



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/20/2581

Re: Property at 41 Kelvin Crescent, East Kilbride, Glasgow, G75 0TY (“the Property”)

Parties:

Mr David McGranaghan, Mrs Laura McGranaghan, 2 Fletcher Road, Henley Beach South, Adelaide, Australia, 5022, Australia (“the Applicants”)

Castle Estates Glasgow Ltd, 14 Union Street, Greenock (“the Applicant’s Representative”)

Mr Steven Wallace, Ms Suzanne Meharry, 41 Kelvin Crescent, East Kilbride, Glasgow, G75 0TY (“the Respondents”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order against the Respondents

Background

- 1 By application dated 14 December 2020 the Applicants applied to the Tribunal for an order for repossession against the Respondent under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
 - (i) Notice to Leave dated stating that proceedings for possession will commence no earlier than 12 December 2020 and citing ground 1;
 - (ii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to South Lanarkshire Council;

- (iii) Copy Single Survey Report in respect of the property dated 25 September 2020;
 - (iv) Copy offer from Austin Lafferty and Co Solicitors to the Applicants in respect of the property.
- 2 The Tribunal was also in receipt of the Land Certificate for the property under Title Number LAN165850 which confirmed the registered owners as David McGranaghan and Laura McGranaghan.
- 3 In response to a request from the Tribunal, the Applicant's Representative subsequently provided proof of service of the Notice to Leave by "DocuSign", an electronic portal, dated 5 June 2020, confirmation of receipt of the section 11 Notice from South Lanarkshire Council, amended application removing reference to ground 12 in relation to rent arrears, copy Private Residential Tenancy Agreement between the parties and confirmation from the Applicants that the Applicant's Representative was authorised to act for them in the proceedings.
- 4 By Notice of Acceptance of Application dated 1 March 2021 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. At the same time, the Tribunal issued a Direction in the following terms:-

"The Applicant is required to provide:

- 1. An explanation for the calculation of the notice period in terms of the notice to leave.*
- 2. Representations regarding the validity of the Notice to Leave in light of the information that the information provided to the tenants of the sale of the potential property appears to relate to correspondence and contact in October 2020, which is several months after the notice to leave was served.*
- 3. Clarification on whether the property has actually been sold or is under offer.*

The said documentation should be lodged with the Chamber no later than close of business on 17 March 2021."

- 5 By email dated 9 March 2021 Catherine McGugan of the Applicant's Representative submitted a response to the Direction on the Applicant's behalf. She advised that the Notice to Leave had been served on the Respondents electronically on 5 June 2020 and had an effective date of 12 December 2020. The Respondents had therefore been given at least six months notice of the Applicant's intention to raise proceedings. Ms McGugan further produced a text message from Mr David McGranaghan to Ms Suzanne Meharry dated 4 June

2020 informing her that the Applicants wished to sell the property and confirmed that a previous offer had fallen through due to the Applicants' current inability to provide vacant possession. They had received legal advice to the effect that they could not proceed with a sale until they had recovered possession of the property.

- 6 A Case Management Discussion was therefore assigned for 13 April 2021, to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers on 10 March 2021.

Case Management Discussion

- 7 The Case Management Discussion took place by teleconference on 13 April 2021. The Applicants were present and represented by Ms Catherine McGugan. The Respondents were present and represented by Ms Erica Young of Hamilton Citizens Advice Bureau.
- 8 The Legal Member explained the purpose of the Case Management Discussion and the legal test that required to be satisfied. She then asked parties to address her on their respective positions.
- 9 Ms McGugan advised that notice had been issued with regard with ground 1, although she noted that originally in the application ground 12 was sought as well. Arrears had accrued on the account after the initial Notice to Leave was served back in June. The Applicants were seeking possession on ground 1 only. The last communication from the Respondents had been on 3 March, advising that they had been unable to seek alternative accommodation. Mr and Mrs McGranaghan did have a legal offer to purchase the property with an entry date of 8 January 2021 but had to withdraw from that transaction on the basis that they did not have vacant possession. Ms McGugan confirmed that the Applicants sought an eviction order.
- 10 Ms Young confirmed that the Respondent's household consists of Ms Suzanne Meharry and Mr Steven Wallace who has some learning difficulties, as well as three dependents. Given the family situation it would be a difficult exercise to relocate especially with the rental market being what it is at the moment in response to the coronavirus pandemic. She noted that the Respondents had resided in the property for nine years.
- 11 Ms Young pointed out the application of the reasonable test. She advised that she was seeking a lengthy continuation until 30 September, which would be the very earliest that an eviction can be carried out, although she conceded

that could change depending on the pandemic. Ms Young pointed out that there was no ongoing prejudice to the Applicants in the Respondents continued occupation of the property. Rent was being paid and the property was being well maintained. The Applicants were not selling the property due to financial hardship. She understood they own their property in Australia.

- 12 Ms Young went on to state that relations between the Applicants and the Respondents had broken down when the Applicants had proposed a significant rent increase from £900 to £1200. It may have been possible to negotiate a compromise, however the Applicants had proceeded to serve the Notice to Leave and proceedings progressed from there. In response to questions from the Tribunal Ms Young confirmed that the Respondent's defence related solely to the reasonableness of granting the order. She advised that the original proceedings were not in relation to the sale of the property, they related to rent arrears. The Respondents had been looking for alternative properties, they had a relationship with letting agencies and were checking what was available. They had put work into finding alternative accommodation. Ms Young advised that the papers had only come to her recently but she understood the serious intent to sell the property was recent and had been a back up ground when the Notice to Leave was served last year. Ms Young understood that serious efforts were not made in terms of selling the property until January of this year. The Applicants already own property in Australia therefore she did not know why they would require a deposit to purchase a house.
- 13 In response Ms McGugan advised that there had only been one Notice to Leave served on the Respondents in June 2020 which stated the ground as the landlord's intention to sell. No other Notice to Leave had been issued. Ms McGugan advised that the situation was impacting on the Applicants' financial situation in Australia. They required the sale proceeds as a deposit to enable them to purchase property in Australia. Various text messages had been sent to Ms Meharry, she was aware of the landlord's plans to sell. She had allowed access for viewings and home reports. The Respondents were fully aware that the property was being sold.
- 14 The Legal Member then sought clarification on the position regarding the Applicants' home ownership. Ms McGugan was not clear therefore the Legal Member asked Mr McGranaghan to address her on this matter. Mr McGranaghan confirmed that the house required to be sold so that he and his family could purchase a property in Australia. They don't own a property in Australia, they are currently renting. He advised that was the reason why the Notice to Leave was served back in June 2020. The Applicants had to turn down an offer to purchase the property on the basis that they could not offer vacant possession. The Legal Member then sought further clarification from Ms Young on her statement regarding the Applicants' home ownership. Ms Young was not clear therefore the Legal Member asked Ms Meharry to

address her on that issue. Ms Meharry advised she had googled the property the Applicants were staying in and noted that it had been purchased in 2018. She found that suspicious. She conceded however that there was nothing to suggest the Applicants were the owners of the property they were currently staying in.

Relevant Legislation

- 15 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020:-

1 - Meaning of private residential tenancy

1) *A tenancy is a private residential tenancy where—*

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

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.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

- (a) subsection (3), or*
- (b) any of sections 54 to 56 (but see subsection (4)).*
- (3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*
- (4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*
- (5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*
 - (a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*
 - (b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

54 Restriction on applying during the notice period

- (1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*
- (2) The relevant period in relation to a notice to leave—*
 - (a) begins on the day the tenant receives the notice to leave from the landlord, and*
 - (b) in the case of a notice served before 3 October 2020 expires on the day falling—*
 - (i) 28 days after it begins if subsection (3) applies,*
 - (ii) three months after it begins if subsection (3A) applies,*
 - (iii) six months after it begins if neither subsection (3) nor (3A) applies.*
 - (c) in the case of a notice served on or after 3 October 2020, expires on the day falling—*
 - (i) 28 days after it begins if subsection (3B) applies,*
 - (ii) three months after it begins if subsection (3C) applies,*
 - (iii) six months after it begins if neither subsection (3B) nor (3C) applies*
- (3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]*
- (3A) This subsection applies if—*
 - (a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*
 - (i) that the landlord intends to live in the let property, [ground 4]*
 - (ii) that a member of the landlord's family intends to live in the let property, [ground 5]*
 - (iii) that the tenant has a relevant conviction, [ground 13]*

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) 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.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 1

1 Landlord intends to sell

(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.

Findings in Fact and Law

- 16 The parties entered into a Private Residential Tenancy Agreement which commenced on 11 November 2019, albeit the Respondents had resided in the property prior to that date.
- 17 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 18 On 5 June 2020 the Applicant's Representative delivered a Notice to Leave to the Respondents by electronic means via "DocuSign". The Notice to Leave cited ground 1 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 12 December 2020.
- 19 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 20 The Applicants are the registered joint owners of the property.
- 21 The Applicants therefore have title to sell the property.
- 22 The Applicants have instructed the sale of the property, including arranging a Single Survey Report dated 25 September 2020.
- 23 The Applicants received an offer for the property on 11 November 2020. The offer was subsequently withdrawn as the Applicants were unable to offer vacant possession at that time.
- 24 The Applicants require to sell the property in order to purchase a home in Australia where they have settled.
- 25 The Applicants intend to sell the property within three months of the Respondents ceasing to occupy.
- 26 It is reasonable to make the order sought by the Applicants.
- 27 The provisions of ground 1 of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

- 28 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. Whilst the Tribunal noted the Respondents' defence of reasonableness as put forward by Ms Young, the

Tribunal did not consider the exercise of its discretion in this regard required the hearing of evidence based on the written representations and the submissions from the parties at the Case Management Discussion.

- 29 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants' intention to rely upon ground 1 of Schedule 3 of the 2016 Act. The Notice to Leave had been sent electronically to the Respondents on 5 June 2020 and confirmed that the earliest date on which proceedings would be raised would be 12 December 2020. The Tribunal was therefore satisfied that the six month period required under section 54 of the Act had been complied with. The Tribunal did not accept that the reliance upon ground 1 was an afterthought as was submitted by the Respondents. It was clear in the Notice to Leave served in June 2020 that ground 1 was being relied upon. There was no mention in the Notice of rent arrears, and no reliance upon ground 12. The Tribunal did note that the initial application to the Tribunal cited ground 12, which corresponded with the position put forward by the Applicants' Representative, namely that the arrears had accrued after the Notice to Leave was served. This was amended after it was noted by the Applicants that the Notice to Leave did not contain ground 12.
- 30 The Tribunal was further satisfied on the basis of its findings in fact that the Applicants had title to sell the property and intended to do so within three months of the Respondents having vacated. The Tribunal accepted that their intention was genuine in this regard, based on the steps they had taken to date which had resulted in matters proceeding to the advanced stage of an offer having been made to purchase the property which had unfortunately fallen through. The Tribunal therefore had to consider whether it was reasonable in the circumstances of the case to make the order, which required the Tribunal to balance the various facts and circumstances of the case in order to exercise its judicial discretion in this regard.
- 31 The Tribunal considered the fact that the Respondents had been given notice of the Applicants' intention to sell the property in June 2020 thereby giving them ample opportunity to obtain alternative accommodation. Whilst the Tribunal was conscious of the ongoing restrictions arising from the Covid-19 pandemic, it did not consider these to be so prohibitive as to prevent the Respondents from arranging accommodation in the ten months since the Notice to Leave was served. The Tribunal further accepted the Applicants' position that they were currently renting a property in Australia and required the proceeds from the sale of the property as a deposit for a home in the country. Ms Meharry had conceded at the Case Management Discussion that she could not confirm the Applicants' home ownership and her suspicions regarding the purchase of the property they were currently occupying appeared to the Tribunal to be without any clear foundation. The Tribunal therefore considered that the ongoing prejudice to the Applicants in their inability to sell the property in order to purchase a new home outweighed any

prejudice to the Respondents by the making of the order. Whilst the Tribunal did have some sympathy for the Respondents' personal circumstances it noted that they would have a further opportunity to obtain alternative accommodation in the period leading up to the enforcement of the order. It appeared from the submissions made by Ms Young at the Case Management Discussion that efforts were well underway in this regard.

- 32 The Tribunal therefore determined it would be reasonable to issue an eviction order in all the circumstances of the case and concluded that ground 1 had been met.

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.

Ruth O'Hare

Legal Member/Chair

13th April 2021
Date