



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/22/0232

Re: Property at 9 Alberta Avenue, East Kilbride, G75 8AE (“the Property”)

Parties:

Mr John Webb, 24 Ratho Drive, Carrickstone, Cumbernauld, G68 0GG (“the Applicant”)

Mr David Galbraith, 9 Alberta Avenue, East Kilbride, G75 8AE (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 9 Alberta Avenue, East Kilbride, G75 8AE under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 21 January 2022, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the

Regulations”). The basis of the Application was that the Applicant required to sell the Property under Ground 1 of Schedule 3 of the 2016 Act.

2. The application was accompanied by a Private Residential Tenancy Agreement dated 4 July 2020 between the parties which is inadvertently named a Scottish Secure Tenancy, a Notice to Leave dated 9 July 2021 with a Recorded Delivery slip, a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to South Lanarkshire Council dated 25 January 2022 and email correspondence from Home Connexions.
3. On 2 March 2022, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 22 March 2022 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 9 May 2022. The Respondent required to lodge written submissions by 12 April 2022. This paperwork was served on the Respondent by Andrew McLean, Sheriff Officer, Glasgow on 23 March 2022 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 9 May 2022 by way of teleconference. The Applicant appeared on his own behalf. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
6. The Tribunal had before it the Private Residential Tenancy Agreement dated 4 July 2020 between the parties, a Notice to Leave dated 9 July 2021 with a two Recorded Delivery slips dated 12 and 13 September 2021, a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to South Lanarkshire Council dated 25 February 2022 and emails dated 15 February from Home Connexions dated 15 February 2022. The Tribunal noted the terms of these documents.
7. Mr Webb moved the Tribunal to grant an Order for repossession. The Tribunal noted the Notice to Leave dated 9 July 2021 which relied on Ground 1 (Landlord intends to Sell the Property) of Schedule 3 of the 2016 Act. He advised that he had originally served two Notices to Leave, both on 9 July 2021, the other one being served on the basis of rent arrears and that the Respondent was not living in the Property. They had both been served by Recorded Delivery with one being signed for on 12 July and the other one on

13 July 2021. Mr Webb explained he had originally raised an eviction action based on the fact that the Respondent did not live in the Property. He had withdrawn that as he had then ascertained through an inspection and checking the rubbish bins that the Respondent was still living in the Property.

8. He went onto explain that the Respondent had fallen into rent arrears. He had tried to get the Respondent to engage regarding the arrears, but the Respondent had ignored his text messages. In response to a question from the Tribunal he confirmed he had sent all the COVID arrears information as recommended, but he got nowhere and the Respondent continued to ignore him. He had not been sure whether the Respondent still lived in the Property. In about September 2021 he went to the Property to carry out an inspection. The Respondent had changed the locks and as the Applicant was sitting in his car the Respondent came back and explained to the Applicant that he had been in hospital with COVID for months and had returned to the Notices to Leave. The Applicant advised him that he intended to sell the Property and asked the Respondent when he intended to move out to which the Respondent replied he could not say. He then paid rent from November 2021 to March 2022, but nothing since the Respondent received notification of the CMD from the Tribunal.
9. Mr Webb explained he intended to sell the Property. This was the only rental property he had. As the Respondent was not paying the rent, the Property was a financial strain on him. He had a mortgage over the Property. The situation was taking its toll on him. He had a young family to provide for. He was stressed as the rent was meant to cover the mortgage. He just wanted to sell it now. He had originally contacted Home Connexions in July 2021 to put the Property on the market. They had advised him to wait until he had obtained an Order from the Tribunal before putting the Property up for sale.
10. In relation to the Respondent's personal circumstances he advised the Respondent lived at the Property on his own. He understood the Respondent worked for First Bus. He understands the Respondent still lived in the Property.

Findings in Fact

11. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement on 8 June 2018 in relation to the Property.
12. The Applicant owns the Property. The Applicant intends to put the Property up for sale when he gains repossession of it. The emails dated 15 February 2022 from Home Connexions indicate they will deal with the sale of the Property.
13. The Applicant served a Notice to Leave on the Respondent 9 July 2021. The Notice to Leave was served by way of Recorded Delivery post on 9 July 2021.

The Notice to Leave required the Applicant to leave the Property by 13 January 2022. The Notice to Leave relied on ground 1 (Landlord intends to sell) of Schedule 3 to the 2016 Act.

14. The Respondent is a single person who lives alone at the Property.
15. The Respondent has fallen into rent arrears. The rent was intended to cover the mortgage the Applicant has over the Property. The Applicant can no longer afford to keep the Property and requires to sell it.
16. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on South Lanarkshire Council on 25 January 2022.

Reasons for Decision

17. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1, namely the Landlord intends to sell the Property. Ground 1 is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
18. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
19. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to sell the Property at Part 2 of the Notice in terms of Ground 1 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2)(c)(iii).
20. The application is based on a Notice to Leave given after 7 April 2020, the date the Coronavirus (Scotland) Act 2020 came into force amending the terms of the 2016 Act under Schedule 1 paragraphs 1 and 2. In terms of Section 54(2)(c)(iii) the notice period of the Notice to Leave is six months.
21. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2)

will expire. Section 64(5) assumes a tenant will receive the Notice to Leave 48 hours after it is sent. In this case the Notice to Leave was served by Recorded Delivery post on 9 July 2021. In relation to service of documents the Tribunal considered the terms of Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010. Section 26 (1) applies where an Act of the Scottish Parliament or a Scottish instrument authorises or requires a document to be served on a person (whether the expression “serve”, “give”, “send” or any other expression is used). In terms of Section 26 (2)(b) a document may be served on a person by being sent to the proper address of the person (i)by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 or (ii)by a postal service which provides for the delivery of the document to be recorded. The Tribunal was accordingly satisfied the Notice to Leave had been validly served on 9 July 2021 by Recorded Delivery post. .

22. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 13 January 2022. The application was made on 21 January 2022. In the circumstances the Tribunal is satisfied the Respondent has been given more than sufficient notice of three months in terms of the 2016 Act. Accordingly the Notice to Leave complies with Section 62.
23. The Tribunal is also satisfied the Notice to Leave complies with Section 52(5) of the 2016 Act and that the application proceeds on the eviction ground stated in the Notice to Leave, namely ground 1.
24. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Mr Webb. The Tribunal considered the Respondent had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Mr Webb that the factual basis of the application had been established and was satisfied the Applicant intended to sell the Property.
25. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant’s intention was to sell the Property when he obtained possession of it. It was causing him financial strain due to the Respondent’s arrears. He had a young family to provide for. The rent was meant to cover the mortgage. It was stressful as the mortgage was not being covered. The Respondent was a single man who it was understood was in employment.

The balance of reasonableness in this case weighted towards the Applicant.
The Tribunal find it would be reasonable to grant the order

26. In the circumstances the Tribunal considered that in terms of Ground 1 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

25. The Tribunal granted an order for repossession. The decision of the Tribunal was 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.

S. E

9 May 2022

Legal Chair

Date