 weeks. She explained in the email that the Respondent had tenanted the house for 18 years, that she was considerably disabled and had her two sons, who were her carers, residing with her. She had sought help with rehousing.

A Case Management Discussion ("CMD") was scheduled for 23rd March 2020. However, this CMD was postponed due to the Covid 19 pandemic.

A fresh CMD was fixed for 13th July 2020 at 10am.

Case Management Discussion

The CMD took place by teleconference.

Miss Waters of Cairn Letting Agents dialled in on behalf of the Applicant. Miss McKellar from the Govan Law Centre dialled in on behalf of the Respondent.

Miss McKellar had sent an email to the Tribunal the evening before, lodging a copy of the Respondent's government shielding letter for Coronavirus. This had not been forwarded to the Legal Member or to Miss Waters. The Legal Member decided not to start the CMD until the letter had been circulated. This was duly done.

The Legal Member had everyone introduce themselves, and then explained how the CMD would be conducted, and also explained the purposes of a CMD.

Miss Waters was asked to make her motion. She said that the Applicants were seeking an order for eviction based on Ground 1 of Schedule 3, in that they wished to sell the Property. The Legal Member asked her if she had seen the email of 9th March, and she said that she had. The legal Member read out Ground 1 and asked Miss Waters what evidence she had produced of her client's intention to sell. She said that she had produced an email from the Applicants, but could also produce evidence of the instruction of the estate agent.

Miss McKellar was asked for the Respondent's position. She said that it was accepted that there was no defence, but the Respondent will be shielding, due to her health condition, until the end of July. She was seeking that the CMD be continued for a period of 4 weeks. The legal Member asked what steps the respondent had taken to secure a further tenancy. Miss McKellar said that the respondent had applied to 5 different housing associations. She could not apply to the Council through the Homeless legislation until an order had been granted for eviction. The restrictions due to Coronavirus had made it very difficult to move forward.

The Legal Member adjourned for a short period to consider the position. The CMD was recommenced and the Legal Member advised the parties that she had decided

to grant the order, but suspend its extraction for a period of 8 weeks. Miss Waters asked if that could be reduced to 4 weeks given how long it had been since the action was raised. The legal member considered this, but given that the order wouldn't, in normal course, be extracted for a period of 4 weeks, she rejected the motion.

Findings In Fact

1. The parties entered in to a Private Residential Tenancy agreement in relation to the property;
2. A Notice to leave had been correctly and timeously served on the respondent;
3. The Applicant intended to sell the property once they had vacant possession;
4. The restrictions brought in as a result of the coronavirus pandemic have made it difficult for the respondent to secure other accommodation.

Reasons For Decision

Ground 1 is a mandatory ground, in that the tribunal must grant eviction if the ground has been met. The Legal Member was satisfied that the ground had been met. This case was raised before the Coronavirus (Scotland) Act 2020 was enacted and so is not covered by that Act. The ground remains mandatory in this case.

Rule 16A(d) of the Procedure Rules allows the Tribunal to order a delay in the time for executing the order. Given the ongoing situation with regards to Coronavirus the legal Member decided to use this provision. The Shielding letter lodged by the respondent the day before the CMD was not a determining factor in the Tribunal's decision. The Legal Member was mindful of how difficult it would be for anyone to secure fresh accommodation quickly in the current climate. The email of 9th March 2020 was, however, persuasive.

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.

Alison Kelly

Legal Member/Chair

13 July 2020

Date