



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/19/0255

Re: Property at Upper Flat Cobbler Brae, The Cross, Errol, Perthshire, PH2 7QR (“the Property”)

Parties:

Mrs Jillian Heather Martin and Mr Jojn Martin, Glenearn Gas Brae, Errol, Perthshire, PH2 7QR (“the Applicant”)

Mr Christopher Lawrence Cullen, Upper Flat Cobbler Brae, The Cross, Errol, Perthshire, PH2 7QR (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for the eviction of the Respondent from the property on the ground that ground 1 of Schedule 3 of the 2016 Act was satisfied.

Background

1. By Application dated 24 January 2019 the Applicants representatives Blackadders LLP, Solicitors, 6 Bon Accord Square, Aberdeen applied to the Tribunal for an order for the eviction of the Respondent from the property on the ground that the Applicants intended to sell the property.
2. The Applicants representatives provided the Tribunal with a copy of the Private Residential tenancy Agreement, the Notice to Leave, Section 11 Notice and Marketing Proposal and Estimate of Fees & Outlays in support of the application.

3. By Notice of Acceptance dated 21 February 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management discussion was assigned.
4. At the request of the Applicants representative by letter dated 28 February 2019 the application which had originally been in the name of the first Applicant alone was amended to run in the joint names of the Applicants as title to the property was held in their joint names.
5. Intimation of the Case Management Discussion was sent to the Applicants representatives by post on 14 March 2019 and was served on the Respondent by Sheriff Officers on 18 March 2019.

The Case Management Discussion

6. The Case Management Discussion was held on 5 April 2019 at Inveralmond Business Centre, Auld Bond road, Perth. The Applicants were represented by Mrs Sally McCartney, Solicitor, Perth. There was no appearance by the Respondent.
7. The Case Management Discussion proceeded in the absence of the Respondent as the Tribunal was satisfied that the Respondent having had intimation of the hearing in terms of Rule 24 (1) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (" the 2017 Rules"), the Tribunal was entitled to proceed in terms of Rule 29 in the absence of the Respondent.
8. Mrs McCartney confirmed that the parties had entered into a Private Residential tenancy in terms of the 2016 Act and referred the Tribunal to the copy of the agreement lodged with the application.
9. Mrs McCartney confirmed that the Applicants had approached their representatives Blackadders in December 2019 as they wished to sell the property once they obtained vacant possession. Mrs McCartney referred the Tribunal to the other documents lodged and specifically the Notice to leave, the Marketing Proposal and Estimate of Fees & Outlays and the Section 11 Notice.
10. Mrs McCartney submitted that as all of the documentation was in order the order sought should be granted. She accepted there was a typographical error in the Notice to Leave in that it was dated 19.1.18 rather than 19.12.18 but that the accompanying email was dated 19 December 2018. The Notice provided the Respondent with the necessary 28 days prior to any application being made to the Tribunal for eviction.

Findings in Fact

11. The parties entered into a Private Residential Tenancy Agreement that commenced on 25 June 2018 at a monthly rent of £550.00.

12. The Applicants representatives sent a Notice to Leave to the Respondent by email on 19 December 2018 on the ground that the Applicants intend to sell the property.
13. The earliest date for raising proceedings for eviction with the Tribunal was said to be 18 January 2019.
14. The Applicants representatives have instructed Blackadders LLP. Solicitors to market and sell the property once vacant possession has been obtained.
15. The Applicants representatives served a Section 11 notice on Perth & Kinross Council by email on 24 January 2019.
16. Ground 1 of Schedule 3 of the 2016 Act has been satisfied.

Reasons for Decision

17. The Applicants have decided to sell the property. As at the date of service of the Notice to Leave the Respondent had occupied the property for less than six months the Applicants were required to give the Respondent at least 28 days notice before making an application for eviction to the Tribunal. In terms of the Tenancy Agreement formal notices could be served by either hard copy post or personal service or by email. The Notice to Leave was served by email on 19 December 2018. Although there was a typographical error as to the date of signing of the Notice to Leave this would not in the view of the Tribunal in any way invalidate it. The Notice was clear in its terms. It provided the Respondent with the mandatory 28 days notice.
18. The Applicants representatives properly intimated the application for eviction to Perth & Kinross Council at the commencement of raising these proceedings.
19. The Tribunal was therefore satisfied that in the absence of any objection from the Respondent and on the information provided by Mrs McCartney at the Case Management Discussion along with the documentary evidence provided that the Applicants were entitled to the order sought.

Decision

20. Having considered the application and the documents provided in support of the application together with the Applicants representatives submissions finds the Applicants entitled to order for the eviction of the Respondent from the property on the ground that Ground 1 of Schedule 3 of the 2016 Act had been satisfied.

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.

G Harding

Legal Member/Chair

Date

5 April 2019