



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 ('the Act')

Chamber Ref: FTS/HPC/EV/20/1590

Re: Property at 7 Broughton Road, Biggar, ML12 6AN ("the Property")

Parties:

Mr James McCann, Castle Craig, Blyth Bridge, West Lothian, EH46 7DH ("the Applicant")

Ms Lisa Sweeney, 7 Broughton Road, Biggar, ML12 6AN ("the Respondent")

Tribunal Members:

Nairn Young (Legal Member)

Decision

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

- **Background**
 1. This is an application for an eviction order against the Respondent, who is alleged by the Applicant to occupy the Property in terms of a private residential tenancy agreement with him. It called for case management discussion ('CMD') at 10:00am on 3 February 2021 by teleconference. The Applicant was represented on the call by Mr Frank Gill. The Respondent was represented on the call by Mr Steve Shannon. She was also present in the room with him and was listening to proceedings.

- Findings in Fact
2. The Respondent occupies the Property in terms of private residential tenancy agreement with the Applicant, commencing 23 October 2019.
 3. A notice to leave was sent to the Respondent by the Applicant's agent on 17 April 2020.
 4. In that notice to leave, the eviction ground being used was identified as: "Your landlord intends to live in the Let Property."
 5. The Applicant is entitled to sell the Property.
 6. The Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it.
 7. The parties are content for an eviction order to be granted, on the basis that it not be enforced until 31 August 2021
- Reasons for Decision
8. This matter called for a CMD previously, on 24 November 2020, at which point the Applicant indicated his wish to amend his application to rely on Ground 1 of Schedule 3 to the Act, "Landlord intends to sell." The Tribunal adjourned to this CMD, directing that that application to amend should be made in writing; that the Applicant should also address the Tribunal on why it should grant permission for the new ground to be included in terms of s.52(5)(b) of the Act; that the Respondent should be allowed time to respond; and that various other matters should be addressed.
 9. The Applicant lodged his application to amend and written submissions on 15 December 2020. He indicated that his situation had changed in the months intervening and that he now intended to sell the Property, in order to repay money he had borrowed to purchase another home. He submitted that it

would be significantly prejudicial to him to require the termination process to be started from the beginning, given the amount of time that it would take to complete. He further submitted that the prejudice to the Respondent in granting permission to amend and include a new ground would be slight. He acknowledged that the notice period applicable in regard to the new ground suggested was 6 months, as against the 3 month notice period required in regard to the ground stated on the notice to leave; but contended that, given the time that had now elapsed since the notice to leave had been served, the Respondent had, in effect, had longer than 6 months to deal with the matter appropriately.

10. The Respondent did not respond in terms of the direction issued; however, her representative was able to respond at the CMD. He stated that she was opposed to the amendment being allowed and to permission to include a new ground being granted. She had contended from the outset that the real reason for an eviction order being sought was to sell the Property and was prepared to offer evidence to support that contention. It would be unfair to allow the Applicant to circumvent the more onerous notice requirements that go along with the ground that it was now sought to rely on. There would be significant prejudice to the Respondent. Although she recognised that she would have to leave the Property eventually, to require her to do so at the moment would leave her unable to find further accommodation. She had already been searching diligently for accommodation, but, due to the pandemic, there was nothing suitable available.

11. The Tribunal decided to consent to the amendment of the application and grant permission for Ground 1 to be included as a stated basis on which an eviction order is sought, essentially for the reasons advanced by the Applicant. If it had been the intention of the Applicant to circumvent the notice requirements (on which question the Tribunal has not heard evidence and makes no finding), that intention has been frustrated by the time it has already taken to reach this point in the process. Any remaining observations in regard to prejudice to the Respondent were better considered as issues going to

whether or not it would be reasonable to grant the application, it being accepted that the requirements of Ground 1(2)(a) and (b) are satisfied.

12. The Tribunal therefore asked to be addressed by the Applicant on whether it was reasonable to grant the application. At that point, the Applicant's representative asked for the CMD to be adjourned to allow discussion between the parties as to a possible settlement of the matter. The Tribunal adjourned the CMD for 30 mins for that purpose.

13. Following the adjournment, the parties indicated that they had agreed that it would be reasonable for the eviction order to be granted, on the basis that it would not be enforceable until 31 August 2021. The Tribunal agreed that granting the order on that basis would be reasonable. The parties' agreement indicated that they were content that there would be little prejudice to them in the order being granted and there was no reason why the Tribunal should disagree with that position.

- Decision

Order granted, on the basis agreed.

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.

N Young

Nairn Young
Legal Member/Chair

3 February 2021
Date