



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/21/1173

Re: Property at 49 Linkwood Road, The Rushes, Airdrie, ML6 6GP (“the Property”)

Parties:

Mr Simon Mousley, Ms Lindsay Gibson, 11 Gales Park, Bothwell, G71 8TS (“the Applicants”)

Mr Richie Hugh Jeffrey, Mrs Stephanie Jeffrey, 49 Linkwood Road, The Rushes, Airdrie, ML6 6GP; 49 Linkwood Road, The Rushes, Airdrie, ML6 6GP (“the Respondents”)

Tribunal Members:

Joel Conn (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The PRT in question was by the Applicants to the Respondents commencing on 20 July 2018.
2. The application was dated 14 May 2021 and lodged with the Tribunal on that date.
3. The application relied upon a Notice to Leave dated 6 October 2020 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 served upon the Respondents by email on that date by the Applicants’ letting agent. The

Notice relied upon Ground 4 of Schedule 3 Part 1 of the 2016 Act, being that “Your Landlord intends to live in the Let Property”. The Notice intimated that an application to the Tribunal would not be made before 9 January 2021.

4. Evidence of a section 11 notice dated 21 April 2021 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon North Lanarkshire Council was provided with the application.

The Hearing

5. On 6 July 2021 at 10:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, we were addressed by the Applicants’ agent, Shabeilla Saddiq, solicitor, of TCH Law solicitors.
6. There was no appearance by the Respondents. The Applicants’ agent stated that no contact had been received from the Respondents since the service of the Notice to Leave. The clerk confirmed that no contact had been received by the Tribunal from the Respondents. In the circumstances, having waited until around 10:09, we were satisfied to proceed in the absence of the Respondents.
7. The Applicants’ agent confirmed that the application for eviction was still insisted upon. No order for expenses was sought.
8. The Applicants’ agent relied upon the papers lodged with an application as the basis of the application. The Applicants had submitted an affidavit by the First Named Applicant which, in summary, outlined that he required a new home further to break up of the Applicants’ relationship but that he wished to remain local to the Second Named Applicant for reasons of care for their child. He explained that, having originally moved to the Lanarkshire area from Dundee, he had no alternative accommodation local to the area other than the Property.
9. The Applicants’ agent confirmed that nothing material had changed since the affidavit was sworn on 12 May 2021 and that, having spoken with the First Named Applicant, he had since confirmed to her that the continued co-habitation, though they were separated, was a strain on the Applicants and the First Named Applicant was keen to move into the Property as soon as possible.
10. In the absence of the Respondents, we asked the Applicants’ agent for any information available to her on the Respondents’ circumstances. She said that she believed the Respondents had five children but had no other details about their family. Otherwise, the Applicants’ agent said that, to the best of her knowledge, she was unaware of any special adaptation of the Property for the Respondents’ needs or the needs of their children. Finally, the Applicants’ agent referred to the rent for the Property being in substantial arrears of £7,000 (due to irregular payments principally between September 2020 and February 2021). Due to the lack of contact from the Respondents, she had no information on the reason for the arrears. There was a conjoined application regarding the arrears.

Findings in Fact

11. By an agreement dated 20 July 2018, the Applicants let the Property to the Respondents under a Private Residential Tenancy with a start date of 20 July 2018 (“the Tenancy”).
12. In terms of clause 4 of the PRT, the parties agreed that email would be sufficient for communication of notices in terms of the Tenancy.
13. On 6 October 2020, the Applicants’ letting agent drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice that “Your Landlord intends to live in the Let Property” and giving the reason that “The Landlord intends to live in the let property as he is going through a separation and needs to be close to family”. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 9 January 2021.
14. By email service on 6 October 2020, the Applicants’ letting agent served the said Notice on the Respondents.
15. The Applicants have provided the Respondents with greater than three months’ notice of the Applicants’ intentions.
16. The First Named Applicant intends to occupy the Property as his only or principal home, and for at least 3 months following recovery of possession.
17. On 14 May 2021, the notice period under the Notice to Leave having expired without the Respondents apparently vacating the Property, the Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 4 of Schedule 3 Part 1 of the 2016 Act (as currently amended by the temporary provisions of the Coronavirus (Scotland) Act 2020), and providing an affidavit supporting the First Named Applicant’s intention to occupy the Property as his only or principal home.
18. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon North Lanarkshire Council on or around 21 April 2021 on the Applicants’ behalf.
19. On 2 June 2021, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondents, providing the Respondents with sufficient notice of the CMD of 6 July 2021.

Reasons for Decision

20. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly served upon the Respondents with sufficient notice.

21. In regard to whether the Notice to Leave was in sufficient detail, Part 2 of the notice stated that it relied upon Ground 4 of Schedule 3 Part 1 of the 2016 Act; that the Applicants sought to live in the Property. The explanation is somewhat inexact in that it states: "The Landlord intends to live in the let property..." and not which of the two Landlords has this intention. Nonetheless, it is clear why the Notice is being issued and why and we considered that in the circumstances this was sufficient explanation. We were thus satisfied that the requirements of the 2016 Act (as temporarily amended) had been complied with in regard to the Notice to Leave in itself and as a pre-requisite to raising the application.
22. In regard to whether we were satisfied that the Applicants were entitled to rely upon Ground 4 in these circumstances, we were provided with an affidavit that, in short, explained that the First Named Applicant needed a new home, had only the Property available to him, and required a home in this locale specifically. We note that Ground 4 is satisfied (in terms of the Act) if only one of joint landlords seeks to move into the Property and so the affidavit was evidence of a competent intention under the ground. We require, in terms of the Act as temporarily amended, to consider the reasonableness of the application. We were satisfied that the Applicants' reasons for seeking eviction were reasonable and we had no information before us to suggest that it was unreasonable to evict the Respondent. In the circumstances as before us, the Respondents have had over eight months' notice of the Applicants' intention and had not sought to remove from the Property and we know of no special reason why they require to reside at the Property specifically (for instance due to adaptation of the Property or its proximity to some institution or place of educational). In all the circumstances before us, we were satisfied that Ground 4 was well founded by the Applicants. We noted that the Respondents had further incurred rent arrears and this supported the reasonableness of the Applicants' request though it principally related to a different ground for eviction that was not relied upon.
23. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to grant an order for eviction.

Decision

24. In all the circumstances, we make the decision to grant an order against the Respondents for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in normal terms.

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.

6 July 2021

Legal Member/Chair

Date