



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/21/2298

Re: Property at 64 Dean Park, Newtongrange, EH22 4LP (“the Property”)

Parties:

Mr Paul Wilson, Steven Mann, 25 Park Road, Newtongrange, EH22 4JE (“the Applicant”)

Mrs Grace Dodds, 64 Dean Park, Newtongrange, EH22 4LP (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- Background
 1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of the Applicant’s intention to sell the Property, being Ground 1 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 20 December 2021 by tele-conference. The Applicants and the Respondent were personally present and representing themselves.

3. The Applicants moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement (“the Agreement”), which commenced 22 August 2020. The Applicants intended to sell the Property and required vacant possession in order to do so. They did not want to have to raise eviction proceedings but felt they had no choice as the Respondent had been told by the council not to leave. Whilst they had purchased the property as an investment for the future, they had realised during the pandemic that they found being landlords very stressful and their mental health had been affected. A Notice to Leave had been served on the Respondent on the basis of Ground 1 of Schedule 3 to the 2016 Act, on 17 March 2021. Said Notice stated that proceedings could not be raised before 17 September 2021.

4. The Respondent submitted that when she had moved into the property, she had been told this would be her “forever home.” She was upset when told she had to leave. She called the council’s homeless team who advised her not to leave until the landlords had obtained an eviction order. They were unable to rehouse her until then. She did not want to remain in the property but had no choice but to stay there, as she had been told to do by the council. She lived alone and was 68 years old. She had previously lived with her daughter before she moved into the property, as she had injured her shoulder and needed assistance, but could not move back in there as her daughter had a further baby since then and there was no room. She could not afford another private let as her rental benefit was capped at £500 per month and she had not been able to find another property that was in that region of rent.

5. The following documents were lodged alongside the application:

- (i) Copy Private Residential Tenancy Agreement
- (ii) Copy Notice to Leave
- (iii) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
- (iv) Letter from Mov8 dated 27 August 2021 confirming instruction re marketing the Property for sale.

- Findings in Fact

6. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement which commenced on 22 August 2020;
- (ii) The Applicant is the heritable proprietor of the Property;
- (iii) The Applicant is entitled to sell the Property;
- (iv) The Applicant intends to sell the Property;
- (v) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 1 of Schedule 3 to the 2016 Act;
- (vi) The Applicant has provided a letter of engagement from an estate agent regarding the marketing of the Property.

- Reasons for Decision

7. Section 51 of the 2016 Act (as amended by the Coronavirus (Scotland) Act 2020) states as follows:

“51 (1) 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.

(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.

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

(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.”

8. Ground 1 of Schedule 3 to the 2016 Act (as amended by the Coronavirus (Scotland) Act 2020) states as follows:

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

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

(a) is entitled to sell the let property,

(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, and

(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 sub-paragraph (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 that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.”

9. The Tribunal was satisfied that the terms of Ground 1 of Schedule 3 to the 2016 Act had been met. This was not opposed by the Respondent. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act.

10. The Tribunal was required to take into account the reasonableness of granting the order, in terms of the relevant provisions of the Coronavirus (Scotland) Act 2020. The Tribunal was satisfied that it was reasonable to grant the order sought. The Respondent said that she did not wish to live in the Property. The Respondent wanted to be rehoused by the local authority and had been advised that they would not do so until a repossession order was granted. It may be that the granting of the Order may in fact assist the Respondent in being rehoused by the Local Authority. Whilst the Tribunal took the view that the Applicant should have fully considered the implications of becoming landlords when they took on the property, it did not consider it reasonable to force them to continue to be landlords and continue to carry the obligations and liabilities that lie therein, under the circumstances.

- Decision

11. The Tribunal granted an order against the Respondents for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Fiona Watson

Legal Member/Chair

Date: 20 December 2021