



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/22/0749

Re: Property at 9 King George Court, Renfrew, PA4 0AU (“the Property”)

Parties:

Mr Seref Zengin, 4 Milne Way, Uddingston, G71 7JH (“the Applicant”)

Mr Miran Tawgozi and Ms Lanja Y Saleh, 9 King George Court, Renfrew, PA4 0AU; 9 King George Court, Renfrew, PA4 0AU (“the Respondents”)

Tribunal Members:

Martin McAllister (Legal Member) and Frances Wood (Ordinary Member) (“the tribunal”)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondent in respect of the Property.

Background

1. This is an application for recovery of the Property. The application is dated 14th March 2022. The Applicant is seeking recovery under Ground 1, Part 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 as amended by Schedule 1 (3) (a) of the Coronavirus (Scotland) Act 2020. This ground states that it is an eviction ground that the landlord intends to sell the let property. The date and time of the Hearing was intimated to parties who were given the opportunity to make written representations and/or lodge productions. The Applicant lodged productions. The Respondent made no representations and did not lodge productions.

The Case Management Discussion

2. A case management discussion was held on 13th July 2022 at 2 pm. It was held by audio conference.
3. The Applicant was present.

Preliminary Matters

4. It was noted that the Respondents were not present. The date and time, together with instructions in joining the audio conference was served on the Respondents by Sheriff Officers on 25th May 2022.
5. The tribunal explained the purpose of a case management discussion.

Documents before the tribunal

- 6.1 Private Residential Tenancy Agreement dated 14th December 2020.
- 6.2 Notice to Leave dated 7th September 2020.
- 6.3 Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003.
- 6.4 Sole Selling Agents Agreement for sale of the Property between the Applicant and Nicola Kennedy Residential dated 1st March 2022.
- 6.5 Print of Title Sheet for REN91888 (the Property).

Findings in Fact

- 7.1 The Applicant is the owner of the Property.
- 7.2 The Applicant and the Respondent entered into a Private Residential Agreement for the Property on 14th December 2020.
- 7.3 The start date for the tenancy was 24th February 2020.
- 7.4 The monthly rent for the Property is £625 per month.
- 7.5 The Applicant intends to place the Property for sale on the open market.

7.6 The Applicant has engaged estate agents to market the Property as soon as vacant possession is obtained.

7.7 The Applicant gave the Respondents Notice to Leave on 7th September 2021¹⁰.

7.8 The Respondents reside at the Property.

Findings in Fact and Law

8.1 The Private Residential Agreement dated 14th December 2020 contains eviction grounds including Ground 1: “The landlord intends to sell the property for market value within three months of the tenant leaving the property.”

8.2 The Notice to Leave which was dated and which was served on 7th September 2021 referred to Ground 1 which was being relied on by the Applicant as the reason for seeking recovery of the Property.

8.3 The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 11th March 2022.

The Law

The following provisions of the Private Housing (Tenancies) (Scotland) (Act) 2016 include the amendments made by the Coronavirus Act 2020

Section 51: First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

(introduced by section 51)

Schedule 3, Part 1

Let property required for another purpose

Landlord intends to sell

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

(2) The First-tier Tribunal *may* 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, *and*

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(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.

Evidence

9. The tribunal had regard to the documentation which had been lodged by the Applicant.

10. The Applicant stated that he and his wife planned to move overseas. He said that he has no other buy to let properties.

11. The Applicant said that he had spent a lot of money on the Property and de had upgraded it. He said that the Property's maintenance was costing him too much money and that he could no longer afford to keep it.

12. The Applicant said that the plan to move overseas was made during lockdown and he hoped to implement it within three to six months. He said that it was necessary for him to sell the Property so he could move on with his plan. He said

that he would not want to be letting out a property when he was living out of the country.

13. The Applicant said that he did not know much about the personal circumstances of the Respondents. He said that he thought that they had two children. He said that the Respondents did not contact him after service of the Notice to Leave and that he thought it better that he not contact them until the application had been determined by the Tribunal.

Submissions

14. The Applicant asked that the order be granted.

Deliberations and Reasons

15. The tribunal considered that it had sufficient information before it to allow it to determine the application and that a Hearing was not required. It was satisfied that the Respondents had received intimation of the arrangements for the case management discussion but had chosen not to submit written representations or participate in proceedings.

16. The tribunal considered that it required to take a two stage approach in considering the application. Prior to the Coronavirus Act 2020, Ground 1 of Part 1 of Schedule 3 of the 2016 Act was a mandatory ground for eviction. Following the provisions of the 2020 Act, it was a discretionary ground and, before making the order, consideration required to be taken as to whether or not it was reasonable for it to be granted.

17. The tribunal found the evidence of the Applicant's intention to sell the Property to be convincing. The documentary evidence of the Sole Selling Agreement was persuasive.

18. The tribunal considered if the requirements of Ground 1 were met. It had no difficulty in finding that the Applicant is entitled to sell the Property. It accepted the terms of the Title Sheet which demonstrated ownership of the Property.

19. In terms of the provisions of the Coronavirus Act 2020, the notice period for such an application is six months. The tribunal accepted that the Notice to Leave had been issued more than six months prior to the date of the application and that appropriate intimation had been given to the local authority under the Homelessness Etc. (Scotland) Act 2003.

20. In considering whether or not it is reasonable to grant the order, the tribunal required to consider all the circumstances. The tribunal considered it reasonable that a landlord may decide to sell a property if he was finding it expensive to maintain and if he wanted to divest himself of ownership prior to his departure overseas.

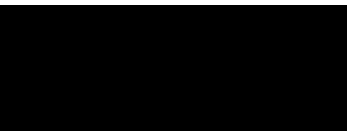
21. The tribunal was required to balance the Applicant's position against that of the Respondents. It could not do so because the Respondents had failed to provide any

information in this regard. They had the opportunity to submit representations and chose not to do so. They had not attended the Hearing or arranged for someone to represent them. The respondents had ample time during the notice period to find alternative accommodation.

22. Weighing matters, the tribunal considered that it was reasonable to grant the order of eviction.

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.



Martin J. McAllister
Legal Member
13th July 2022