



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/20/2573

Re: Property at 28 Balmoral Drive, Bearsden, G61 1DJ (“the Property”)

Parties:

Mr Robert Kennedy, 98 Speirs Road, Bearsden, G61 2LA (“the Applicant”)

Ms Maureen Quinn, 28 Balmoral Drive, Bearsden, G61 1DJ (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

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

Introduction

1. This is an application under Rule 109 and Section 51 of the Private Housing (Scotland) Act 2016. This application was heard at the same time as case reference FTS/HPC/CV/20/2141 which is between the same parties. When this application was made the application named another respondent, Mr John W Grant, who is a known associate of the respondent, and who sometimes resides within the property. Upon subsequent clarification it was established that he is not a formal tenant of the property and has no rights to occupy it. Any Eviction Order made authorises the ejection of all of those residing in the property with the respondent’s permission. The application only proceeds against the respondent personally as she is the only tenant.
2. This application is for an Eviction Order. The other application between the parties relates to a Payment Order application by the applicant for unpaid rent.

3. An initial Case Management Discussion (CMD) took place in this application on 3 March 2021. It was identified at that time that Sheriff Officers had failed to serve the application upon the respondent. The respondent at that time was represented (by Mr J Smith of Messrs Latta & Co) and due to anticipated formal opposition to the application matters were continued to a final hearing before a two member Tribunal.
4. After the CMD on 3 March 2021 a Direction was issued by the Tribunal. This required the respondent to provide a full written submission to set out her proposed defence to the application, confirming whether the ground of eviction was disputed and / or whether it was submitted whether the order sought is unreasonable. Any factors upon which she was to rely required to be set out and supported by corresponding documentary evidence. The said documentation required to be lodged with the Chamber no later than 5.00 pm on Thursday 25 March 2021. The Direction was not complied with.

The Hearing

5. The two member evidential hearing took place at 10.00 am on 15 April 2021 by teleconference. The applicant and his wife Mrs Jackie Kennedy joined the hearing personally and represented their own interests. The respondent had been represented by a solicitor, but in advance of the hearing that solicitor had withdrawn from acting. The respondent joined the hearing personally and confirmed that she was representing her own interests.
6. The Tribunal made inquiry with both parties in relation to the procedural elements of the application and thereafter the merits of the application. The Tribunal also made inquiry in relation to the personal circumstances of both parties in order to reach a fair determination of the application with regards to reasonableness. Both parties were afforded the opportunity of providing any further additional evidence and making any further representations and concluding submissions.

Findings and Reasons

7. The property is 28 Balmoral Drive, Bearsden, Glasgow G61 1DJ.
8. The applicant is Mr Robert Kennedy who is the landlord. The respondent is Ms Maureen Quinn who is the tenant.
9. The parties entered into a private residential tenancy in respect of the property which commenced on 1 January 2019. The rent was stipulated at £1,000 per month. A deposit in the sum of £1,000 was paid.

10. The owner of the property is the applicant. The applicant and his wife, Jackie Kennedy, are both named as landlords on the written lease. She has been significantly involved in communications with the respondent and the administration of the tenancy.
11. By way of Notice to Leave dated 7 September 2020, the respondent was advised of the applicant's intention to recover the property. The ground relied upon is ground 4 contained within Part 1, Schedule 3 to the 2016 Act, namely that the landlord intends to live in the property. This prescribes that it is an eviction ground if the landlord intends to occupy the property as the landlord's only principal home for at least 3 months.
12. Ground 4 as originally drafted was a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. Additionally the notice periods have been extended by virtue of the 2020 Act. The relevant notice period under ground 4 was 84 days and is now 3 months.
13. The Notice to Leave is dated 7 September 2020. In terms of Section 62(5) of the 2016 Act it is to be assumed that the tenant will receive Notice to Leave 48 hours after it is sent. It is to be assumed therefore that the Notice to Leave was received on 9 September 2020. The Respondent acknowledges having received this Notice. The 3 month notice period runs from then and expired on 9 December 2020. The Notice to Leave requires to specify the day upon which the landlord expects the Tribunal proceedings can start, and in terms of Section 62(4) it is one day after the notice period expires, being 10 December 2020. The Notice to Leave was not validly completed with the relevant date. The Notice to Leave stated that the first day upon which the landlord expected Tribunal proceedings to commence was on 9 December 2020. The notice period was one day short.
14. 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.

15. The provisions of Schedule 1 to the 2020 Act do apply in this case. The notice period was extended from one of 84 days to one of 3 months. The notice period was miscalculated by one day only. The relief arising from Paragraph 10 of Schedule 1 to the 2020 Act means that the Notice to Leave is not invalid. The Notice to Leave accompanying the application was submitted to the Tribunal on 11 December 2020 when this application commenced. This postdated 10 December 2020. The Notice to Leave can be relied upon by the applicant.
16. Ground 4(4) states that evidence tending to show that the landlord has the intention to live in the property includes (for example) an Affidavit stating that the landlord has that intention. The application is accompanied by such a relevant Affidavit of the applicant landlord, which is dated 2 December 2020.
17. Other evidence is also produced in support of the landlord's intention to live in the let property. A statement of sale cash account has been produced by Conveyancing Direct Solicitors which disclose that the applicant's former home at 98 Speirs Road, Bearsden was sold on 30 October 2020. Also produced is a letter by Clyde Property, Letting Department, disclosing that the applicant and his wife have been renting a property through that agency since 23 October 2020.
18. The applicant and his wife's have sold their former home at 98 Speirs Road, Bearsden. This was with the intention of returning to the let property in which the respondent resides in. The applicant and his wife reevaluated their entire circumstances following the first Coronavirus lockdown in March 2020. They chose to sell their then home at 98 Speirs Road, Bearsden in mid-2020 as lockdown measures eased. It was not anticipated, at that stage, that ongoing Coronavirus restrictions would last for as long as they now have.
19. The applicant and his wife are aged 58 and 57 years respectively. The applicant is a self-employed joiner. His wife is an accountant. Also resident within their household is the applicant's wife's daughter who is a university student.
20. The respondent is aged 55 years of age. She is currently unemployed though is actively seeking employment. Her habitual employment is as a sales representative. She has no dependents and no health problems.
21. A relevant factor to take into account is the fact that the respondent continues to make no payments of rent. The Tribunal has simultaneously determined that a Payment Order should be made against the respondent in the sum of £6,000 in respect of arrears of rent. Rent arrears continue to increase due to non-

payment. As at the current date the amount of rent arrears outstanding totals £9,000. The respondent expresses no intention of paying any future rent. Indeed, she has withheld the sum of approximately £3,000 which has been paid to her directly in terms of State benefits for the purpose of meeting her rent payments. Her actions in this respect are unreasonable.

22. The applicant and his wife have required to rent a property for their own use until such time as they obtain vacant possession of the property. They are currently paying £1,250 per calendar month for their rental property. This is a significant burden for them.
23. The Tribunal noted from the respondent that she accepted the landlord and his wife's intention to move into the property for use as their principal home for at least 3 months. The ground of eviction was not challenged. The Tribunal found the ground was established. The respondent's challenge was limited to the reasonableness of the Tribunal making the Order. She founded upon the current economic circumstances generally as a consequence of the Coronavirus pandemic and her own situation in that she currently has no employment. She relied upon no other factors.
24. The Tribunal found that the making of an Eviction Order was reasonable in all of the circumstances, having regard to the personal profiles of the parties and having regard to the fact that the respondent pays no rent, with no intention of doing so.
25. The property is situated within a designated level 4 area for the purposes of Covid-19 restrictions imposed by the Scottish Government. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 12) Regulations 2021 as amended by the Health Protection (Coronavirus) (Restrictions and Requirements) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021 apply. This prevents in a level 3 or 4 area, except in specified circumstances, attendance at a dwelling house for the purpose of serving a charge for removing or executing a Decree for removing from heritable property (giving notice of or carrying out an Eviction Order in relation to a residential tenancy of a dwelling house). None of the specified circumstances apply. As things stand, any Eviction Order cannot be implemented in respect of the property. It is currently unknown as to when those restrictions will cease. The fact that, as at the date of the hearing, no eviction can be carried out does not prevent the Tribunal making the Eviction Order which is sought.

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.

15 April 2021

Legal Member/Chair

Date