



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/21/1827

Re: Property at 16 Kenilworth Drive, Saltcoats, KA21 6HS (“the Property”)

Parties:

Miss Yvonne Finnigan, c/o 24 Dykesmains Road, Saltcoats, KA21 6DH (“the Applicant”)

Ms Margaret McFarlane, 16 Kenilworth Drive, Saltcoats, KA21 6HS (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 16 Kenilworth Drive, Saltcoats, KA21 6HS under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

- 1. By application dated 29 July 2021, the Applicant’s agent applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**

2. The application was accompanied by a Private Residential Tenancy Agreement dated 6 March 2020 between the parties, a Notice to Leave dated 20 April 2021 with an email from the Applicant dated 14 April 2021 that she required to live in the Property and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to North Ayrshire Council dated 20 April 2021.
3. On 11 August 2021, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 24 August 2021 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 23 September 2021. The Respondent required to lodge written submissions by 13 September 2021. This paperwork was served on the Respondent by Cameron Sutherland, Sheriff Officer, Glasgow on 24 August 2021 and the Execution of Service was received by the Tribunal administration. The Respondent made no representations.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 23 September 2021 by way of teleconference. The Applicant’s agent Ms Styles from Move2 Lettings Ltd appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
6. The Tribunal had before it the Private Rented Tenancy Agreement between the parties dated 6 March 2020 with a start date of 6 March 2020, a copy of a Notice to Leave dated 20 April 2021 with a copy email from the Applicant dated 14 April 2021 to the Applicant’s agent that she required to move back into the Property and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Ayrshire Council dated 20 April 2021. The Tribunal noted the content of these documents.
7. Ms Styles submitted that the Applicant lives in Abu Dhabi and was struggling financially so wished to move back to the UK and back into the Property. Ms Styles spoke to the Respondent at the time the Notice to Leave was sent to the Respondent. The Respondent had taken the Notice to Leave to North Ayrshire Council who had advised her that she should stay in the Property until the Tribunal granted an Order against her. Ms Styles explained that she did not want to approach the Respondent again as she was conscious of the fact she did not want to be seen as harassing the Respondent. The Respondent had not paid rent so far this month and was due a small amount from last month. Although the Applicant was not necessarily too concerned about that the Applicant was a bit wary that the Respondent had not been in contact. Ms Styles was not aware as to whether the Respondent still lived in the Property.

8. In response to questions from Mr Darroch, Ms Styles confirmed the Respondent lived in the Property with her twin 19 year old sons. There was no one in the house with any disability. She also explained to the Tribunal that the Respondent worked as a Health Care Assistant in Ayr. Ms Styles confirmed she was asking the Tribunal to grant an Order to evict.

Findings in Fact

9. The Applicant and the Respondent entered into Private Residential Tenancy Agreement dated 6 March 2020 with a start date of 6 March 2020 in relation to the Property.
10. The Applicant lives in Abu Dhabi, is struggling financially and wishes to move back to the UK and live in the Property.
11. On 20 April 2021, the Applicant's agent sent a Notice to Leave on the Respondent in terms of Section 50 of the 2016 Act which stated the reason for the Notice was that the Applicant wanted to move back to the UK and into the Property by reliance on Schedule 3, paragraph 4 of the 2016 Act. The Notice required the Respondent to leave the Property by 22 July 2021.
12. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on North Ayrshire Council on 20 April 2021.
13. The Respondent and her two 19 year old sons live in the Property. The Respondent works as a Health Care Assistant. The Respondent sought assistance with regards to rehousing from North Ayrshire Council after service of the Notice to Leave.

Relevant Legislation

14. The Tribunal considered the terms of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020.
15. Section 51 (1) of the 2016 Act provides the First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Section 51 (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

Section 51 (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

Section 51 (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Section 52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of— (a) subsection (3), or (b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) **The relevant period in relation to a notice to leave— (a) begins on the day the tenant receives the notice to leave from the landlord, and**

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies.

Section 54 (3C) applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

16. Ground 4 in Schedule 3 of the Act states that -

(1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if

(a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

Reasons for Decision

17. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Applicant's agent. The Tribunal noted the content of the separate email lodged and which was attached to the Notice to Leave which set out clearly the intention of the Applicant to reside in the Property. The Tribunal accepted the veracity of the Applicant's email and accepted the

submissions of Ms Styles as to the Applicant's reasons for wanting to move back to the UK and into the Property. The Tribunal noted that Clause 4 allowed for service by email on the Respondent.

18. The application was based on a Notice to Leave given after 7 April 2020, the date the Coronavirus (Scotland) Act 2020 came into force amending the terms of the 2016 Act under Schedule 1, paragraphs 3 and 4. The Notice to Leave was served by email on the Respondent on 20 April 2021 and thus the notice period stated in Section 54 (2) (c) (ii) of 3 months applies. The Tribunal was satisfied that the Notice to Leave met the requirements set out in Section 64.

19. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to move back to the UK and live in the Property when she obtained possession of it. The Applicant was struggling financially. It was not unreasonable that she would want to move back into the Property. The Respondent, whilst she had not responded to the application, had taken the sensible step in seeking advice from North Ayrshire Council about her housing situation. The Respondent was in employment and lived with her adult twin sons. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

20. In the circumstances the Tribunal considered that in terms of Ground 4 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

21. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Shirley Evans

23 September 2021

Legal Chair

Date