



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/21/1935

Re: Property at 6 Gemmell Place, Newton Mearns, G77 6DB (“the Property”)

Parties:

Prashantkumar Desai, 15 Brentnall Drive, Sutton Coldfield, B75 5BB (“the Applicant”)

Carolanne Brady, Thomas Daly, 6 Gemmell Place, Newton Mearns, G77 6DB (“the Respondents”)

Tribunal Members:

Joel Conn (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The PRT in question was by the Applicant to the Respondents commencing on 3 March 2020.
2. The application was dated 20 July 2021 and lodged with the Tribunal shortly after that date.
3. The application relied upon a Notice to Leave dated 15 December 2020 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 served upon the Respondents by email to the contact email address in the Tenancy Agreement (being the address of the first Respondent) by the Applicant’s letting agent on that date. The Notice relied upon Ground 1 of

Schedule 3 Part 1 of the 2016 Act, being that “Your Landlord intends to sell the Let Property”. The Notice intimated that an application to the Tribunal would not be made before 15 June 2021.

4. Evidence of a section 11 notice dated 13 July 2021 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon East Renfrewshire Council was provided with the application.

The Hearing

5. On 3 November 2021 at 14:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, we were addressed by the Applicant and his agent, Sarah McNicol, solicitor, of Jackson Boyd solicitors.
6. There was no appearance by the Respondents. The Applicant and the Applicant’s agent provided submissions on contact from the Respondents with the Applicant’s letting agent, including:
 - a. An email on 15 December 2020 acknowledging the Notice to Leave;
 - b. An email sometime since June 2021 stating that they had declared themselves homeless with the local authority in June 2021 and were putting in bids on public tenancies as they came up, and that they had sought advice from a Citizens Advice Bureau; and
 - c. An email around two weeks ago stating that they were now looking into alternative private tenancies.

The Applicant’s position was that, to the best of his knowledge, the Respondents continued to reside at the Property. The clerk confirmed that no contact had been received by the Tribunal from the Respondents. In the circumstances, having waited until 14:15 to commence the call, and with no attempt from the Respondents to dial in during the course of the call, we were satisfied to proceed in the absence of the Respondents.

7. The Applicant’s agent confirmed that the application for eviction was still insisted upon. No order for expenses was sought.
8. The Applicant’s agent relied upon the papers lodged with an application as the basis of the application and the further submissions. The papers included a June 2021 report for the Applicant on marketing options and likely valuation from Blackwells & Abode, a firm of estate agents and letting agents in Hamilton, as well as a letter from them dated 6 September 2021 confirming they were instructed to market the Property once it was vacant. The Applicant explained that, since March 2020, he had investigated further education and was aware of a significant cost for the course he wished to undertake. Further, since the start of the pandemic, he had suffered some expense as well as required financially to assist family members who had suffered ill-health. He thus required to raise funds from the sale of the Property and had decided to sell it.
9. In the absence of the Respondents, we asked the Applicant and his agent for any information available on the Respondents’ circumstances. The Applicant stated that he believed that the Respondents had at least one child, in a local

school. Otherwise, the Applicant said that there was no special adaptation of the Property for the Respondents needs. Neither the Applicant nor his agent provided any information as to a special impediment to the Respondents obtaining alternative accommodation.

Findings in Fact

10. By an agreement dated 3 March 2020, the Applicant let the Property to the Respondents under a Private Residential Tenancy with a start date of 3 March 2020 (“the Tenancy”).
11. In terms of clause 4 of the PRT, the parties agreed that email communication would be sufficient for communication of notices in terms of the Tenancy.
12. On 15 December 2020, the Applicant’s letting agent, Blackwells and Abode Scotland, drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondent with notice that “Your Landlord intends to sell the Let Property” and giving the reason that the “Landlord has decided to sell the property”. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 15 June 2021.
13. By email service on 15 December 2020, the Applicant’s letting agent served the said Notice to the email address provided by the Respondents in the Tenancy Agreement.
14. The Applicant has provided the Respondent with six months’ notice of the Applicant’s intentions.
15. The Applicant is entitled to sell the Property.
16. The Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the Respondents ceasing to occupy it.
17. On 20 July 2021, the notice period under the Notice to Leave having expired without the Respondents apparently vacating the Property, the Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 Part 1 of the 2016 Act (as currently amended by the temporary provisions of the Coronavirus (Scotland) Act 2020), and providing evidence of engagement of an estate agent concerning the sale of the let property.
18. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon East Renfrewshire Council on or around 13 July 2021 on the Applicant’s behalf.
19. On 4 October 2021, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondents, providing the Respondents with sufficient notice of the CMD of 3 November 2021.

Reasons for Decision

20. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently served upon the Respondents with sufficient notice.
21. In regard to whether the Notice to Leave was in sufficient detail, Part 2 of the notice stated that it relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act; that the Applicant sought to sell the Property. Little explanation was provided in Part 3 of the notice other than to repeat, in terms, that intention. We considered that in the circumstances this was sufficient explanation. We were thus satisfied that the requirements of the 2016 Act (as temporarily amended) had been complied with in regard to the Notice to Leave in itself and as a pre-requisite to raising the application.
22. In regard to whether we were satisfied that the Applicant was entitled to rely upon Ground 1 in these circumstances, we could see no reason to doubt the Applicant's entitlement to sell the Property. Further, we were provided with the letter confirming Blackwells & Abode had been engaged as estate agents and evidence of their commencement of their services, by way of their "Online Valuation Report" of 14 June 2021 with advice to the Applicant. We were satisfied with the Applicant's explanation of wishing to sell the Property in early course so as to realise funds for his education as well as replenish funds that had been expended during the current pandemic.
23. We require, in terms of the Act as temporarily amended, to consider whether we were "satisfied that it is reasonable to issue an eviction order on account of those facts" stated in the Act being: the Applicant's entitlement to sell; and his intention to market for sale within three months of vacant possession. We were satisfied that the Applicant's reasons for seeking eviction were reasonable and we had no information before us to suggest that it was unreasonable to evict the Respondents other than that they had clearly been attempting to secure alternative accommodation and had not yet succeeded, suggesting some difficulties in the local housing market. In the circumstances as before us, the Respondents have had over ten months' notice of the Applicant's intention and we know of no special reason why they require to reside at the Property specifically. In all the circumstances before us, we were satisfied that Ground 1 was well founded by the Applicant.
24. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to grant an order for eviction.

Decision

25. In all the circumstances, we make the decision to grant an order against the Respondents for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in normal terms.

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.

Joel Conn

John Conn

Legal Member/Chair

3 November 2021

Date