



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/21/2991

Re: Property at 63 Fintry Road, Dundee, DD4 9EY (“the Property”)

Parties:

Mr Euan Cumming, 10 Balmosie Meadow, Dundee, DD5 3GG (“the Applicant”)

Mr Gary Mitchell, 63 Fintry Road, Dundee, DD4 9EY (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained: -
 - a. a copy of the tenancy agreement,
 - b. a copy of the notice to leave with evidence of service
 - c. a copy section 11 Notice

- d. a copy of terms of engagement letter from a solicitor instructed to market the property for sale.
3. The Applicant's agent, Mr Cruikshank from Pavilion Properties appeared. The Respondent did not appear. Service of the application had been made by sheriff officers upon the Respondent on 1 February 2022, given this the tribunal were content to proceed with today's case management discussion.

Discussion

4. The Applicant's agent advised that he was seeking an order for recovery of possession of the property under the ground 1 (landlord intends to sell the property).
5. The tribunal considered the tenancy agreement, the notice to leave with evidence of service and the section 11 notice. The agent also referred to the papers sent to the applicant from his solicitor which agreed to market the property for sale and which were dated 14 December 2021. In addition, the tribunal considered the rent statement dated until 16 November 2021 which showed rent arrears totalling £1866.28.
6. The tribunal were advised that the rent arrears were still outstanding, had in fact increased and were now £3,264.65 as at today's date. The agent advised that the payments made to the rent were from universal credit; there had however been an ongoing shortfall and arrears had been increasing; the last payment from universal credit was on 10 January 2022. The agent thought that the Respondent may have now left the property, although he could not be sure. He advised that it was only the Respondent who lived in the property. That he had spoken to the Respondent in around December time, and the Respondent had indicated that he was looking for somewhere else to live.
7. The agent advised that the Applicant still intended to sell the property. The Applicant had two rental properties. He understood that due to the covid pandemic the Applicant was now wanting to leave the rental market and hence the sale.

Findings in Fact

8. The Tribunal found the following facts established: -
- a. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 1 September 2020.
 - b. There was a notice to leave addressed to the Respondent. It contained information for the Respondent as to why an eviction order was sought. It was dated 25 May 2021. It confirmed that proceedings would not be brought until 25 November 2021. It had been sent by recorded delivery post to the Respondent on 25 May 2021. The ground in the notice to leave was ground 1 intention to sell the property.
 - c. There was correspondence from solicitors to the Applicant dated 14 December 2021 confirming that they had agreed to act for the Applicant in the sale of the property.
 - d. That current rent arrears for the property were now £3,264.65.
 - e. The Respondent resided in the property by himself.
 - f. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

9. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in schedule 3 of the Act applies and it is reasonable to do so.
10. The ground which the Applicant seeks eviction under is ground 1, which is in the following terms :-

1 Landlord intends to sell

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

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord— (a) is entitled to sell the let property, and (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.

(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.

11. The Respondent did not appear at the case management discussion to oppose the application.
12. The Applicant's agent confirmed that the Applicant still intended to sell the property. There was oral and documentary evidence to support this ground, namely the correspondence from the solicitors to the Applicant dated 14 December 2021. It appeared therefore the terms of ground 1 were met.
13. As the amendments arising from Coronavirus (Scotland) Act 2020 to Private Housing (Tenancies) (Scotland) Act 2016 are in force, the tribunal has also to be satisfied that it would be reasonable to grant the order. We note that the Respondent did not appear to challenge any aspect of the application or, explain why it might not be reasonable to grant an order for eviction. In addition, we find that there are current rent arrears which we consider are fairly substantial and are increasing. We note the last payment of benefits towards rent was made on 10 January 2022. We also note that the Respondent resided in the property by himself. The Applicant rents out two properties and appears to be in the process of selling at least one of those properties. Given all of these issues, the tribunal considers that it would be reasonable to grant the order.
14. The tribunal was therefore prepared to find that ground 1 was met, that it was reasonable to grant the order and therefore grants an eviction order in terms of that ground.

Decision

15. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy underground 1 of schedule 3 of 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.

Melanie Barbour

Legal Member/Chair

Date: 14 March 2022