



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/22/0384

Re: Property at 33 Garrowhill Drive, Drongan, KA6 7BD (“the Property”)

Parties:

OLIGARCHS NAVE LIMITED, 61 Bridge Street, Kington, England, HR5 3DJ (“the Applicant”)

Mr David Johnston, Mrs Beverly Johnston, 33 Garrowhill Drive, Drongan, KA6 7BD (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

Decision

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

1. This was a Case Management Discussion in respect of an application by the Applicant dated 7th February 2022 for an order for eviction against the Respondents. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application and afterwards in response to a direction from the Tribunal:-
 - A copy of the Tenancy Agreement dated 23rd January 2020
 - Copy Notice to Leave dated 29th July 2021
 - Evidence of sending Notice to Leave by recorded delivery dated 30th July 2021
 - Copy S 11 Notice to East Ayrshire Council
 - Copy e-mail to East Ayrshire council dated 7th February 2022
 - Copy Home report including single survey, energy report and property questionnaire by Harvey Donaldson and Gibb dated 30th April 2021.

3. The Tribunal sent a direction to the Applicants dated 28th March 2022 asking for further more recent evidence to support the ground of eviction.
4. In response Ms Donnelly responded on 1st April submitting e-mails from Wilson's auctions and McSherry Halliday solicitors, both dated 31 March 2022, confirming they would be instructed to sell the Property and accept an offer respectively, when the Property became vacant and advising the 12 other properties in the Applicant's portfolio were sold at auction last year. She advised that she believed the Property was not sold because there was a sitting tenant.

The Case Management Discussion (CMD) at 2pm 3rd May 2022

5. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant was represented by Ms Kirsty Donnelly neither of the Respondents attended and neither was represented. The Respondents have been served a copy of the application and papers by sheriff officers on 25th March 2022 together with a note of the date and time of the teleconference and details of how to join. The Respondents have been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in their absence.
6. Ms Donnelly for the Applicant's solicitor advised that she was instructed to seek an order for possession of the Property today.
7. She advised that the notice to leave had been served timeously on the tenants and the Tribunal noted the Applicant has lodged a Notice to Leave which has been served on the tenants by recorded delivery on 30th July 2021. Ms Donnelly confirmed the Applicant is seeking the order in terms of Ground 1 of Schedule 3 of the Act namely that the applicant wishes to sell the Property and referred to the Home report which had been obtained along with several others for other properties in the Applicant's portfolio in April 2021. Ms Donnelly confirmed that as the Applicant's director had moved to another country, namely France, that the Applicant was going to cease being a residential landlord and had sold all their properties in Scotland apart from this one as this had a sitting tenant. It was, she advised, still their intention to sell the Property once the tenants had left.
8. Ms Donnelly then referred to the Direction sent out by the Tribunal and confirmed that in response she had lodged an e-mail from Wilsons Auction dated 31st March 2022 confirming that they were instructed to sell it when the property becomes vacant and an e-mail from McSherry Halliday solicitors dated 31st March 2022 to confirm they will be instructed in the legal work once an acceptable offer has been received and invited the Tribunal to find that it would be reasonable for the order to be granted.
9. Ms Donnelly also mentioned that she believes the Respondents live in the Property on their own, that they have been seeking alternative accommodation and on 28th March had e-mailed the landlord to advise they had been offered a property from the Council. She confirmed that the Respondents had been in touch again last week with the landlord to advise that they expected to be able to move into the new Property within one or two weeks. She confirmed that this e-mail from Mrs Johnston to the landlord also mentioned that April's rent would

be sorted once the tenants moved. From this she deduced that the rent for April may be outstanding.

10. Ms Donnelly concluded by advising that a notice to leave has been served giving 6 month's notice to leave, the Applicants have shown their intention to leave by having a home report done and it would be reasonable for the order to be granted because the tenants appear to have another property to move to within a couple of weeks and the landlord has sold all other properties as it no longer wishes to be a residential landlord.

Findings in Fact

1. The Applicant and the Respondents entered into a lease of the Property with the Respondents which commenced on 24th January 2020.
2. The tenancy is continuing.
3. The Applicants are the owners of the Property and therefore are entitled to sell it.
4. A notice to leave dated 29th July 2021 was served on the Respondent by recorded delivery stating that no proceedings would be raised before 1st February 2022.
5. The Notice to Leave refers to Ground 1, the Landlord intends to sell.
6. These proceedings were raised on 7th February 2022 and the application included a copy of the Notice to Leave.
7. A Section 11 notice has been served on East Ayrshire Council
8. The Applicant intends to sell the Property and wishes to do so after the Respondents leave.
9. The Applicant's director has moved to France and has sold the other properties in their portfolio as they no longer wish to be a residential landlord.
10. The Respondents have been offered a local authority house and expect to get the keys within 1-2 weeks
11. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

11. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 1 Schedule 3 of the Act as the relevant grounds of eviction.
12. The Notice to Leave was served by recorded delivery which was received by the Respondents on 30th July 2021. The Application was also accompanied by evidence of how the ground was met namely by lodging a home report which was instructed for the Property.
13. Grounds 1 require 6 months' notice under the rules which are currently amended by the Coronavirus (Scotland) Act 2020. The Notice sets out the notice period as expiring on 1st February 2022 which meets the requirements of Section 62(4) of the Act as that subsection states that the day to be specified in accordance with Subsection 1 (b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

14. The Application was lodged on 7th February 2022. It was therefore lodged after the expiry of the Notice period and is therefore an application that the Tribunal can consider.
15. Ground 1 of Schedule 3 of the Act is entitled "Landlord intends to sell" and states
 - i. " It is an eviction ground that the landlord intends to sell the let property.
 - ii. The First Tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord-
 - a. Is entitled to sell the 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.
 - c. the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts
16. 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
17. The Tribunal accepted the verbal averments of Ms Donnelly that the Applicant's intention is to sell the Property. This is supported and evidenced by the written statements lodged by Wilsons Auctions and McSherry Halliday solicitors that they would be instructed to sell the Property.
18. The Tribunal then had to consider if it accepts it would be reasonable to grant an action for eviction on this ground. The Tribunal heard from Ms Donnelly that the Applicant no longer wishes to be a residential landlord, that the Director of the Applicant has relocated to France and that they sold all 12 of their other properties at auction last year. She also confirmed that her clients have heard from the Respondents that they have been offered another home to live in by the council and that this should be available in the next 1-2 weeks. There has been no written representations made by the Respondents and they have not attended today's hearing although intimation of this has been made on both Respondents by sheriff officer. Weighing up the evidence and taking note that it appears the Respondents have been offered, and have accepted, another house the Tribunal was satisfied that it was reasonable for an order of possession to be granted on the ground the landlord intends to sell the Property.
19. The Tribunal is therefore satisfied in terms of S 51 (1) of the Act that the eviction ground specified in the application namely Ground 1 is met, and that it is reasonable for the Tribunal to grant the application.

Decision

The Tribunal determined that the order for eviction sought by the Applicant should be granted.

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.



3rd May 2022

Legal Member/Chair

Date