



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/21/1707

Re: Property at 16 Huntly Road, Dundee, DD4 7SY (“the Property”)

Parties:

Ms May Delaney, CO Martin And CO, 15 Albert Square, Dundee, DD1 1DJ (“the Applicant”)

Mr Scott Alexander Ross, Ms Jemma Barron, 16 Huntly Road, Dundee, DD4 7SY (“the Respondents”)

Tribunal Members:

Sarah O’Neill (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the applicant against the respondents.

1. An application was received from the landlord’s solicitor on 14 July 2021 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Ground 1 as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form were:
 - (i) Copy Private Residential Tenancy Agreement between the parties which commenced on 24 September 2019.
 - (ii) Copy notice to leave dated 7 January 2021, citing ground 1, together with proof of sending by recorded delivery on the same date and proof of delivery on 9 January 2021.
 - (iii) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 with proof of sending to Dundee City Council on 13 July 2021.

- (iv) Copy email dated 6 January 2021 from the applicant to Martin and Co, the applicant's letting agent, stating that she had decided to sell the property.
- 3. In response to a letter from the tribunal administration dated 29 July 2021, a further letter was received from the applicant's solicitor on 12 August 2021, setting out their reasons for sending the notice to leave by recorded delivery rather than by email as provided for in the tenancy agreement. Also enclosed with the letter was a letter of engagement dated 12 August 2021 from Campbell Boath, the applicant's solicitor, addressed to the applicant relating to the sale of the property.
- 4. The application was accepted on 24 August 2021. Notice of the case management discussion (CMD) scheduled for 6 October 2021, together with the application papers and guidance notes, was served on both respondents by sheriff officers on behalf of the tribunal on 8 September 2021.
- 5. No written representations were received from the respondents prior to the CMD.

The Case Management Discussion

- 6. A CMD was held by teleconference call on 6 October 2021. The applicant was represented by Mr Alec Campbell, administrator, of Campbell Boath solicitors. The respondents were not present or represented on the teleconference call.
- 7. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal delayed the start of the CMD by 10 minutes in case the respondents had been detained. They did not appear, however, and no telephone calls, messages or emails had been received from them. The tribunal therefore proceeded with the CMD in the absence of the respondents in terms of rule 29 of the 2017 rules.

Preliminary issues

- 8. Mr Campbell told the tribunal at the start of the CMD that he had very recently received an email from Martin and Co containing an email from Ms Barron, one of the respondents, stating that the respondents wished to give notice to quit. He forwarded the email to the tribunal during the course of the CMD. He indicated that he still wished to seek an eviction order on behalf of the applicant, in case the respondents did not vacate the property as they had indicated they intended to do.
- 9. The tribunal raised with Mr Campbell two issues relating to the validity of the notice to leave. Firstly, the tribunal chairperson noted that the date stated in

the notice to leave before which proceedings would not be raised was incorrect in terms of the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020 (“the 2020 Act”).

10. The relevant provisions of the 2016 Act are as follows:

- i) Section 62 (1)(b) which states that the notice to leave must specify 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 tribunal;
- ii) Section 62 (4) which states that 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;
- iii) Section 62 (4) which states that 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;
- iv) Section 54 (2) which states that the relevant period in relation to a notice to leave begins on the day the tenant receives the notice to leave from the landlord

11. Following the changes introduced by the 2020 Act, the relevant period in relation to a notice to leave which is served on or after 2 October 2020, where the notice relies on ground 1 of schedule 3, is 6 months.

12. As the notice to leave was sent to the respondent by recorded delivery on 7 January 2021, it was assumed to have been received on 9 January 2021. In terms of section 54(2), the day when the notice period began was therefore 9 January 2021. In terms of section 62(4), the date on which the applicant could make an application for eviction to the tribunal should therefore have been 10 July 2021. The date stated in the notice, 12 July 2021, was therefore incorrect.

13. The application was not submitted until 13 July 2021, however. Paragraph 10 of schedule 1 to the 2020 Act provides that a notice to leave is not invalid by reason of an error, but it may not be relied upon by the landlord for the purpose of seeking an order for possession until the date on which it could have been relied on has been correctly completed. Therefore, as the applicant did not apply to the tribunal before the date which should have been given on the notice to leave, the notice to leave it is not invalid for that reason.

14. Secondly, the tribunal noted that the notice to leave had been sent to the respondents by recorded delivery, while section 4 of the private residential tenancy agreement between the parties stated that the parties agreed that all communications which may or must be made under the Act and in relation to the tenancy agreement, including notices to be served by one party on the

other, would be made by email. The provision relating to service by hard copy by personal delivery or recorded delivery had been scored out.

15. The tribunal noted that the issue of whether the notice to leave had been validly served on the respondents had been raised with the applicant's solicitors during the sifting process, prior to the application being accepted. The tribunal chairperson asked Mr Campbell to explain why he considered that the notice to leave had been validly served. He explained that it was his firm's practice always to serve such notices by recorded delivery as it was considered a more secure method of delivery than by email. He said that he always delivered notices personally through the letterbox as well as sending them by recorded delivery.
16. Mr Campbell also stated that in his view, Campbell Boath were not contractually obliged to serve the notice to leave by email, as they were not bound by the terms of the tenancy agreement. Martin and Co were bound to do so as the applicant's agent, but the applicant's solicitor was not a party to the tenancy agreement. He appeared to see the solicitors as agents for Martin and Co, rather than for the applicant. He said that in any case the method of service had not been challenged by the respondents at any time since it had been served in them in January 2021. Had they challenged it, he said that he would have re-served the notice by email, but they had not done so.
17. Following an adjournment to consider these arguments, the tribunal noted that it did not agree that the applicant's solicitors were not required to serve the notice to leave by email in terms of the tenancy agreement. The applicant was bound by the terms of the tenancy agreement, and in the same way as Martin and Co, the solicitors were agents for the applicant.
18. The tribunal noted that the law in this area was slightly unclear. It noted that some applications have been rejected by the tribunal at the sifting stage because the landlord purported to serve the notice to leave in a manner other than that specified in the tenancy agreement. It also noted that there are no provisions in the 2016 Act as regards the services of notices under the Act. Accordingly, section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies. This provides for service of documents by personal delivery, recorded delivery/registered post or by email (where this has been agreed in writing before the document is served).
19. The tribunal also observed that there was evidence provided to show that the notice had been sent by recorded delivery on 7 January 2021 and received/signed for on 9 January 2021. It accepted Mr Campbell's evidence that the respondents had not challenged the method of service and noted that no representations on this issue had been received by the tribunal from the respondents.

20. Taking all of these considerations into account, and bearing in mind the tribunal's overriding objective, the tribunal accepted that the notice to leave had been served in a valid manner. It therefore went on to consider whether ground 1 had been made out by the applicant and whether it was reasonable to grant an eviction order in the circumstances.

Findings in Fact

21. The tribunal made the following findings in fact:

- The applicant is the owner of the property and is the registered landlord of the property.
- There was a private residential tenancy in place between the parties, which commenced on 24 September 2019.
- The notice to leave was dated 7 January 2021 and was sent by recorded delivery to the respondents on that date. It was signed for on 9 January 2021. The notice stated that an application for an eviction order would not be submitted to the tribunal before 12 July 2021.
- The respondents had served notice to quit on the applicant by email of 4 October 2021, giving 28 days' notice that they intended to vacate the property by 1 November 2021.
- The applicant intended to sell the property or put it up for sale within 3 months of the respondents ceasing to occupy it.

Reasons for decision

22. Firstly, the tribunal was satisfied that the notice to leave had been validly served on the respondent in terms of the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020 ("the 2020 Act"), for the reasons set out above.

23. The tribunal then considered whether ground 1 had been established by the applicant. Ground 1 as set out in Schedule 3 of the 2016 Act (as amended by the Coronavirus (Scotland) Act 2020) states:

Landlord intends to sell

1(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.

24. Mr Campbell told the tribunal that the applicant now lives permanently abroad. She had previously returned to the Dundee area to visit her mother. Her mother had recently passed away, however, and she therefore had no reason to return to Dundee or to keep the property, In light of this and of the difficulties which she had encountered in letting out the property, she had decided to sell it. He confirmed that she intended to put the property up for sale within 3 months of the respondents ceasing to occupy it.

25. The tribunal was satisfied on the basis of all the evidence before it that the requirements for ground 1 were established. The applicant is the owner of the property and is therefore entitled to sell it. The letter of engagement produced by the applicant's solicitor tended to show that the landlord had the intention to sell the property within 3 months of the respondents ceasing to occupy it. The tribunal accepted the evidence put forward by Mr Campbell as to the applicant's reasons for selling, which were also set out in her email of 6 January 2021 to Martin and Co.

26. The tribunal then went on to consider whether it would be reasonable to grant an eviction order, as required in terms of sub-paragraph 1(2) (c) of schedule 3 of the 2016 Act. In doing so, the tribunal took into account all of the circumstances of the case.

27. In the absence of any representations from the respondents, it was difficult to establish much detail as to their circumstances. Mr Campbell told the tribunal that he understood that the respondents did not have any children or other family members living with them. He also advised the tribunal that the respondents had recently provided a forwarding address to Martin and Co. He forwarded to the tribunal during the course of the CMD an email from Ms Barron to Martin and Co dated 5 October 2021 providing a forwarding address. While it was unclear what the nature of this accommodation was, this suggested that the respondents had some form of accommodation to go

to. The tribunal also noted that in serving notice to quit, the respondents had indicated their intention to leave the property by 1 November 2021.

28. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the tribunal considered that it was reasonable to grant an eviction order. The tribunal therefore grants an eviction order against the respondents under section 51 and ground 1 in Schedule 3 of the 2016 Act.

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.

6th October 2021

Legal Member/Chair

Date