

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/21/2827

Re: Property at 57 Burgh Road, Lerwick, Shetland, ZE1 0HJ (“the Property”)

Parties:

Mr Siddharta Sankar Paul, Mrs Moutika Paul, 7 Kingston Gardens, Ellon, AB41 9DA (“the Applicant”)

Ms Ewelina Jablonska, Hubert Pogorzelski, Andrzej Pogorzelski, 57 Burgh Road, Lerwick, Shetland, ZE1 0HJ (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Elizabeth Currie (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

INTRODUCTION

This is an application under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. This is an application for an Eviction Order.

Intimation of the application and of the Case Management Discussion (CMD) was served upon the Respondents by Sheriff Officers on 21 December 2021.

The CMD took place by teleconference on 21 January 2022 at 2.00 pm.

The applicants were represented by Mrs Kathryn Gordon of Messrs Anderson Goodlad, Solicitors. The respondents represented their own interests. They participated fully in the proceedings with the assistance of a Polish interpreter.

FINDINGS AND REASONS

The Tribunal found the unchallenged documentary evidence credible and reliable and attached weight to it.

The property is 57 Burgh Road, Lerwick, Shetland ZE1 0HJ.

The applicants are Mr Siddharta Sankar and Mrs Moutika Paul. They are the heritable proprietors of the property and the registered landlords.

The respondents are Ms Ewelina Jablonska, Mr Hubert Pogorzelski, and Mr Andrzej Pogorzelski. They are the joint tenants of the property.

The parties entered into a private residential tenancy in respect of the property which commenced on 1 December 2019. The rent stipulated was £650 per month.

This current application for eviction is based upon ground 1, contained within Part 1, Schedule 3, to the 2016 Act, namely that the landlords intend to sell the property.

Ground 1 as originally drafted as a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. Additionally, the notice periods have been extended by virtue of the 2020 Act. The relevant notice period under ground 1 was previously one of 84 days and is now one of 6 months.

The Notice to Leave upon which this application eviction proceeds was found to be valid. It is dated 11 May 2021. It is evidenced to have been served upon the respondents by email, being their preferred method of communication, as per the terms of the written lease between the parties. The copy email of 11 May 2021 issued to the respondents has been produced. The presumption under Section 62 of the Act regarding the period of 48 hours for delivery of the Notice to Leave is rebuttable as per the decision of Sheriff Fleming in the Upper Tribunal case of [2021] UT 20 UTS/AP/20/0029. The additional requirements under Section 62 of the Act have been complied with in that an additional day was added to the 6 month notice period. Delivery of the Notice to Leave took place on 11 May 2021. Expiry of the 6 month notice period took effect on 11 November 2021. The date specified in the Notice to Leave is 13 November 2021. This is an additional 2 days as opposed to the additional one day required under Section 62 of the Act.

Sufficient notice has been given to the respondents which has been acknowledged by them. The Notice to Leave is valid.

At the time of the commencement of the lease it was made clear to the respondents by the applicants that it was their intention to sell the property. The respondents let the property knowing that it was being sold and therefore likely that they could not occupy the property long term. The property has been actively marketed throughout the duration of the lease between the parties being in operation. The property has been marketed for sale by Anderson & Goodlad Solicitors which is evidenced by the sale schedule. A formal offer to purchase the property dated 9 April 2021 has been received by Messrs Simpson & Marwick, Solicitors.

The applicants motivation to sell arises due to the fact that Mr Sankar obtained employment on the mainland. They are currently requiring to service two mortgages which is not sustainable.

The ground for eviction which is relied upon is sufficiently evidenced and is not the subject of any challenge. The Tribunal found ground 1 to be established. The Tribunal proceeded to consider the reasonableness of making the Eviction Order.

The Tribunal took account of the fact that the respondents have always known that the property was being marketed for sale and, accordingly, knew that the duration of their lease was not likely to be a lengthy one. The respondents acknowledge this. They assisted in the sale process making viewings possible by allowing access.

The respondents are a single family unit consisting of Mr Hubert Pogorzelski and Ms Ewelina Jablonska who are partners, and Mr Andrzej Pogorzelski, the father of Mr Hubert Pogorzelski. They are all in employment and have no dependents or vulnerabilities.

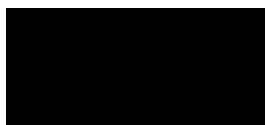
A relevant section 11 Notice under the Homelessness etc (Scotland) Act 2003 has been issued to the local authority. The respondents do not have any objection to vacating the property, but require to obtain alternative accommodation. They have consulted with the local authority but have not yet been offered any other accommodation in the absence of an Eviction Order being granted by the Tribunal. It was submitted by the respondents that they had no objection to the Eviction Order.

Weighing up the whole circumstances the Tribunal concluded that it was reasonable to grant the Eviction Order.

The Tribunal records that the respondents have in no way breached the terms of their tenancy. They have been good tenants and fully cooperative.

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.



21st January 2022

Legal Member/Chair

Date