



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/2209

Re: Property at Flat 2, 9 Bruce Street, Clydebank, G81 1TT (“the Property”)

Parties:

Mr Euan Donaldson, 1/1 95 Dumbarton Road, Clydebank, Dunbartonshire, G81 1UE (“the Applicant”)

Mr Prashant Kumar, Mrs Tulsi Bhandari, Flat 2, 9 Bruce Street, Clydebank, G81 1TT (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 2 September 2021 the Applicant’s representatives, Jackson Boyd Lawyers, Glasgow, applied for an order for the eviction of the Respondents from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement, Notice to Leave, evidence of service of Notice to Leave, evidence of Applicant’s intention to sell the property, Section 11 Notice, evidence of intimation of section 11 notice, title deeds and deposit certificate.
2. Following further correspondence between the tribunal administration and the Applicant’s representatives a legal member of the Tribunal with delegated powers accepted the application by Notice of Acceptance dated 9 November 2021 and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was sent to the Applicant's representatives by post and was served on the Respondents by Sheriff Officers on 16 November 2021.

The Case Management Discussion

4. A CMD was held by teleconference on 17 December 2021. The Applicant did not attend but was represented by Mr Fraser Napier from the Applicant's representatives. The Respondents did not attend nor were they represented. The Tribunal being satisfied that proper intimation of the CMD had been given to the Respondents determined to proceed in their absence.
5. Mr Napier advised the Tribunal that the Applicant had fallen on tough times and had decided to realise capital by selling the property and also another property. He understood the Applicant's difficulties had come about as a result of the Covid pandemic. Mr Napier went on to say that the Applicant had sent a Notice to Leave to the Respondents by email on 31 October 2021 and referred the Tribunal to the documents submitted with the application. Mr Napier confirmed that page 4 of the Notice to Leave had been omitted from the version sent to the Respondents by email but that a further copy had also been sent by recorded delivery post on the same day and it had contained page four. In any event it was quite clear from the Notice to Leave that the Applicant was seeking to evict the Respondents because he intended to sell the property.
6. Mr Napier went on to say that the Applicant had provided sufficient evidence by way of a Home Report and correspondence from estate agents to support the application and had also intimated a Section 11 Notice to West Dunbartonshire Council. He submitted that this was not a situation where the Respondents could remedy matters and they had already had over a year to find alternative accommodation which he suggested was more than enough time. Mr Napier went on to say that given that the Respondents had not attended the CMD it was reasonable in all the circumstances to grant the order sought.
7. The Legal Member noted that the tenancy agreement only provided for formal notices being sent by email and not by hard copy and queried if that being the case the validity of the Notice to Leave was affected. Mr Napier submitted it was not but was unable to refer the Tribunal to any section of the legislation to support his submission. The tribunal referred him to Section 62 of the 2016 Act and queried if the notice sent to the Respondents complied with that section. Mr Napier submitted it did.
8. The Tribunal queried if Mr Napier knew anything of the personal circumstances of the Respondents. He said he was not aware of them having any children. In response to a query from the Tribunal as to the number of properties owned by the Applicant, Mr Napier said he was aware of at least one other. He was not aware if the property was mortgaged. He submitted that any delay in obtaining possession of the property could cause hardship for the Applicant as it was possible that due to the increase in Covid further restrictions could be imposed in the future. He confirmed that the Respondents were as of the week prior to

the CMD still living in the property. He confirmed they had not been in communication with the Applicant or his firm. As far as he was aware the Respondents were continuing to pay their rent.

Findings in Fact

9. The parties entered into a Private Residential tenancy that commenced on 8 January 2020 at a rent of £575.00 per calendar month.
10. The Applicant served a Notice to Leave on the Respondents by email on 31 August 2020 seeking to evict the Respondents under Ground 1 of Schedule 3 of the 2016 Act.
11. The applicant sent a further Notice to Leave by recorded delivery post to the Respondents on 31 August 2020.
12. Page 4 of the Notice to Leave was missing from the version sent by email.
13. The Applicant intends to sell the property to raise capital having been affected by the Covid pandemic.
14. The Applicant has instructed Select Surveyors, Giffnock, Glasgow to prepare a Home Report.
15. The Applicant has contacted McHugh Estate Agents, to market the property.
16. The Applicant's representatives intimated a Section 11 notice to West Dunbartonshire council by email on 30 August 2021.

Reasons for Decision

17. The Tribunal was satisfied that the Respondents were aware of the CMD and had not offered any reason for their non-attendance nor had they submitted any written representations. Although there was a defect in the version of the Notice to Leave sent to the Respondents by email it would have been apparent to the Respondents that the Applicant was seeking to evict them under Ground 1 of Schedule 3 as he wished to sell the property. Furthermore, a second complete copy of the document had also been sent by recorded delivery to the Respondents. Section 73 (10) of the 2016 Act provides that an error in the completion of a document to which that section applies does not make the document invalid unless the error materially affects the effect of the document. Section 73 applies to a Notice to Leave under Section 62(1). Given that the Respondents have not taken issue with the validity of the Notice to Leave and given that a second full copy was sent to them by post and the omission of page 4 of the document would not have materially affected the effect of the document the Tribunal was prepared to accept that the Notice to Leave was validly served upon the Respondents.

18. The Tribunal was also satisfied that the Applicant had provided sufficient evidence to satisfy in terms of Ground 1 of Schedule 3 that he intended to sell the property once he obtained vacant possession.
19. The Tribunal was also satisfied that proper notice of the proceedings had been given to the local authority by way of intimation of a Section 11 Notice.
20. Were it not for the provisions of the Coronavirus (Scotland) Act 2020 the Tribunal would have been obliged to have granted the order however because of the provisions of that act the Tribunal had to consider whether in all the circumstances it would be reasonable to do so. With some hesitation the Tribunal accepted the Applicant's representatives' submission that the Applicant's financial position had been adversely affected by the Covid pandemic although there was a minimal amount of evidence to support this position. In doing so the Tribunal took account of the fact that the Respondents had not offered any opposition to the Applicant's position. In addition, despite having been given an opportunity to make representations on their own behalf the Tribunal had no information with regards to the Respondent's personal circumstances other than that they continued to occupy the property. Therefore, based on the information available to it the Tribunal was satisfied that it was reasonable in the circumstances to grant the order sought.

Decision

21. The Tribunal having considered the written and oral submissions finds the applicant entitled to an order for the eviction of the Respondents from the property under Ground 1 of Schedule 3 of the 2016 Act.

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: Graham Harding

Date: 17 December 2021

Graham Harding

