



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/20/1714

Re: Property at 28/3 Westburn Park, Edinburgh, EH14 2RX (“the Property”)

Parties:

Mrs Debra Blackley, 20 Baberton Mains Court, Edinburgh, EH14 3ER (“the Applicant”)

Elochukwu Anthony Ukwandu, Ogechukwu Patience Ukwandu, 28/3 Westburn Park, Edinburgh, EH14 2RX (“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

On 14th August 2020 the Applicant lodged an application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“The Procedure Rules”), seeking eviction of the Respondent using Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Lodged with the application were:-

1. Private Residential Tenancy Agreement dated 28th February 2019.
2. Notice to Leave dated 6th March 2020
3. Section 11 Notice.

The Applicant seeks to evict using Ground 1, in that he intends to sell the let property. The Applicant was asked by the Tribunal to provide some evidence that he intended to sell the property. On 3rd September 2020 the Applicant's agent, Mandy Beard of Fineholm Letting Services Ltd, emailed the Tribunal confirming that her company also provides estate agency services, and that she has instructions to market the property once the Respondents have moved out.

On 22nd October 2020 the application was served on the Respondents by Sheriff Officer.

On 8th November 2020 the Respondents sent Representations to the Tribunal by way of email. In the representations they explained that they had begun to search for new accommodation on receipt of the Notice to Leave, but the UK went in to lockdown to try to combat the coronavirus pandemic on 23rd March 2020. They approached the Local Authority, who unfortunately could not assist. The First Respondent, who worked in research at the University of Strathclyde was told that his position could not continue due to lack of funding. The First respondent secured a new post at the Cardiff Metropolitan University, and started on 1st October 2020. The Respondents' search for accommodation in Cardiff was hampered by Wales going in to a firebreak lockdown. The respondents finished by asking that they be given until the end of January 2021 to move out of the property.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Mandy Beard of Fineholm Lettings Ltd. Both Respondents dialled in.

The Chairperson made introductions and explained that proceedings should not be recorded. She explained the purpose of a CMD in terms of Rule 17 of the Rules. She confirmed with the parties that they understood.

Miss Beard presented the Applicant's case. She said that the Applicant wanted to sell this property, and the property he currently lived in, to enable him to buy a bigger property for himself and his family to live in. She appreciated that various lockdowns due to the coronavirus pandemic had hindered the Respondents in their search for new accommodation, but did not accept that there had been a total shutdown of the housing and letting markets in Scotland or Wales. She was of the view that the Respondents could have found a property before now. She confirmed that the rent was fully up to date. She moved for the eviction order to be granted.

Mrs Ukwandu spoke on behalf of the Respondents. She went through the written statement already submitted. She said that it had been extremely difficult to find accommodation in Cardiff, particularly with the firebreak lockdown imposed in Wales in late October. They were viewing a property in a couple of days' time, but it may not be suitable as they have three children and the property may not be big enough.

The Chairperson explained that the case was not affected by the Coronavirus (Scotland) Act 2020, and she therefore had to apply the law as it stood before it

came in to force. If she was satisfied that the ground had been established she had to grant the order.

The Chairperson asked Miss Beard if her client would be prepared to agree to the earliest date for eviction being postponed until January 2021. Miss Beard said that he would not. In the circumstances the Chairperson had no discretion regarding postponing the implementation of the order.

Findings In Fact

1. The parties entered in to a tenancy agreement in relation to the property;
2. A Notice to Leave was served correctly on the Respondents;
3. The Notice was served before the Coronavirus (Scotland) Act 2020 and accompanying regulations came in to force and therefor was not affected by them;
4. The papers were served timeously on the Respondents by Sheriff Officer;
5. The Applicant intends to sell the property.

Reasons For Decision

Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 states:

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.

The Chairperson was satisfied that the ground had been met, and that the Applicant had instructed agents to market the property for sale. If the ground has been met the Tribunal must grant the order sought.

The Notice to Leave was served before the Coronavirus (Scotland) Act 2020 came in to force and is therefore unaffected by the changes to notice periods and the change from mandatory to discretionary grounds contained therein.

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

23 November 2020

Legal Member/Chair

Date