Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/19/1392

Re: Property at Lairig View Cottage, Aviemore, Inverness-shire, PH22 1QD ("the Property")

Parties:

Mr Angus Mackintosh Smith, 46 Grakle Croft, Ravenshold Lane, Tattenhall, Chester, CH3 9RJ ("the Applicant")

Mr Philip Mullins, Lairig View Cottage, Aviemore, Inverness-shire, PH22 1QD ("the Respondent")

Tribunal Members:

Ms H Forbes (Legal Member)

Mr A Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for possession of the Property should be granted in favour of the Applicant. The Applicant shall make payment in the sum of £1000 to the Respondent in terms of section 22 of the Housing (Scotland) Act 1988 ("the Act").

Background

By application dated 7th May 2019, made under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended ("the Rules"), the Applicant sought an order for possession of the Property. The grounds of possession were grounds 6, 8, 11 and 12.

The Applicant's representative lodged a copy of the tenancy agreement, which commenced on 1st April 2010. The written agreement purported to be an Assured Shorthold Tenancy. The Applicant's representative also lodged copy Legal Report, Title Sheet INV41403, copy Notice to Quit and Form AT6 dated 19th December 2018,

copy correspondence between the parties, copy Record of Condition dated 3rd September 2018 and copy updated Record of Condition dated 1st May 2019. The Applicant's representative provided a written submission which included a statement that a contractual tenancy had been established notwithstanding the use of an English type of tenancy agreement.

On 20th May 2019, the Applicant's representative lodged copy Section 11 Notice to the Local Authority as required by the Act.

By letter dated 13th June 2019, the Respondent submitted written representations, copy Section 33 Notice, and copy sales particulars.

Thereafter, the Applicant's representative lodged an Inventory of Productions and a List of Authorities.

A Case Management Discussion ("CMD") took place in Inverness on 2nd July 2019. The Tribunal was informed that all rent arrears had been cleared and that the Applicant was seeking possession on ground 6 only. The Applicant had applied for a building warrant and planning permission for demolition of the Property. The Respondent disputed that the Property could not be repaired and said that the Applicant had done nothing to comply with a Repairing Standard Enforcement Order ("RSEO") imposed in 2011. The Respondent said he was considering instructing his own expert to counter those of the Applicant. The Respondent was advised to give some consideration to section 22 of the Act and the amount of any reasonable expenses that were likely to be incurred by the tenant in removing from the Property. The case was set down for a hearing. Parties were directed to lodge witness lists and productions not less than 14 days prior to the hearing.

A hearing scheduled for 4th September 2019 was adjourned at the request of the Applicant due to the fact that their expert witness was unable to complete a report prior to that date. A further hearing was set down for 6th November 2019.

On 17th October 2019, an updated Inventory of Productions was lodged on behalf of the Applicant together with a Witness List.

The Hearing

A hearing took place at Jury's Inn, Millburn Road, Inverness on 6th November 2019. The parties were in attendance. The Applicant was represented by Mr David Welsh, Advocate, and supported by Ms Bennett.

In preliminary discussions, it became clear that the Respondent did not dispute the report of the expert witness, Mr Allan M Robertson, dated 16th October 2019. It was agreed that Mr Robertson did not require to give evidence.

Evidence for the Applicant

The Applicant gave evidence that he is the owner of the Property. He spoke to production 18, which was a valuation report of the Property by DM Hall dated 7th

October 2019. The Property was valued at £20,000. The Applicant spoke to productions 19 and 20, which were the outcomes of the applications for building warrant and planning permission, respectively. A building warrant was approved on 1st August 2019. The decision in respect of planning permission was that prior approval was not required. The Applicant confirmed that all the necessary permissions were now in place. He confirmed that it was his intention to demolish the Property. When asked if he would demolish the Property if there was no tenant, he confirmed that demolition was his intention even if the Property was empty. He said there was no advantage to him in not demolishing the Property. Responding to questions from the Ordinary Member, the Applicant said the RSEO was not complied with because the builders instructed to do the work could not carry it out for health and safety reasons with the Respondent in occupation. The Applicant said he did not accept that the Property would be worth £120,000 if renovated.

Evidence for the Respondent

The Respondent said the Property sits on a site of two acres. It was put on the market two years ago and he was told it was sold to a property developer a year ago. It was listed for sale with a sitting tenant. There was no mention of vacant possession of the Property. He believed the property developer had insisted on eviction. The Respondent said he believed the Property could be repaired and it would be worth £120,000 if the RSEO had been complied with. The Respondent said he had always paid rent, he was happy in the Property, and there had been no trouble. He believed the expert witness, Mr Robertson, had compiled an accurate report and went about it in a professional way. He was concerned at the opinion of Mr Robertson that it would be better to demolish the Property and felt that, had he instructed the report, Mr Robertson may well have concluded that it would be better to repair the Property. The Respondent agreed that this was an opinion of Mr Robertson and did not affect the findings of the report.

Submissions on behalf of the Applicant

Mr Welsh moved the Tribunal to grant the order sought. Ground 6 was satisfied and it was a mandatory ground. It was a matter of agreement that the correct documents had been served upon the Respondent, ending the contractual tenancy between the parties, in terms of section 16 of the Act. The Applicant had a firm and settled intention to demolish the Property and this could not be carried out without the Respondent giving up possession. The motive of the Applicant in demolishing the Property was irrelevant. The Applicant had confirmed his intention to demolish the Property whether or not it was tenanted. Intention was not in dispute. The Applicant had sought expert advice and the necessary permits.

Mr Welsh referred the Tribunal to the Court of Appeal case of *Reohorn and Another -v- Barry Corporation [1956] 1 WLR 845*, and particularly to the paragraph on page 4 – *'In considering whether the court should be satisfied of the landlord's intention, I think that it may readily be satisfied when the premises are old and worn out or are ripe for development, the proposed work is obviously desirable, plans and arrangements are well in hand, and the landlord has the present means and ability to carry out the work.'*

Mr Welsh said it was not the case here that the landlord would replace the tenant if the order was granted. The building has reached the end of its life. It is decayed and rotten, there is water ingress and problems with the plumbing. It is beyond economic repair and is not suitable for habitation. The intention to demolish is informed by this information, and the intention is settled.

Mr Welsh referred the Tribunal to the Upper Tribunal case *Josephine Marshall Trust -v- Nicholas Charlton [2019] UT 34*. Paragraph 25 indicated that an RSEO did not prohibit the Tribunal from granting the order sought. The motives and reasons for demolishing the Property were irrelevant (para 29). An expert had said that the Property had reached end of life (para 30). At paragraph 32, the Supreme Court case of *S. Franses Ltd -v- The Cavendish Hotel (London) Ltd. [2018] UKSC 62* was referred to. The findings of paragraph 39 were similar to the case before the Tribunal.

In summary, intention to demolish had been proven and the Property could not be demolished unless the Respondent was removed from the Property. The Tribunal was required to grant the order sought.

Submissions by the Respondent

The Respondent submitted that the facts of *Josephine Marshall Trust -v- Nicholas Charlton [2019] UT 34* were different to this case. The Upper Tribunal case had involved a charity and not a commercial builder as was the case here. The Respondent reiterated his opinion that the Property could be renovated and did not have to be demolished.

Section 22 – Payment of removal expenses in certain cases

This section provides that, where an order for possession of a house let on an assured tenancy on ground 6 is made, the landlord shall pay to the tenant a sum equal to the reasonable expenses likely to be incurred by the tenant in removing from the house. Parties were given an opportunity to consider this matter. Parties agreed upon a sum of £1000 as a suitable amount payable by the Applicant to the Respondent.

Findings in Fact

1. The Respondent occupies the Property in terms of a tenancy agreement entered into on 1st April 2006. The tenancy was an Assured Tenancy in terms of section 12 of the Act.

2. The contractual tenancy was terminated by Notice to Quit served on 19th December 2018. The tenancy was then deemed a Statutory Assured Tenancy, in terms of section 16 of the Act.

3. The Property is in a state of disrepair.

4. The Respondent has refused to remove from the Property.

5. The Applicant intends to demolish the Property.

6. A Building Warrant for demolition of the Property has been granted.

7. Planning permission for demolition of the Property is not required.

8. The Applicant cannot reasonably demolish the Property without the Respondent giving up possession of the Property.

Reasons for Decision

The Tribunal considered all the evidence before it. The requisite notices were served upon the Respondent in terms of the Act. The Applicant, being the 'relevant landlord', has the requisite intention to demolish the Property. The work cannot otherwise be carried out even if the Respondent accepts a variation in the terms of the tenancy or an assured tenancy of only part of the house or both. There was no evidence before the Tribunal to dispute the intention of the Applicant. The Tribunal was persuaded that the test within ground 6 had been met and that, in those circumstance, it did not have discretion as to whether or not to grant the order sought.

Decision

The Tribunal grants an order for possession of the Property in favour of the Applicant. The Applicant shall make payment in the sum of £1000 to the Respondent in terms of section 22 of the 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.

H Forbes

6th November 2019

Legal Member/Chair **Date**