



Decision and Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/20/2407

Re: 23 Longcraigs, Port Seton, Prestonpans, EH32 0TR ("the Property")

Parties:

Mr Joseph Kowbel ("the Applicant")

Scott Runciman, Solicitor, Gilson Gray, Solicitors, Edinburgh ('The Applicant's Representative')

Mr Douglas Jardine and Mrs Christine Christie ("the Respondents")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Member: Jacqui Taylor (Legal Member)

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application (FTS/HPC/EV/20/2407) was dated 17th November 2020. The application states that the ground for eviction was as follows:

Ground 4: The Landlord intends to live in the let Property upon vacant possession as his only or principal home.

1.3 By Notice of Acceptance by Melanie Barbour, Convener of the First-tier Tribunal, dated 25th November 2020, she intimated that he had decided to refer the application (which application paperwork comprises documents received between 17th and 20th November 2020) to a Tribunal.

1.4 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 6th September 2019. The commencement date of the tenancy was 6th September 2019.
- Notice to Leave dated 20th July 2020 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 7th November 2020.
- An email by the Applicant to the Respondents dated 20th July 2020 sending the Notice to Leave and an email acknowledgement from the Respondents dated 1st September 2020.
- An email by Christine Christie, one of the Respondents to the Applicant's solicitor dated 14th November 2020 acknowledging that she received the Notice to Leave on 20th July 2020.
- Section 11 Notice addressed to East Lothian Homelessness Department and relative recorded delivery slip.
- Affidavit by the Applicant dated 20th November 2020.

2. The Original Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 14.00 on 11th January 2021.

The Applicant did not attend the CMD but his representative Scott Runciman, Solicitor, attended on his behalf.

Christine Christie, one of the Respondents attended the CMD.

No written responses had been received from the Respondent.

2.1 The Tribunal identified with the applicant's representative the following agreed facts:

2.1.1 The Respondents are Tenants of the Property in terms of the lease between the parties. The start date of the Tenancy was 6th September 2019.

2.2.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

2.2.3. The Applicant is Landlord of the Property. The Tribunal had a copy of the Applicant's title deeds being Land Certificate ELN1939. Section B of the Land Certificate confirmed that the Applicant purchased the Property on 10th July 2017.

2.2 Oral Evidence

Mr Runciman advised that the Applicant seeks the order for possession as he needs to live in the Property. He is presently living in temporary accommodation and he referred the Tribunal to the Affidavit by the Applicant dated 20th November 2020. He confirmed that as far as he is aware there have been no changes to the circumstances of the Applicant since the date of the Affidavit. He also explained that there are rent

arrears of £1950 and consequently he considered that it was reasonable for the Tribunal to grant the eviction order.

Christine Christie explained that she does not object to the application for the eviction order.

In relation to the period of Notice given in the Notice to Leave Mr Runciman suggested that the period of three months was correct as the application for eviction was only on the basis of ground 4. However, if this was incorrect he asked the Tribunal to exercise their discretion under paragraph 10 of Schedule 1 of the Coronavirus (Scotland) Act 2020 and proceed notwithstanding the error. He explained that this was reasonable as the Respondents were not objecting to the application.

2.3.Requirements of Section 109 of the Procedure Rules.

(a) The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenant.
- (iv) the ground of eviction. The ground stated in the application is that the Applicant intends to live in the Property.

The Tribunal accepted that this is Ground 4 of Schedule 3 of the 2016 Act.

(b) The Tribunal confirmed that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

- (i) evidence showing that the eviction ground or grounds had been met.

The Affidavit by the Applicant dated 20th November 2020 was evidence that the Applicant intended to live in the Property as his principal dwelling house, that he does not have any other accommodation available to him and that he intends to reside there for the foreseeable future.

- (ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 20th July 2020 and advised the Tenants that the Applicant intends to apply to the Tribunal for an eviction order in respect of the Property on the basis of Ground 4 (The Landlord intends to live in the Property) and Ground 12 (The Tenants are in rent arrears over three consecutive months). It also advised that an application would not be submitted to the Tribunal for an eviction order before 7th November 2020.

The Tenancy commenced on 6th September 2019. As at 20th July 2020 (the date of the Notice to Leave) the Tenant had resided in the Property for more than six months. As the Notice to Leave had been served on the Respondents after 7th April 2020 the provisions of The Coronavirus Act 2020 apply. The Notice period is therefore dictated

by the grounds on which the notice relies. Where the Notice relies on two grounds to which different periods apply, it is the longer period of notice that is required. Therefore Six months Notice is required.

The Notice to Leave did not give the Respondents the required period of six months notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords' representatives as required by Section 109(c) of the Procedure Rules.

2.4. Decision

2.4.1 The Tribunal found that the Applicant had met the requirements of Ground 4 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 for the following reasons:

2.4.2 The Tribunal had a copy of the Landlord's title ELN1939 and established that the Applicant was heritable proprietor of the Property.

2.4.3 Evidence had been provided that the Applicant intended to reside in the Property. The Tribunal accepted the evidence contained in the Applicant's affidavit dated 20th November 2020 which explained that he needed to reside in the Property due to the fact that he is staying at his partner's parents' house on a temporary basis until he is able to regain possession of his property and that he fully intends to reside there for the foreseeable future.

2.4.4 Coronavirus Act 2020

The Tribunal acknowledged that the Coronavirus Act came into force on 7th April 2020. As the Notice to leave specified grounds 4 and 12 the longer period of notice of 6 months applies. ie notice expires 23rd January 2021.

The Tribunal also acknowledged:-

2.4.4.1 There is no power to dispense with the Notice to Leave under the 2016 Act. 6

2.4.4.2 Under section 52(4) of the 2016 Act, the Tribunal may allow an application for an eviction order to be made, during the notice period.

2.4.4.3 In terms of paragraph 10 of Schedule 1 of the Coronavirus (Scotland) Act 2020 the Notice to Leave is not invalid due to the error in the period of Notice 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 upon had it been correctly completed.

2.4.4.4 The Notice to Leave should have stated that an application would not be submitted to the Tribunal until 23rd January 2021.

In the circumstances the Tribunal determined that they allowed the application for eviction to be made during the notice period and that the CMD should be continued until a date after 23rd January 2021. The matter of whether it is reasonable for the Tribunal to grant the Order for Possession would be considered at the adjourned CMD.

3 Adjourned Case Management Discussion

This case called for the Adjourned conference call Case management Discussion (CMD) at 10.00 on 1st February 2021.

The Applicant did not attend the CMD but his representative Scott Runciman, Solicitor, attended on his behalf.

Christine Christie and Mr Douglas Jardine, the Respondents, attended the CMD.

No written responses had been received from the Respondents.

3.1 Oral Submissions

Scott Runciman advised the Tribunal that the terms of the Affidavit by the Applicant dated 20th November 2020 were still correct. The Applicant is living in temporary accommodation and needs to move back into the Property.

He also advised that he considered it reasonable for the order for eviction to be granted for the following reasons:

- The Respondents have not objected to the application.
- The Respondents have effectively been working with the Applicant. The Eviction order is needed to enable the Council to provide the Respondents with alternative accommodation. The eviction order will effectively assist both parties.
- The Rent Arrears are still outstanding. As at 11th January 2021 the arrears amounted to £1950. His client has not advised him of the current figure.
- The fact that the Applicant is living in temporary accommodation is putting a strain on the family he is living with.

Ms Christie advised that she agreed with the submissions made by Mr Runciman. However she believed that Universal Credit have started to pay back some of the arrears which she believes now amount to approximately £1800. She explained that until the eviction order is granted the Council will not rehouse her and her family.

4. Decision

The Tribunal accept that Ground 4 of Schedule 3 of the 2016 Act has been established by (i) the terms of the Affidavit by the Applicant dated 20th November 2020 which state that the Applicant is living in temporary accommodation and he needs to live in the Property as his principal home and (ii) Mr Runciman's submissions that the circumstances narrated in the Affidavit are still correct and the Applicant's situation has not changed.

The Tribunal also accept the submissions made by Mr Runciman that it is reasonable for the Eviction Order to be granted, especially as the Respondents have not put any reasons to the Tribunal as to why the order for eviction should not be granted and it does appear to the Tribunal to be in the interest of both parties for the Eviction Order to be granted.

In the circumstances the Tribunal determine that the order for possession of the Property be granted as Ground 4 of Schedule 3 of the 2016 Act had been met and it is reasonable to grant the order for possession.

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.

J. Taylor

Legal Member

1st February 2021