



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/21/2496

Re: Property at 15 Greenacres Place, Bonnybridge, FK4 2BJ (“the Property”)

Parties:

Miss Leanne Martin, 16 Highland Dykes Drive, Bonnybridge, FK4 1PE (“the Applicant”)

Miss Sarah McCully, 15 Greenacres Place, Bonnybridge, FK4 2BJ (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Eviction Order be granted against the Respondent

Introduction

This is an application under rule 109 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (hereinafter referred to as “the 2016 Act”).

Service of the application and intimation of the Case Management Discussion (CMD) was made upon the respondent by Sheriff Officer delivery on 18 November 2021.

The CMD took place by teleconference at 2.00 pm on 21 December 2021.

The applicant was represented by Miss Cheryl Mills of Yendor Homes. The respondent joined the teleconference hearing and represented her own interests.

Findings and Reasons

The property is 15 Greenacres Place, Bonnybridge FK4 2BJ.

The applicant is Ms Leanne Martin. She is the landlord. The respondent is Miss Sarah McCulley. She is the tenant.

The parties entered into a private residential tenancy which commenced on 21 December 2020. Rent was stipulated at a rate of £650 per month. A deposit was also paid in the sum of £650. A former joint tenancy was in operation between the applicant; and the respondent and her partner.

The basis of the proposed eviction is on the basis of ground 1 contained within Part 1, Schedule 3 to the 2016 Act. This ground exists if the landlord intends to sell the property. Subsection (3) of ground 1 anticipates that formal evidence regarding the landlord's intention will be produced and that this would include, for example, a letter of engagement from a solicitor or estate agent concerning the sale of the let property.

Prior to the coming into force of the Coronavirus (Scotland) Act 2020 (hereinafter referred to as "the 2020 Act"), the relevant notice period under ground 1 was one of 84 days. After 7 April 2020 the notice period was 6 months. The Notice to Leave is dated 7 April 2021. On the application of section 62(5) of the 2016 Act, it is to be assumed that the respondent would have received the Notice to Leave 48 hours after it was sent ie on 9 April 2021. The 6 month notice period runs from then ie until 9 October 2021. After expiry of the 6 month notice period, the earliest day on which the landlord under the tenancy can expect to become entitled to make an application for an eviction order to the First-tier Tribunal is the day following after the day on which the notice expires under application of section 62(4) of the Act ie 10 October 2021.

The Notice to Leave which is dated 7 April 2021 stipulates that an application will not be submitted to the Tribunal for an eviction order before 10 October 2021. This is the required notice period under the 2016 Act, as amended, by the 2020 Act and is the notice period correctly calculated under section 62 of the Act. In the circumstances the Notice to Leave is valid and can be relied upon.

The evidence lodged in support of the applicant's intention to sell, comprises a copy of a letter from Yendor Homes dated 31 March 2021 offering to be engaged in the sale of the property. Messrs DM Hall Surveyors are vouched to have been instructed to prepare a Home Report in respect of the proposed sale, once vacant possession is obtained.

The applicant's intention to sell arises because she finds the business of letting the property too onerous. She used to live in the property herself. She doesn't have any other rental properties. She wishes to use the sale proceeds to assist her elder son financially.

The Tribunal was satisfied that the landlord's intentions and motivations to sell the property are genuinely held.

The respondent opposed the eviction application. She advised that she questioned the motivation of the landlord but ultimately accepted that the landlord does intend to sell the let property. She did not advance any other arguments for her opposition.

The Tribunal found ground 1 established on the basis of the available unchallenged evidence.

All evictions are now discretionary due to the introduction of the 2020 Act. The Tribunal proceeded to consider the issue of reasonableness.

The respondent is 29 years of age. She is a single parent of two children, a daughter aged 13 and a son aged 4. Her son suffers from autism and has additional support needs. The let property has not been adapted for his use. The respondent is unemployed. Her partner, with whom she has an on / off relationship, resides with her some of the time.

The respondent is in rent arrears to the extent of £1,410.79 which relates to the period between the tenancy commencing and 25 February 2021. Direct payments are now made to the applicant by the benefits agency. No offers to repay these sums have been forthcoming.

The respondent has already approached the local authority regarding her accommodation needs. She is likely to obtain suitable alternative accommodation once the eviction order is granted.

The Tribunal ultimately determined that it was reasonable that the Eviction Order be made.

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.

Richard Mill

21 December 2021

Legal Member/Chair

Date