



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/21/1603

Re: Property at 17 South Drive, Liff, Dundee, DD2 5SJ (“the Property”)

Parties:

Miss Jenna Mitchell, 56 Main Street, Invergowrie, DD2 5AA (“the Applicant”)

Mr Rod Sim, Ms Adelle Sim, 17 South Drive, Liff, Dundee, DD2 5SJ (“the Respondents”)

Tribunal Members:

Lesley Ward (Legal Member) and Elizabeth Currie (Ordinary Member)

- 1. The tribunal determined that an order for the eviction of the respondents from the property at 17 South Drive, Liff, Dundee DD2 5SJ be made on the basis of ground 4, that the applicant intends to live in the property, and it is reasonable in all of the circumstances to grant an eviction order.**
2. This was a case management discussion ‘CMD’ in connection with an application for eviction in terms of s52 of the Private Housing (Tenancies)(Scotland) Act 2016 and Rule 109 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules. The applicant was represented by Ms Euphemia Matheson solicitor. The respondents were represented by Ms Jane McNicol solicitor.
3. The tribunal had before it the following copy documents: -
 - (1) Application dated 7 July 2021.
 - (2) Private Residential Tenancy Agreement ‘PRT’ between the parties dated 8 March 2018.
 - (3) Notice to leave dated 30 December 2020.
 - (4) Proof of service of notice to leave dated 5 January 2021.
 - (5) Notice to leave dated 3 June 2021.

- (6) Proof of service of notice to leave dated 4 June 2021.
- (7) S11 notice.
- (8) Land certificate.
- (9) Affidavit by applicant dated 30 June 2021.
- (10) Notification regarding change of landlord dated 1 June 2021.
- (11) Written submissions by respondents.
- (12) Inventory of productions for applicant.

Preliminary matters

- 4. Both solicitors advised that the parties had reached an agreement about how to proceed. It was agreed that the respondents would not oppose the eviction on the basis that the order would not be executed until 4 November 2021. Ms Matheson invited the tribunal to grant the eviction on the basis that the eviction ground was established, and it was reasonable in all of the circumstances to do so. Ms McNicol confirmed that if the tribunal granted the eviction and postponed enforcement of the order until 4 November 2021 this would tie in with the date of completion of her clients' new build property.
- 5. Having ascertained that the parties had reached an agreement on how to proceed, the tribunal sought to clarify some matters regarding the notice to leave. The tribunal noted that there were two notices to leave. Ms Matheson submitted that she was relying on the second notice to leave. The application had therefore been made before the expiry of the notice period and she was inviting the tribunal to entertain the application in terms of s52(4) of the Act. She submitted that there had been a previous application to the tribunal on ground 4 and that had been rejected by the tribunal as the landlord at that time was Northwood Dundee and not an individual. The landlord had changed to the applicant on 1 June 2021. Ms Matheson also submitted that although the earlier notice was not being relied upon, it still meant that the respondents had been aware of the applicant's intention to live in the property from early January 2021 onwards. The respondent was not opposed to the application being received and entertained before the expiry of the notice to leave.

6. Findings in fact

- (1) The applicant is the owner of the property.
- (2) Northwood (Dundee) Ltd and the respondents entered into a PRT for let of the property on 20 November 2018.
- (3) The applicant was assigned as landlord of the property on 1 June 2021.
- (4) The applicant intends to live in the property as her only or principal home for at least 3 months.
- (5) A valid notice to leave dated 3 June 2021 was served on the respondents on 4 June 2021.

- (6) The respondents have purchased a newbuild property which will be ready for their occupation by 4 November 2021.
- (7) The applicant is residing in temporary accommodation and her belongings are in storage.

Reasons

- 7. This was an unopposed application for eviction in connection with a PRT. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair.
- 8. The tribunal was satisfied that the notice to leave served on the respondents on 4 June 2021 was valid. This was served on the respondents at the property and was signed for. The correct notice period is 3 months in terms of the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020. The date given on the notice to leave was 6 September 2021. The application was made on 5 July 2021. The application was therefor made before the expiry of the notice period. The tribunal was satisfied that it was reasonable in all of the circumstances for the application to be received and entertained by the tribunal before the notice period expired. As set out in the application, there was some urgency on the part of the applicant as the property she had been residing in had been sold. The respondents have been aware of the applicant's wish to move back into the property since January 2021 and were not opposed to the tribunal making the order.
- 9. Given the amendments of the Coronavirus (Scotland) Act 2020, the tribunal must be satisfied that the eviction ground is met and that it is reasonable in all of the circumstances to grant the eviction. The tribunal was satisfied on the evidence produced by the applicant that the eviction ground was met. The tribunal was satisfied, given the terms of the affidavit lodged that the applicant intends to move back into the property.
- 10. Regarding the reasonableness of granting the order, the respondents are not opposed to the eviction being granted. They have purchased a newbuild property which will be ready on 4 November 2021. The applicant wishes to move back into the property and recognises that a delay in the execution of the eviction order will accommodate the timescale the respondents are working to.
- 11. Having regard to the whole circumstances of the case, the tribunal was satisfied that it was reasonable to grant the eviction. In terms of rule 16A (d) of the rules, the eviction will not be executed before 4 November 2021.

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.

Lesley Ward

13 September 2021

Lesley A Ward Legal Member

Date