

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/22/1257

Re: Property at 40 Fergusson Road, Broxburn, EH52 5BL (“the Property”)

Parties:

Mr Ahmedur Rahman, 13 Hartington Place, Edinburgh, EH10 4LF (“the Applicant”)

Miss Callie Wilding, Miss Kelsey Orriss, 40 Fergusson Road, Broxburn, EH52 5BL (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the parties)

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

Introduction

This application is under rule 109 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application seeks an eviction order.

Service of the application and intimation of the Case Management Discussion (CMD) was effected upon the respondents by Sheriff Officers on 22 August 2022.

Procedural Background

The tribunal identified a number of issues with the application and issued a Direction dated 23 August 2022 in the following terms:

“The **applicant** requires to provide the following no later than 12 noon on Friday 16 September 2022:

1. An explanation as to why an (English) assured tenancy was purported to have been created commencing 5 June 2021 when such a tenancy was not competent.
2. Evidence of service the Notice to Leave dated 8 October 2021 upon the respondents.
3. The Notice to Leave has not been prepared in accordance with the provisions of Section 62 of the Act which requires the notice period (in this case 6 months) plus an additional total of 3 days. A written submission is required specifying the basis upon which the Notice to Leave is valid (with reference to any statutory provisions and relevant case law).
5. It is noted that the Section 11 Notice issued to the local authority by the applicant states that the start date of the tenancy is 5 December 2018. By contrast the written tenancy agreement states that commencement of the tenancy was 5 June 2021. The applicant is required to provide clarification.
4. A written submission is required setting out the motivation and reasons as to why the applicant now wishes to sell the property purchased by him in August 2018.”

The applicant did not respond to the Direction.

CMD hearing

The CMD took place by teleconference at 2.00 pm on 6 October 2022. Neither party joined the hearing. There was no known barrier to their participation.

Findings and Reasons

The property is 40 Fergusson Road, Broxburn EH52 5BL. The applicant is Mr Ahmedur Rahman who is the heritable proprietor and registered landlord. The respondents are Miss Callie Wilding and Miss Kelsey Orriss who are the tenants.

The parties entered into a written residential tenancy agreement which commenced on 5 June 2021. The rent was stipulated at £625 per month. The written tenancy agreement purports to be in an “ Assured Shorthold Tenancy Agreement”. Such tenancies have never been capable of being created in Scotland and furthermore Scottish assured tenancies have not been competent to be created since 1 December 2017. The lease arrangement does appear to fulfil the requirements of a private residential tenancy under the 2016 Act.

In the written application to the tribunal the applicant suggested that a number of different grounds were being relied upon. The Notice to Leave served upon the respondents only gave notice of one ground, namely the applicant’s intention to sell

the property. On further clarification the applicant restricted his application to that basis. The ground relied upon is ground 1 contained within Part 1 of Schedule 3 to the 2016 Act. Ground 1 as originally drafted was a mandatory ground for eviction. Since coming into force of the Coronavirus (Scotland) Act 2020 all eviction grounds are discretionary.

The Notice to Leave which is relied upon is dated 8 October 2021. Service of the Notice to Leave is not evidenced and despite requests to the applicant no such evidence has been forthcoming. This is fatal to the application being considered further.

Furthermore, the relevant notice period as at the time of preparation of the Notice to Leave was one of 6 months. The Notice was not prepared accurately with reference to section 62 of the Act. The provisions of section 62 require the total notice period to comprise the notice period itself – in this case a period of 6 months plus an additional 48 hours for deemed service plus one additional day. The Notice to Leave however was not prepared lawfully; it was three days short. No submissions are made on behalf of the applicant as to why, in these circumstances, the Notice cannot be relied upon.

Furthermore the applicant has failed to evidence to the required standard that he is genuinely motivated to sell the property. He has failed to provide the required evidence requested by the Tribunal by way of Direction. He has not provided any details regarding the respondents personal circumstances to evidence that an eviction order would be reasonable.

The applicant failed to participate in the CMD without explanation. Accordingly having regard to the procedural flaws in the application and having regard to the applicant's want of insistence the tribunal dismissed the application.

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.

R Mill

6 October 2022

Legal Member/Chair

Date