



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/21/2606

Re: Property at 47 Lawson Crescent, South Queensferry, EH30 9JE (“the Property”)

Parties:

Mrs Alison Proudfoot, 19A Coates Crescent, Edinburgh, EH3 7AF (“the Applicant”)

Mrs Tina Gonzalez, Mr Nicholas Gonzalez, 47 Lawson Crescent, South Queensferry, EH30 9JE (“the Respondents”)

Tribunal Members:

Susan Christie (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction Order be granted against the Respondents in favour of the Applicant.

Background

1. The application for an eviction order was made on 16 November 2021 and accepted by the tribunal on 21 October 2021. The Applicant seeks an eviction Order under Ground 4, Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (‘the Act’).
2. The paperwork was served on the Respondents by Sheriff Officers service on 16 February 2022.
3. Written representations were invited from the Respondents by 8 March 2022.
4. Written representations were received timeously.

The Case Management Discussion (CMD)- 30 March 2022 at 2pm.

5. A Case Management Discussion (CMD) took place on 30 March 2022 at 2pm by conference call. The Applicant participated and the tribunal

- proceeded in the absence of the Respondents as intimation had been made of the date and time arranged.
6. The tribunal briefly adjourned to consider the application then resumed by which time the Respondents had joined the call. They explained they had mistaken the time assigned which they believed to be 3pm. They wished to make oral representations and the tribunal allowed them to participate fully in the CMD, relaying in summary form what had been discussed when they were absent from the call.
 7. The paperwork submitted along with the Application was examined and discussed alongside the written representations and the documentation submitted.
 8. The requirements contained in Ground 4 of Schedule 3 of the Act was referred to and considered in detail.
 9. The Applicant is the registered owner of the Property and landlord.
 10. A Private Residential Tenancy (PRT) was entered into between the Applicant and the Respondents on or around 22 November 2019, with a start date of 13 December 2019.
 11. Notices to Leave dated 29 April 2021 were served on the Respondents by e mail sent on that date, and it was accepted that they had been received. It was noted that there was potentially an error in the Notices whereby taking into account a grace period of 48 hours to receive the same, the date for raising the proceedings was one day early by the tribunal's calculation. However, the tribunal had regard to the Coronavirus (Scotland) Act 2020 Paragraph 10 of Schedule 1 which brought in provisions that made allowances for certain errors in notices. In this case the potential error in the notice would not render it invalid, given the date of raising the application.
 12. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to the relevant local authority prior to the application being made.
 13. The Parties set out their respective positions.
 14. Whilst the Parties had differing accounts as to what had been said or agreed at the outset and during the process to this point in the proceedings, ultimately the Ground itself was not disputed and the focus was instead a date for removal. The tribunal therefore took the view that a Hearing was not required and a decision on the application could be made today.
 15. A brief adjournment took place to allow discussion between the tribunal members. The decision of the tribunal was given orally to the Parties before concluding.

Findings in Fact

- I. A Private Residential Tenancy (PRT) was entered into between the Applicant and the Respondents on or around 22 November 2019, with a tenancy start date of 13 December 2019.
- II. Notices to Leave dated 29 April 2021 were served on the Respondents by e mail sent on that date, and it was accepted that they had been

received. The Notices are valid and can be relied upon in the application.

- III. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to the relevant local authority prior to the application being made.
- IV. The Applicant intends to return to the Property and live in it as her only and principal home for at least 3 months. Ground 4, Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 is met.
- V. The tribunal is satisfied that it is reasonable that an eviction Order should be made.
- VI. The tribunal order a delay in the execution of an order so as to allow for it not to be executed prior to 12 noon on 29 July 2022.

Reasons for Decision & Decision

The Applicant is the registered owner of the Property and landlord.

A Private Residential Tenancy (PRT) was entered into between the Applicant and the Respondents on or around 22 November 2019, with a start date of 13 December 2019. Notices to Leave dated 29 April 2021 were served on the Respondents by e mail sent on that date, and it was accepted that they had been received. It was noted that there was potentially an error in the Notices whereby considering a grace period of 48 hours to receive the same, the date for raising the proceedings was one day early by the tribunal's calculation. However, the tribunal had regard to the Coronavirus (Scotland) Act 2020 Paragraph 10 of Schedule 1 which brought in provisions that made allowances for certain errors in notices. In this case the potential error in the notice would not render it invalid, given the date of raising the application. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to the relevant local authority prior to the application being made.

The Applicant set out her position. Her intention was to have a period abroad and let the Property out for the duration of her absence. It had not worked out as she had planned and she had in effect been living either in relatives houses or with relatives for differing periods of time, using two addresses more recently as a base. She was working from home, and this has been less than ideal, and she wished to return to the Property and live there for a period more than three months and possibly to the end of the year before marketing it for sale if she could find another property. She had served the notices looking to recover the Property in July last year as the events around the Covid-19 situation had changed everything and could not have been foreseen by the Parties. It had changed her plans. She was covering her mortgage payments and there were other financial considerations for her. She had relied on her letting agent's advice as to how to approach the matter of seeking recovery of the Property. She was seeking recovery by the end of June 2022.

The Respondents set out their position. They were not disputing the Ground for recovery was valid but simply the timing of the leaving. They had an expectation to be in the Property until December 2022 and now their main regard is their family's educational requirements that they did not wish to disturb. They sought to remain within the Property until the end of July 2022 to allow the academic term to end and then allow for removal. Whilst the Parties had differing accounts as to what had been said or agreed at the outset and during the process to this point in the proceedings

and whilst there were tensions around that, ultimately the Ground itself was not disputed and the focus was instead a date for removal. The Respondents wished to leave the Property by the end of July 2022 by the latest and had been looking for alternative accommodation that suited their requirements. The tribunal therefore took the view that a Hearing was not required and a decision on the application could be made today. Further discussion resulted in the Applicant conceding that the date of removal could be by the end of July at the latest, in an effort to have the matter concluded.

The Tribunal had regard to the amendments made to the Act in relation to the Coronavirus (Scotland) Act 2020, particularly the discretion to be applied. The Tribunal was satisfied an Order should be made today and it was reasonable to do so. The tribunal determined that the date to be assigned in the Order for removal is 29 July 2022, which is expected to be the latest date for removal from the Property. This was made under Rule 16A(d) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 that allows the tribunal to order a delay in the execution of an order. The decision is 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.

Legal Member: Susan Christie

Date: 30 March 2022