



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”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/20/1787

Re: Property at 125 Lenzie Avenue, Deans, Livingston, EH54 8NS (“the Property”)

Parties:

Ms Nicole Easson, formerly c/o 73 Strathlogie, West Field, West Lothian, EH48 3DA and now c/o 67 West Main Street, Armadale (“the Applicant”)

Ms Ana Cardoso, Mr Sergio Correa, 125 Lenzie Avenue, Deans, Livingston, EH54 8NS (“the Respondents”)

Tribunal Members:

Nicola Weir (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application dated 7 August 2020 and received on 10 August 2020, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act. Recovery was sought on the basis of Ground 4 of Schedule 3 to the 2016 Act. Supporting documentation was submitted with the application in terms of the Regulations, including a copy of the lease and the Notices to Leave.
2. At the sifting stage of the application, a Legal Member had identified that the wrong date had been stated in the Notices to Leave for the end of the notice period, taking into account the changes made by the Coronavirus (Scotland)

Act 2020 (“the 2020 Act”) to the 2016 Act and that the application to the Tribunal had been made prior to the correct end of the notice period and had therefore been premature. This was brought to the attention of the Applicant’s agent, who had submitted the application on behalf of the Applicant, on 7 October 2020. She was given the option of withdrawing the application and re-submitting it after the correct period of notice had been given or proceeding with the application, in which case, the Tribunal would likely require to be addressed on this matter at a later stage. The Applicant’s agent responded on 16 October 2020 that, after seeking legal advice, she wished to proceed with this application.

3. The application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations. Notification of the application was then made to the Respondents and the date, time and arrangements for a Case Management Discussion (“CMD”) were intimated to both parties, advising of the date by which any written representations should be lodged. A Direction was also issued dated 26 October 2020 by the Tribunal requesting written submissions on behalf of the Applicant as to why it would be reasonable to entertain the application when it had been submitted prior to the end of the requisite notice period. The Applicant’s agent lodged some further representations and documentation by email on 18 November 2020 which was circulated to the Respondents.
4. A Case Management Discussion (“CMD”) took place by telephone conference call on 8 December 2020, attended by the Applicant, the Applicant’s agent, both Respondents and an Interpreter to interpret for the Respondents whose language is Portuguese. A detailed Note on the CMD prepared by the Legal Member who dealt with the CMD and a Direction, both dated 8 December 2020, were issued to parties after the CMD. The Tribunal Members have had regard to the terms of both documents. It had been conceded by the Applicant’s agent that the date stated in the Notices to Leave was wrong and she gave her explanation for that. She also conceded at the CMD that, even although the Tribunal can now (again as a consequence of the amendments made by the 2020 Act) relieve an Applicant of an error in the date stated in the Notice to Leave, the application had been submitted to the Tribunal before the end of the correct notice period. She requested that the Tribunal consider allowing the application in the circumstances, in terms of Section 52(4) of the 2016 Act. The Respondents were opposed to the application and details were given regarding the parties’ respective current circumstances and in support of their respective positions. The Legal Member continued the application to a Hearing in order that further evidence could be presented to the Tribunal and the identified issues, including legal issues, further considered in light of that evidence and any further submissions made. A Hearing was assigned for 25 January 2020 at 10am, to take place by telephone conference call, with a Portuguese Interpreter again being arranged to interpret for the Respondents at the Hearing. The Legal Member issued a further Direction requiring each party to intimate to the Tribunal by 5pm on 8 January 2021 details of any witnesses they intend to call to give evidence on their behalf at the Hearing

and any further documentary evidence on which they wished to rely. In addition, the Applicant was required to submit their legal argument/written submissions setting out their considered position in respect of the application. Neither party provided details of their intended witnesses in advance of the Hearing and nor did the Applicant submit their legal arguments/submissions in writing. The Applicant's representative did, however, lodge some further written representations and documentation by email to the Tribunal on 8 January 2021 which were circulated to the Respondents at that time.

The Hearing

5. The Hearing took place by telephone conference call on 25 January 2021, commencing at 10am. The Hearing was attended by the Applicant, Ms Easson; her agent, Ms Antoinette Orr, Director of Martin & Co; both Respondents, Ms Cardoso and Mr Correa; and Ms Alcantara, Portuguese Interpreter.
6. After introductions and introductory remarks by the Legal Member, the Legal Member made reference to the Direction issued after the CMD, as detailed above, and requested details regarding the matter of witnesses and the note of legal submissions which had been requested from the Applicant. It was clarified by the parties that they did not intend to call any additional witnesses. Ms Orr explained that she had not realised that she had to lodge any further legal submissions over and above what had already been lodged and that she intended to cover this verbally when making her submissions, following the hearing of the evidence. The Legal Member also checked with parties that they had seen all the case papers that the Tribunal had before them and this was confirmed.
7. Evidence for the Applicant

Ms Orr made reference to the documentation submitted in support of the application and explained that she had been instructed by the Applicant in Spring of last year that she had essentially become homeless as a result of a relationship breakdown with her partner and that she needed the Property back to live in herself, as a permanent home for herself and her daughter. Ms Orr had arranged to serve Notices to Leave on the Respondents to start off the process and unfortunately, she had made a mistake in the date specified in the Notice. This was due to the changes made by the Coronavirus legislation. Ms Orr had wrongly applied a notice period of three times 28 days ie. 84 days as opposed to 3 calendar months and this meant that she had then submitted the Tribunal application on behalf of the Applicant a few days earlier than it should have been. Ms Orr explained that this and the whole Tribunal process has caused significant stress to the Applicant as the Notices to Leave were instructed 9 months ago and given the difficult circumstances in which the Applicant finds herself. This is the only home available to the Applicant, who has no other options, and she is accordingly looking for an eviction order to be granted today.

Ms Easson then gave evidence herself and answered questions from the Tribunal Members. The Respondents did not wish to ask the Applicant any questions. The Applicant explained that this Property was initially her home, that she let out as she had moved in with her now ex-partner. After their relationship ended, she and her one year old daughter had to move in with the Applicant's mother as they would otherwise have been homeless. The Applicant could not stay with her mother long-term, due to her mother's own circumstances. Her mother has custody of the Applicant's nephew who is 9 and there is not room at her mother's house for herself and her daughter to stay. Her mother is also a care worker and is in a very stressful situation at work due to Coronavirus. She is also worried that she may contract Coronavirus and then pass this on to the Applicant and her grandchildren. The Applicant's mother has submitted a note confirming this. These circumstances led to a lot of stress and tension and led to her mother having to ask the Applicant to leave. This was around a month ago and the Applicant and her daughter are now staying temporarily with her father. She did seek help from West Lothian Council but they have said that she cannot be housed through them as she owns her own property which she needs to recover from her tenants. The Applicant confirmed the address of her father's home where she is now staying and explained that circumstances there are also difficult. She advised that her father's house is a 3 bedroom property but that her father already lives with his partner and the Applicant's adult brother who is 34. With the Applicant and her daughter staying there, there are five people in the house and it is overcrowded. There are two double bedrooms and a single and the Applicant is herself having to sleep on the couch. In addition, she advised that she does not have a very good relationship with her father and cannot stay there for long. The Applicant explained the position with her own finances and referred to the details of her income and outgoings which have been produced and that there is really nothing left over at the end of the month. She is struggling financially, paying her mortgage for the Property, her landlord insurance and with the costs of childcare, which mean that she is currently only able to work 16 hours per week. If she was able to recover her own Property for herself and her daughter and get back on her feet, she would be able to afford more childcare and would be able to increase her hours at work which her employers have said is now available. In response to a question from the Ordinary Member, the Applicant confirmed that she has not made a homeless application to West Lothian Council as she was told that they do not consider her homeless. The man with whom she had discussions had said that he had never heard of this situation and thinks that she will get her own Property back but she was to get back to them after the Tribunal decision.

In response to some further questions, Ms Orr confirmed that she had offered the Respondents three alternative private rented properties to try and resolve the situation. The first was a flat just round the corner from the Property but that was rejected because of Ms Cardoso's mobility problems. The second was a townhouse type property but that was rejected as too expensive. The third was, she thought, perfect for the Respondents as it had a downstairs bedroom but the Respondents did not even respond to that offer because they seemed to have decided by then to go down the Council route. Ms Orr

considers that the Respondents have options available to them which the Applicant does not. Her understanding is that if they apply to the Council, they will be provided with temporary accommodation until a suitable permanent property becomes available. West Lothian Council are fully aware of the situation as can be seen from the correspondence with the Council which has been lodged in support of the application. The Council even offered to pay the Respondents' deposit and first months' rent if they accepted an alternative private let property but the Respondents still rejected that. Ms Orr confirmed that the tenants were good tenants and always paid, and are still paying, their rent. She added that this demonstrates that they are quite financially secure, more so than the Applicant, and could, in her submission, afford to move on to an alternative property.

8. Evidence for the Respondents

Mr Correa gave evidence and answered questions from the Tribunal Members and Ms Orr. He stated that he was not expecting his landlord to try and put them out of the Property in the middle of a pandemic. Two of the properties offered to them by Ms Orr were too expensive and they also need a house in a better location than they were offered because his wife has mobility problems after suffering a stroke. Due to the language barrier, he is not sure whether one of the properties they were offered was a Council house or not. They have not had an offer from the Council about paying the first months' rent and they would be worried about what would happen after the first months' rent as he only has a job delivering pizza and his hours are always changing because of the pandemic. There are five people living in the Property; he and his wife and three children, aged 3, 5 and 18. It is a 3 bedroom house. He is the only person working and he currently earns around £1,400 per month. His 18 year old daughter is a student and does not work. His younger children attend local school and nursery, although they are at home with his wife just now because of the schools being closed. His wife had a stroke and an operation which has left her in a lot of pain. As to the reasonableness of the Tribunal granting an eviction order, Mr Correa explained that they have concerns about their financial position. At least they know what they have to afford at the moment with their utility bills, etc. He also stressed the health concerns regarding his wife, following the stroke. She also suffers from sciatica and this all affects her mental health. When asked to comment on what he had heard regarding his landlord's personal circumstances, he said that he understands her situation and feels sorry for her but it seems to him that they are both in the same situation and have the same problem. He was asked if it was his understanding that, if the Tribunal granted an eviction order, he would be provided with Council Housing and he confirmed that was the case. He had originally approached West Lothian Council as they were struggling financially and wanted to know if they could get help with their Council Tax, such as a deduction. The person they dealt with told him that they could apply for Council housing. In response to some questions from the Ordinary Member, Mr Correa confirmed that they had made a formal application to the Council for housing. They would be given temporary accommodation and he was not told how long it would be until they were given a permanent property. Mr Correa stated that there was a language barrier but he thinks he was told that they would only get an offer on one

house and this concerns him as the house offered might not be suitable or in a suitable location.

Ms Orr also asked Mr Correa some questions. She asked if he could confirm what it is that the Respondents want as they cannot stay in the Property forever. Mr Correa stated that their concerns are about paying for a private house and that is why they would prefer a Council house. When asked if he was aware that he would only be able to get a Council house if he was evicted from the Property, he confirmed he was. As to his worries about being able to afford another property, Ms Orr asked if he managed to receive a Council Tax rebate and also if he was in receipt of full Housing Benefit or other benefits, to which Mr Correa responded that he is not in receipt of any such benefits and, even when he broke his foot previously in three places, he received nothing.

Although the Respondents had indicated at the outset of the Hearing that they both might give evidence, when Ms Cardoso was asked if she wanted to add anything to what Mr Correa had said, she indicated that he had covered everything about her own health situation. She wanted to ask a question about updating the Council on the outcome and whether the Tribunal would provide the Council with copies of the paperwork, to which the Legal Member explained that this would be covered later. Ms Cardoso confirmed that there was nothing further that she wished to say.

9. Summing up

In summing up, Ms Orr submitted that it was reasonable for the application to be allowed and granted today. The mistake made in the Notice to Leave at the beginning only resulted in the application being put in a few extra days earlier than it should have been. The mistake was due to the pressures of the current climate and the legislation changing. She stressed the personal and financial pressures on the landlord who just wants to recover the Property to have for her own home for herself and her baby. It is clear that the tenants can, however, get help elsewhere. They can get a Council house or another private house and, if on low income, should be able to get benefits to help with the costs of that. Ms Orr said that she can understand the tenants' worries about moving home and their financial security but pointed out that considerable time has passed, namely 9 months, since this process began. She stressed that she is still willing to try and help them get another property.

Mr Correa summed up by saying that he does feel sorry for the landlord but he has his family health concerns and concerns about his earnings to consider too. He said that he will consent to the eviction so that they can get a Council house. The Legal Member double-checked that this was now his position and he confirmed it was.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.

2. The Respondents are the tenants of the Property by virtue of a Private Residential Tenancy commencing on 14 June 2019.
3. The rent in terms of the lease is £650 per calendar month and the rent is up to date.
4. Following a change in the Applicant's own personal circumstances, she instructed her letting agent to serve notice on the Respondents to recover possession of the Property as she required it back for herself and her daughter to live in.
5. A Notice to Leave dated 11 May 2020, specifying Ground 4 of Schedule 3 to the 2016 Act, was served on the Respondents by email in accordance with the terms of the lease.
6. The date specified in the Notice to Leave as the end of the notice period was 6 August 2020.
7. Given the changes to notice periods in the 2016 Act by virtue of The Coronavirus (Scotland) Act 2020, the date specified in the Notice to Leave should have been 14 August 2020.
8. The Tribunal Application was dated 7 August 2020 and was date stamped as received by the Tribunal on 10 August 2020.
9. The application was made by the Applicant prior to the expiry of the correct notice period.
10. The Respondents continue to reside in the Property and opposed the application.
11. Given all the circumstances of the case, it is reasonable for the Tribunal to entertain the application although it was made during the notice period.
12. The Applicant intends to live in the Property as her only or principal home for at least 3 months.
13. Given all the circumstances of the case, it is reasonable for an eviction order to be granted.

Reasons for Decision

14. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the further written representations and supporting documents lodged on behalf of the Applicant and the oral evidence given at the Hearing by both parties.

15. The Tribunal found the evidence of both parties to be credible and reliable. The parties were not in dispute as such as regards the factual evidence they each gave regarding their own personal circumstances and, indeed, both expressed a degree of understanding of the other's position.

16. Having considered and weighed up all the relevant facts and circumstances, the Tribunal was satisfied that it was reasonable for the Tribunal to entertain this application in terms of Section 52(4) of the 2016 Act, despite it having been made in breach of Section 54 ie. during the relevant notice period. It was conceded by the Applicant that the Tribunal application had been made on 7 August 2020, when it should not have been made until 14 August 2020. The Tribunal had regard to the Applicant's explanation for this error, namely the change which had very recently been made to the notice period applicable to this particular ground of eviction by the Coronavirus (Scotland) Act 2020; the fact that the application had been made just 7 days earlier than it should have been; and that, consequently, by the time the application was made, the Respondents had had 84 days notice of the landlord's intention to raise proceedings for recovery of the Property ie. a period just short of 3 months. The Tribunal also considered it significant, when considering the matter from a fair notice point of view, that a period of 8 months has now passed since the Notice to Leave was served. The Tribunal had sympathy for the position of the Respondents, given that they occupy the Property as their family home, with their 3 children, that the Property meets their needs as far as size, type and location, that Ms Cardoso has health and mobility issues and that their financial security, with regard particularly to Mr Correa's working hours and earnings, has been impacted by Coronavirus. However, the Tribunal was persuaded by the evidence in support of the Applicant's position that she would be more adversely affected than the Respondents if the Tribunal were to decide not to entertain or grant this application. The Tribunal accepted that the Applicant had found herself in difficult circumstances, following a relationship breakdown, and requires permanent accommodation for herself and her baby daughter. She and her daughter have been staying temporarily, initially with her mother and now with her father, but both homes are unsuitable due to the number of existing occupants, relationships are strained, and the Applicant is currently having to sleep on the couch. The Tribunal accepted the Applicant's evidence that she is struggling financially and that she does not have alternative housing options available to her as she already has a mortgage and other costs to pay in respect of the Property and is not eligible for Council housing because she owns this Property. The Tribunal believed the Applicant's evidence that her circumstances have caused her significant stress over a number of months and that she considers it essential to recover the Property as soon as possible for the wellbeing of herself and her daughter. Although, conversely, recovery of the Property may adversely affect the Respondents, the Tribunal was satisfied from the evidence that they would, as a consequence, likely be provided with temporary accommodation and subsequently re-housed permanently by the local authority. Mr Correa conceded as much in his evidence and confirmed that the Respondents have already submitted an application to the local authority who are currently awaiting the outcome of these proceedings. The Tribunal, having heard evidence regarding the Respondents' financial circumstances and the fact

that they have managed throughout the tenancy to meet their rental payment of £650 per month, were of the view that the Respondents may well also have the option of moving to an alternative private let property.

17. The Tribunal found that the ground of eviction that the landlord intends to live in the let property had been met (Ground 4 of Schedule 3 to the 2016 Act, as amended by the 2020 Act), in that the Tribunal was satisfied that the Applicant intends to occupy the Property as her only or principal home for at least 3 months and that it is reasonable to issue an eviction order on account of those facts. In considering the reasonableness of granting an eviction order in this case, the Tribunal had regard to all the relevant facts and circumstances of the case, pertaining to both parties, as at the date of the Hearing, all as detailed in paragraph 16 above.

18. The Tribunal accordingly determined that an order for recovery of possession of the Property be granted.

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.

Nicola Weir
Legal Member/Chair

25 January 2021
Date