



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/22/2963

Re: Property at Flat 1 Craignethan Apartments, 69 Abbeygreen, Lesmahagow, ML11 0EF (“the Property”)

Parties:

Residential Loans Ltd, 1st Floor Right, 65 Bath Street, Glasgow, G2 2BX (“the Applicant”)

Mr James Cowan, Flat 1 Craignethan Apartments, 69 Abbeygreen, Lesmahagow, ML11 0EF (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

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 Flat 1 Craignethan Apartments, 69 Abbeygreen, Lesmahagow, ML11 0EF 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 his 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 22 August 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 and that the Respondent was in rent arrears under Ground 12 of Schedule 3 of the 2016 Act.

2. The application was accompanied by a Private Residential Tenancy Agreement dated 21 August 2019 between the parties, a Notice to Leave dated 26 January 2022 with Sheriff Officers Execution of Service dated 27 January 2022, a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to South Lanarkshire Council dated 3 August 2022, a contract of sale with Country Let dated 16 March 2022, a rent statement to 21 July 2022 showing arrears of £3200 and various letters from Country Let to the Respondent dated from 6 September 2021 to 12 August 2022.
3. On 23 August 2022, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 24 August 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 5 October 2022. The Respondent required to lodge written submissions by 14 September 2022. This paperwork was served on the Respondent by Roderick Stevenson, Sheriff Officer, Edinburgh on 26 August 2022 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 5 October 2022 by way of teleconference. Mrs Fleming from the Applicant appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 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 together with an application for recovery of rent arrears under reference FTS/HPC/CV/22/0228.
6. The Tribunal had before it the Private Residential Tenancy Agreement dated 21 August 2021 between the parties, a Notice to Leave dated 26 January 2022 with Sheriff Officers Execution of Service dated 27 January 2022, a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to South Lanarkshire Council dated 3 August 2022, a contract of sale with Country Let dated 16 March 2022, a rent statement to 21 July 2022 showing arrears of £3200 and various letters from Country Let to the Respondent dated from 6 September 2021 to 12 August 2022. The Tribunal noted the terms of these documents.

7. Mrs Fleming moved the Tribunal to grant an Order for repossession. The Tribunal noted the Notice to Leave dated 26 January 2022 which relied on Ground 1 (Landlord intends to Sell the Property) of Schedule 3 of the 2016 Act and Ground 12 (Rent arrears).
8. She explained that the Respondent had fallen into rent arrears. Mrs Fleming explained that the Respondent was now in arrears to 21 September 2022 of £4100. With reference to the rent statement, she explained the last payment to the rent account of £600 was made on 29 April 2022. The Tribunal noted that in terms of Clause 8 of the tenancy agreement the Respondent had agreed to pay rent of £450 per month. The Applicant's agents Country Let regularly wrote to the Respondent and tried to get him to engage with them. The Tribunal noted the last letter was dated 12 August 2022 advising the Respondent that the arrears were £3200. On being questioned by the Tribunal Mrs Fleming could not confirm that the Respondent had been advised by Country Let that arrears were £4100. Mrs Fleming advised that Country Let were based close to the Property and had attended at the Property on numerous occasions. However the Respondent never opened the door to them.
9. She explained that when Country Let recently attended at the Property they noticed all the windows were broken. She believed the Respondent was still living in the Property. She explained that the Applicant had always planned to sell the Property. They had originally owned 8 flats at Craignethan Apartments and had already sold 6 of the flats. With the Respondent being in arrears the Applicant now just wanted to sell the Property. She referred the Tribunal to the contract of sale with Country Let dated 16 March 2022 to show the Applicant intended to sell the Property. Country Let were also estate agents as well as letting agents. She explained they intended to use Messrs Mellicks who had sold the other flats in the block to carry out the conveyancing as they were familiar with the title. This was shown on the contract of sale with Country Let. On being questioned by the Tribunal Mrs Fleming advised that the Applicant intended to sell the Property as soon as possible if they gained repossession of the Property.

Findings in Fact

10. The Applicant and the Respondent agreed by way of Clause 8 of a Private Residential Tenancy Agreement dated 21 August 2019 in relation to the Property that the Respondent would pay the Applicant a monthly rent of £450.
11. The Respondent has fallen into arrears of rent. The arrears as of 21 September 2022 were £4100. The last payment made to the rent account by the Respondent was £600 on 29 April 2022.

12. The Applicant's agent Country Let regularly wrote to the Respondent to advise him of the arrears. They advised the Respondent on 12 August 2022 that the arrears were £3200.
13. The Applicant owns the Property. The Applicant intends to put the Property up for sale when they gain repossession of it. The contract of sale dated 16 March 2022 with Country Let indicates they will deal with the advertising of the Property and that Messrs Mellicks will be the solicitors acting on behalf of the Applicant.
14. The Applicant served a Notice to Leave on the Respondent 27 January 2022. The Notice to Leave was served by Sheriff Officers on 27 January 2022. The Notice to Leave required the Applicant to leave the Property by 28 July 2022. The Notice to Leave relied on Ground 1 (Landlord intends to sell) and Ground 12 (Rent arrears) of Schedule 3 to the 2016 Act.
15. The Respondent remains in the Property. The windows at the Property are now broken.
16. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on South Lanarkshire Council on 3 August 2022.

Reasons for Decision

17. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
 - Private Housing (Tenancies) (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020 and
 - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
18. 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 and on Ground 12, namely rent arrears. Both grounds are discretionary grounds of eviction. As well as being satisfied the facts have been established to support the grounds, the Tribunal has to be satisfied that it is reasonable to evict.
19. 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.

20. 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 and that the Respondent is in arrears at Part 2 of the Notice in terms of both Ground 1 and Ground 12 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).
21. 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)(b)(iii) the notice period of the Notice to Leave is six months.
22. 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. In this case the Notice to Leave was served on the Respondent by Sheriff Officers on 27 January 2022. The Tribunal was accordingly satisfied the Notice to Leave was validly served on 27 January 2022.
23. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 28 July 2022. The application was made on 22 August 2022. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of six months in terms of the 2016 Act. Accordingly, the Notice to Leave complies with Section 62.
24. The Tribunal is also satisfied the Notice to Leave complies with Section 52(5) of the 2016 Act and that the application proceeds on eviction grounds stated in the Notice to Leave, namely Grounds 1 and 12.
25. 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 Mrs Fleming. 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 Mrs Fleming, whom they found to be credible, that the factual basis of the application had been established and was satisfied the Applicant intended to sell the Property as soon as they regained possession.
26. The Tribunal was also satisfied on the basis of the documents lodged, together with submissions made by Mrs Fleming that the facts in relation to the arrears of rent were not in dispute and that there was no need to proceed to a full hearing for evidence to be led. In particular it is not disputed that the Respondent had been in rent arrears and was in arrears of more than 3

months. The arrears were still increasing and as of 21 September 2022 had increased to £4100.

27. 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 they obtained possession of it. They had always intended to sell all 8 flats they owned in the building and had already sold 6 of their flats there. The Tribunal was satisfied that on the basis of the submissions of Mrs Fleming that as the Respondent was in rent arrears they now wanted to sell the Property. The Respondent had ignored all attempts by Country Let to engage with them. The Applicant had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 as referenced by the letters sent by Country Let to the Respondent. Arrears were increasing by the month. The Property was now vandalised. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order

28. In the circumstances the Tribunal considered that in terms of Grounds 1 and 12 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

29. 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.

Shirley Evans

5 October 2022

Legal Chair

Date