



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/1743

Re: Property at 24 LOCH TROOL WAY, WHITBURN, EH47 0RN (“the Property”)

Parties:

MS SHARON HODGKINS, 46 ALLISON GARDENS, BLACKRIDGE, BATHGATE, EH48 3AZ (“the Applicant”)

MR ERNEST BARYLA, 24 LOCH TROOL WAY, WHITBURN, EH47 0RN (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be made against the Respondent in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 in that she intends to sell the let property or at least put it up for sale within 3 months of the tenant ceasing to occupy it and it is reasonable on account of that fact to grant the order.

The decision of the tribunal was unanimous.

Background

1.This application for an Eviction order in terms of Rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 8th June 2022 and accepted by the Tribunal on 9th August 2022.A case management discussion was set down for 21st October 2022 at 2pm.

Case Management Discussion

2. The Applicant did not attend the case management discussion but was represented by Ms McGeough solicitor of Harper Macleod Solicitors. There was no appearance by or on behalf of the Respondent. The Tribunal noted that the application and supporting papers together with the date of the case management discussion had been served on the Respondent by Sheriff officers placing these through the letterbox at the property on 7th September 2022. Ms McGeough requested that the Tribunal proceed in the absence of the Respondent and the tribunal agreed to this request given that the Respondent had received fair notice of the application and the case management discussion date.

3. The Tribunal had sight of the application, a paper apart, a tenancy agreement, a rent statement, a Notice to Leave with confirmation of postal delivery, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 with proof of intimation of this document to the relevant local authority, an email and fee quote for sale of the property from Mov8 Real Estate, a letter from PWC, a number of photographs of the property, a rent statement, a series of screenshots of messages between the parties and a letter from the Applicant's GP practice.

4. Ms McGeough explained to the Tribunal that her client was in a difficult situation currently and struggling with her mental health. She was currently living with her estranged husband and three children at a property which they own jointly. The relationship has broken down and the situation is difficult for her. The Applicant's current address has a mortgage over it and has a second loan secured over it. The receivers of the company which holds a second ranking charge over the property, have written to the Applicant requesting that this is discharged, and payment is required. She had requested a settlement figure earlier in 2022 and understood this was to be in the region of £35000 but the settlement date for that figure has passed and the Applicant understands that this debt may now be closer to £50000.

5. The Applicant has approached the local authority for housing assistance for herself and her three children. At present she understands that this cannot be offered as she owns a second home and is not currently homeless. The Applicant works in an office five days per week.

6. The Applicant intends if she can recover the let property to sell it as soon as possible to provide capital for her and her children to then rent private rented accommodation and to deal with the payment being requested by the receivers of the company which holds a second ranking charge on the property which she jointly owns with her estranged husband. She has yet to instruct a solicitor to deal with issues around the relationship and the children and is unable to secure legal aid for that purpose due to her circumstances and may also require to use funds from the sale to fund a family law solicitor in due course. She cannot currently buy a property due to her financial

situation. Given her difficult domestic circumstances and the pressing financial situation the sale of the property was said to offer her the best way forward.

7.The Applicant instructed a valuation for the let property and a quotation to market it for sale in October 2021 in anticipation of selling it as soon as it becomes vacant.

8.The Applicant had submitted a letter from her GP to confirm the impact the current situation is having on her health.

9.The Applicant had entered into a private residential tenancy at the property with the Respondent with effect from 30th September 2019.The tenancy agreement lodged was not signed by the Respondent as he had retained the signed copy. The monthly rent payable in advance is £400.Ms McGeough advised that there had been issues throughout the tenancy regarding payment of rent late or not at all.

10.Ms McGeough also advised that there had been issues during the tenancy with the Respondent keeping the property clean and tidy and she had lodged photographs to demonstrate the position. She requested that the Tribunal take account of these circumstances in considering whether it was reasonable to grant the order.

11.The Applicant had spoken to the Respondent regarding her intention to sell the property and the eviction proceedings she was commencing, and she had been advised by him that the advice he had been given in terms of being rehoused was to stay at the property until an eviction order was granted.

12.The Tribunal had sight of a Notice to Leave dated 28th October 2021 sent to the Respondent and received on 30th October 2021.The date in part 4 of the Notice given as the earliest date when an application for eviction could be submitted to the First Tier Tribunal was stated as 2nd May 2022.The Tribunal considered the terms of section 62(1)(b) and Section 62(5) of the 2016 Act. The date in part 4 of a Notice to Leave should be the day after the end of the notice period which should include the 48-hour period after which it is assumed to be received by a tenant. Taking the terms of s62 of the Act into account the Tribunal considered whether the date in part 4 of the Notice should in fact have been 1st May 2022.As the Respondent appeared to have been given a later date than that which was required, by one day, Ms McGeough submitted that this was a minor issue which did not prejudice the Respondent and asked the Tribunal to consider this as a minor error which did not affect the validity of the Notice to Leave in terms of section 73 of the 2016 Act.

13.The Tribunal had sight of a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 which had been intimated to West Lothian Council by email on 8 June 2022.

14.The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact and Law

15.The Applicant and Respondent entered into a private residential tenancy at the property with effect from 30th September 2019.

16.The Applicant lives with her three children and her estranged husband in the family home.

17. The Applicant's relationship has broken down and she requires to move out and source funds to deal with a charge over the family home for which payment has been requested.

18.The Applicant cannot obtain local authority accommodation for herself and her children currently as she owns two properties and is not currently homeless.

19.The Applicant intends to sell the let property as soon as it is vacant in order to provide funds to source a rented property for herself and her three children to live in and to use these funds to deal with the outstanding charge on the family home in which payment has been requested.

20.The Applicant is entitled to sell the let property.

21. The Applicant's GP considers that her current circumstances are impacting on her mental health.

22.The Applicant sent a Notice to Leave to the Respondent giving proper notice that she was seeking to evict him from the property.

23.This Notice had an incorrect date in part 4 and the date given was a day later than the date required. This is a minor error in the Notice in terms of section 73 of the Private Housing (Tenancies) (Scotland) Act 2016 and this does not affect its validity.

24.A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was intimated to West Lothian Council in relation to this application.

25.During the tenancy the Respondent has at times been late paying rent or has missed rent payments.

26.During the tenancy the Respondent has at times not kept the let property clean and tidy.

27.In October 2021 the Applicant instructed a firm to value her property and obtained a quotation to market it for sale in anticipation of it becoming vacant.

Reasons for Decision

28.The Tribunal was satisfied that the eviction ground was made out and that in the Applicant's current circumstances it is reasonable to grant the order. The Tribunal took account of all of the circumstances before it in deciding whether it was reasonable to grant the order and noted that the Respondent had not appeared or made representations to suggest that it was unreasonable to grant the order.

The Tribunal accepted that the error in the date in Part 4 of the Notice to leave was a minor error which did not affect its validity following the approach taken in *Holleran v McAlister* (FTS/HPC/EV/3231).

Decision

The Tribunal determined that an eviction order be made against the Respondent in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 in that she intends to sell the let property or at least put it up for sale within 3 months of the tenant ceasing to occupy it and it is reasonable on account of that fact to grant the order.

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.

Legal Member/Chair

21.10.22

Date