



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/21/1053

Re: Property at 49 Lauder Gardens, Carnbroe, Coatbridge, ML5 4UA (“the Property”)

Parties:

Mr Ryan Drummond, 17 Wilson Court, Bellshill, ML4 3DB (“the Applicant”)

Miss Kirsty McKenna, 49 Lauder Gardens, Carnbroe, Coatbridge, ML5 4UA (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Angus Lamont (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 49 Lauder Gardens, Carnbroe, Coatbridge, ML5 4UA 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 their goods, gear and whole belongings forth 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 3 May 2021, 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”).

2. The application was accompanied by a Private Residential Tenancy Agreement dated 13 August 2018 between the parties, a Notice to Leave dated 1 February 2021, a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to North Lanarkshire Council dated 25 May 2021 and a separate statement that he required to live in the Property.
3. On 9 June 2021, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 21 June 2021 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 29 July 2021. The Respondent required to lodge written submissions by 12 July 2021. This paperwork was served personally on the Respondent by David Dempster, Sheriff Officer, Glasgow on 12 June 2021 and the Execution of Service was received by the Tribunal administration. The Respondent made no representations.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 29 July 2021 by way of teleconference. The Applicant was present and represented himself. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 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 her absence.
6. The Tribunal had before it the Private Rented Tenancy Agreement between the parties dated 13 August 2018 with a start date of 20 August 2021, a copy of a Notice to Leave dated 1 February 2021 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Lanarkshire Council dated 25 May 2021. The Applicant also provided a separate statement that he intended to reside in the Property as soon as possible as his primary residence.
7. The Applicant explained that he had served the Notice to Leave personally on the Respondent at the Property on 1 February 2021. He had fully explained to her why he needed to terminate the tenancy with her, namely that he and his wife had separated and that in order to have a 50% share in the custody of his 6 year old son, he needed to reside in the Property. The Tribunal noted that this accorded with the written statement the Applicant had lodged that he intended to live in the Property as his primary residence as soon as possible. He explained the Respondent appeared to appreciate the position. He also explained that he solely owned the Property. The Applicant went on to advise that he had remained in contact with the Respondent who was hoping to secure new build accommodation near the Property which was being developed by Link Housing Association and North Lanarkshire Council. He

advised that he had stayed with his mother for a while, but due to the shared care arrangements with his son, it was not practical for him to continue to live with her. He had accordingly rented a property in Bellshill where he was paying £550 per month and had had to pay a deposit of £875. The Respondent still resides at the Property. He asked the Tribunal to grant an order to evict.

Findings in Fact

8. The Applicant and the Respondent entered into Private Residential Tenancy Agreement dated 13 August 2018 with a start date of 20 August 2018 in relation to the Property.
9. The Applicant has separated from his wife. He needs to secure accommodation for him and his 6 year old son in order to take care of him on a shared basis 50% of the time.
10. The Property is owned solely by the Applicant. After separating from his wife the Applicant lived with his mother for a while. The Applicant is now living in a rental property in Bellshill at a monthly rent of £550. His intention is to move into the Property and to reside there as his primary residence as soon as possible. His son will live with him in the Property for 50% of time.
11. On 1 February 2021, the Applicant personally served a Notice to Leave on the Respondent in terms of Section 50 of the 2016 Act which stated the reason for the Notice was that the Applicant wanted to move into the Property by reliance on Schedule 3, paragraph 4 of the 2016 Act. The Notice required the Respondent to leave the Property by 2 May 2021. The Respondent continues to reside in the Property.
12. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on North Lanarkshire Council on 25 May 2021.

Relevant Legislation

13. The Tribunal considered the terms of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020.
14. Section 51 (1) of the 2016 Act provides 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.

Section 51 (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.

Section 51 (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

Section 51 (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.

Section 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.

Section 54 (3C) 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]

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.

15. Ground 4 in Schedule 3 of the Act states that -

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

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if

(a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months and

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

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

Reasons for Decision

16. 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 Applicant. The Tribunal noted the content of the separate statement lodged which set out clearly the intentions of the Applicant to reside in the Property to enable him to have 50% shared custody of his son. The Tribunal found the Applicant to be credible in stating his intentions to move into the Property as his primary residence and accepted the veracity of his statement.

17. The application was 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 3 and 4. The Notice to Leave was served personally on the Respondent on 1 February 2021 and thus the notice period stated in Section 54 (2) (c) (ii) of 3 months applies. The Tribunal was satisfied that the Notice to Leave met the requirements set out in Section 64.

17. Further the Tribunal considered whether in all the circumstances it was reasonable to issue the Order. The Tribunal considered the Applicant's submissions that he required the Property to provide a home for him and his son on a shared basis and that it was not practical for him to continue to live at his own mother's house. The Tribunal noted the Applicant was having to rent another Property as the Respondent was still resident in the Property. The Tribunal noted the Respondent had not opposed the application and that on the basis of what she had informed the Applicant she was hoping to secure nearby alternative accommodation. The Tribunal noted that a Section 11 Notice had been served on the Local Authority.

19. In the circumstances the Tribunal considered that in terms of Ground 4 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

20. 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

11

29 July 2021

Legal Chair

Date