



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/21/1203

Re: Property at 6 The Paddock, Auchterarder, PH3 1LE (“the Property”)

Parties:

Mr Euan Fuller, 10 Allanfield, Auchterarder, PH3 1FN (“the Applicant”)

Mr Anthony Murrell, Mrs Vikki Murrell, 6 The Paddock, Auchterarder, PH3 1LE (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Mary Lyden (Ordinary Member)

Decision

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

• Background

1. This was the second Case Management Discussion (CMD) in respect of an application by the Applicant dated 18th May 2021 for an order for eviction against the Respondents.
2. The following documents were lodged with the application:-
 1. Partial copy of the tenancy agreement dated
 2. Notice to Leave dated 29th June 2018
 3. Copy S 11 Notice and copy e-mail sending the notice to Perth and Kinross Council
3. In response to a request for further information from the Tribunal the Applicant also lodged written authority from the joint owner Mr James Fuller to Mr Euan Fuller to raise this application; a copy of the letters to the Respondents dated 23rd September 2020 serving the Notice to Leave; and a track and trace dated 24th September confirming the items were delivered and received by “Murrell”.
4. The application is for an order of eviction based on Ground 1 of the Act the Landlord wishes to sell the Property. At the first CMD Mr Murrell appeared on behalf of both respondents and advised that as he was currently serving a

sentence in a prison in London he had not received a copy of the papers from the Tribunal which had been sent to his home address. He advised his wife had given him the telephone conference details to phone in and explained his wife has a number of health issues and is stressed and anxious about this application. Mr Murrell also advised that his wife had tried unsuccessfully to seek legal advice from a variety of solicitors and that they would like further time to do so. Mr Murrell indicated that he hoped to be released and be back home before the 4th October 2021 so that he could assist his wife to move.

5. The Tribunal determined that the CMD should be continued to another date to allow a copy of the all the papers to be formally served on Mr Murrell at his current address; to allow the Respondents time to get legal advice if possible and to allow certain further information from the applicant to be lodged that the Tribunal had identified namely:
 - a. the Tribunal wished the Applicant to serve a fresh S11 notice on the local authority referring to the correct legislation and to show evidence of such service and receipt as it is concerned the local authority has not offered any support.
 - b. a full copy of the tenancy agreement
 - c. further evidence in support of the ground of eviction which could be a copy of the home report or evidence it has been instructed, or a statement or affidavit from both landlords and owners. The current e-mail from the estate agents and response accepting the quote to sell the Property appears to be to and from the landlords father Mr Lennie Fuller and not the Applicant or joint landlord James Fuller.
6. Mr Piggot for the applicant lodged a fresh copy of the S11 notice with a copy of e-mail service on Perth and Kinross Council dated 18th August 2021. He also lodged as evidence in support of the ground of eviction
 - a. an affidavit by Euan Fuller dated 31st August 2021
 - b. Agreement between James and Mackay estate agents and Euan Fuller dated 27th August 2021 confirming the marketing of the Property.
 - c. Letter from James and Mackay solicitors and estate agents dated 26th August 2021 addressed to Euan and James Fuller accepting their instructions to act in the sale of the Property and providing an estimate of the costs of the transaction and the terms of business.
7. The Tribunal also had before it today confirmation of service of the papers on Mr Murrell at HMP Thameside London on 3rd September.

The Case Management Discussion

8. The CMD proceeded today by way of teleconference due to the continued requirement at the current time due to the global pandemic for social distancing. The Convener made introductions, and explained how the CMD would be conducted over the teleconference
9. The Applicant did not attend but was represented once again by his solicitor Mr Mike Piggot from Lindsays solicitors. The First named Respondent also attended but was not represented and advised his wife was not attending. Mr Murrell confirmed he had received the papers but was now residing back at

- this home address and had a copy of the latest submissions from the Applicant as they had been sent to his wife at the Property address.
10. The Tribunal invited Mr Piggot to confirm what he was seeking and he confirmed that the Applicant is seeking an order for eviction based on Ground 1 of the Act which is that the Applicant wishes to sell the Property.
 11. He advised that his client had now complied with the direction of the Tribunal following the last Tribunal by sending a fresh s11 notice with the correct legislation referred to; providing an affidavit from Mr Euan Fuller and confirmation that estate agents and solicitors have been instructed in the sale of the Property.
 12. Mr Murrell advised that he eventually managed, after some difficulty, to get some legal advice from the Citizen Advice bureau and he mentioned that both they and the Council had mentioned that it might be significant that the Applicant did not have a home report, that he was not convinced that the Applicant did wish to sell the Property pointing out that they have not instructed a home report. The Tribunal noted that an action for wrongful termination can be applied for by any party if they believe a Tribunal was misled into issuing an eviction order. Mr Murrell also advised that the Affidavit ostensibly notarised by a solicitor had not in fact been signed by the Notary Public. Mr Murrell went on to say that he and his wife did want to move out though and they were actively looking at private tenancies but they were expensive in this area and they just wanted to provide a stable home for their children. He also confirmed he was now residing back at the Property with his family.
 13. Mr Piggot in response to the question as to why the home report had not been done or instructed advised that the Applicant advised he wanted the Property inspected first to see if any work was needed to bring up to standard for selling, he emphasised that there was no evidence or suspicion that the Property was not in good order but advised that Mrs Murrell had said she could not provide access until after 22nd September, which would be after this CMD.
 14. Mr Piggot also advised that as the affidavit had been done by video conference by his partner, Mr Paul Harper, who was the Notary who had witnessed and notarised Mr Fuller's statement had not been able to sign it there and then. He advised that he had written proof of the notarisation and could send that to the Tribunal if he could have short adjournment.
 15. Mr Murrell confirmed that his wife had not refused access after receiving an e-mail from Paula Neeson of the letting agent but had given potential other dates after 21st September, however he also advised that his wife had received a letter from Country Wide Residential Lettings that said they were giving 48 hours' notice and would ask a tradesman to attend on 3rd September at 4pm but no one came to the house. He said that he had a video recording that covered the period from 2.30pm to 4.30pm on that day and no one turned up. He also said that he had received a letter from the letting agent about the gas safety check due in November and felt that this was not really necessary if the landlords were intending to sell the property.
 16. The Tribunal then adjourned the CMD to allow Mr Piggot to produce evidence to support that the affidavit had been properly notarised and to try and find out what happened at the proposed visit on 3rd September, as well as to allow Mr Murrell to lodge a copy of the letter from Country Wide letting agents.

17. Mr Piggot lodged both a copy of the affidavit with the Notaries name, Mr Harper typed on it and a copy of Mr Harper's attendance record which notes that he has checked Mr Euan Fuller's passport is satisfied that he is indeed Mr Fuller, that Mr Fuller then read out the affidavit and he advised him on signing it, witnessed him signing it and asked him to scan the affidavit so Mr Harper's electronic signature could be added. The date of the attendance note is 31st August. Mr Piggot also explained that he had clarified what had happened on 3rd September and he advised he was told the letting agent sent their letter intimating there would be a tradesman calling on 3rd September by recorded delivery but when they checked the track and trace there was no proof of delivery and so they cancelled the tradesman not wanting Mrs Murrell to have a surprise visit.
18. The Tribunal noted it had also received the copy letter from Mr Murrell which was in the terms read out by him, and noted that he had photographed the letter and envelope it was sent in which showed it was dated 31st August and sent recorded delivery.
19. The Tribunal then invited the parties to address them on the question of whether or not it was reasonable for the eviction action to be granted. Mr Piggot submitted that Mr Fuller the Applicant has provided all the required notices, that he advised Mr and Mrs Murrell that he wanted to sell the house and they responded by saying he would have to go for an eviction order. Mr Piggot added that Mr Fuller has incurred extra costs in instructing representation for this action as well as getting an affidavit. He also mentioned he would have incurred further costs if he had instructed a home report but it is noted by the Tribunal that this will be a necessary cost anyway when the house is put up for sale. He advised that the Applicant requires the proceeds of the house sale to put towards a new home for him and his partner and has already sold the property he was living in with that intention.
20. Mr Murrell advised that he and his wife understood that they are only renting this Property and it is the landlord's property and if he wants it back, it is his property. He advised that they do wish to leave the Property and would leave as soon as they found another place, that they just want to provide a stable home for their children.

Findings in Fact

1. The Applicant is the landlord and joint owner of the Property.
2. The Respondent has entered into a lease with the Applicant and the joint owner James Fuller which commenced on 29th June 2018.
3. These proceedings were raised on 19th May 2021 and the application included a copy of the Notice to Leave.
4. The application and all accompanying papers have been served on both Respondents.
5. The Respondents are still living in the Property.
6. A Section 11 notice has been served on Perth and Kinross Council
7. A notice to leave was served on the Respondent by recorded delivery on 23rd September 2021
8. The Notice to leave mentions Ground 1 confirms the landlord wishes to sell the Property.

9. The joint owner Mr James Fuller is currently abroad serving in the marines and has authorised his brother, the Applicant, to deal with the Property, raise this action and act for him in any sale of the Property.
10. The Applicant and the joint owner have instructed a solicitor and estate agent to deal with the sale of the Property.
11. The Applicant wishes to sell the Property to use the free proceeds of sale towards buying another property.
12. The Notice to leave indicating that the landlord wished to sell the Property was served almost 12 months ago.
13. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

14. Reasons for Decision

21. The Tribunal was satisfied that the Respondent had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 1 of Schedule 3 of the Act as the relevant ground of eviction.
22. The Notice to Leave was served by recorded delivery and the Applicant has lodged a track and trace showing it had been accepted by "Murrell" on 24th September 2020.
23. The Notice also set out the relevant notice period which expired on 26th March 2021
24. The Application was lodged on May 2021 it was therefore lodged after the expiry of the Notice period and within 6 months from the date of the expiry of the notice period and therefor complies with Section 55 of the Act.
25. Ground 1 of Schedule 3 of the Act states "
 1. It is an eviction ground that the landlord intends to sell the Property.
 2. The First Tier Tribunal may find that the ground named by subparagraph (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.
 - c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.
 3. Evidence tending to show that the landlord has the intention mentioned in Subparagraph (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 from anyone responsible for marketing the let property would be required to possess under Section 98 of the Housing (Scotland) Act 2006.
26. The Tribunal accepted the written affidavit from the Applicant that he intends to sell the Property and that he requires his part of the proceeds of sale to use towards buying a new property for him and his partner. He and Mr James Fuller have instructed estate agents and solicitors in the marketing and sale of the Property. The Respondent suggested that not having a home report may mean they did not have the intention to sell the Property but there is not a requirement to have a home report to evidence the intention to sell this is just one type of evidence that may be used to show that intention and the Tribunal

accepts that the Applicant has shown other evidence in the form of his affidavit and letters of engagement with solicitors and an estate agent. The Respondent also agreed with Mr Piggot's assertion that when asked for access for a tradesman Mrs Murrell claimed it would only be suitable after 21st September. Mr Piggot explained that the Applicant wanted to check out the house and see if anything needed attended to before instructing a home report.

27. The Tribunal accepts that the Applicant is the joint owner of the Property, that he has the authority of his brother to act in this matter and sell the house. That even if he did not have that authority he has the right to raise an action of division and sale to authorise the sale of a Property he is a joint owner of, he is therefore entitled to sell the Property and has shown evidence of his intention to do so.
28. The Tribunal accepts that the Notice to Leave has been validly served on the Respondents; that the Respondents have had notice of the Applicant's intention since September last year and have had further time since the raising of this application to seek legal advice which they have now been able to do since the last CMD.
29. Given the requirements of the Act have been met and the ground of eviction has been established, and noting that the Tribunal can make any order at a CMD that it can after a full hearing, the Tribunal agreed a full hearing was not required and went on to consider whether the granting of an order was reasonable.
30. The Tribunal has weighed up the right of the landlord to sell his Property, and taken account that the landlord has given 6 months' notice as required by law, has provided all the documentation asked for by the Tribunal to support his claim; has provided a valid reason for wishing to sell the Property namely to use the proceeds to buy another house for himself and his partner with a view to starting a family against the inconvenience to the Respondent and their family in having to move. The Respondents have now had notice of this impending need to move since last September, Mr Murrell had previously stated he just wanted time to come back home to help his wife pack and move their furniture and has again confirmed today that they wish to move but have not found anywhere to move to yet. Mr Murrell has been in touch with the local authority and advised they are awaiting the outcome of this CMD. The Tribunal finds that it is reasonable to grant the eviction as the tenants have had reasonable notice of the Applicant's wish to sell his Property; Mr Murrell is now back in the Property and able to help his wife move and the local authority has a duty to provide support and assistance to the tenants in these circumstances. Taking all the circumstances into account the Tribunal is satisfied an order for eviction is reasonable.

- **Decision**

An order for eviction is granted.

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.

Legal Member/Chair:

Date: 21st September 2021


Jan Todd