



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/19/2276

Re: Property at 6/17 Portland Gardens, Edinburgh, EH6 6NJ (“the Property”)

Parties:

JLRM Properties Limited, 3 Gamekeepers Park, Barnton, Edinburgh, EH4 6PA (“the Applicant”)

Ms Louise Hanscombe, 6/17 Portland Gardens, Edinburgh, EH6 6NJ (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- Background
- 1. An application dated 18 July 2019 was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of the Applicant’s intention to sell the Property, being Ground 1 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).

- Case Management Discussion
2. A Case Management Discussion (“CMD”) took place on 1 October 2019. The Applicant was represented by Miss Rashid of TC Young Solicitors. Mr Hackett of JLRM Properties Limited was also present. There was no appearance by or on behalf of the Respondent. The Tribunal was satisfied that the application had been intimated on the Respondent at the Property by way of Sheriff Officer on 22 August 2019 and accordingly the Respondent had sufficient intimation of the date and time of the CMD. Accordingly, the Tribunal was satisfied that the CMD could proceed in the Respondent’s absence.
 3. The Applicant’s representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement (“the Agreement”), which commenced 4 March 2019. The Applicant intended to sell the Property and required vacant possession in order to do so. A Notice to Leave had been served on the Respondent on the basis of Ground 1 of Schedule 3 to the 2016 Act, on 14 June 2019. The Respondent was still believed to be residing within the Property.

The following documents were lodged alongside the application:

1. Copy Private Residential Tenancy Agreement
 2. Copy Notice to Leave
 3. Proof of service of the Notice to Leave by email
 4. Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
 5. Letter from Wilson Ward dated 10 June 2019 confirming their terms of business for sale of the Property.
4. A separate application submitted by the Applicant was also considered by the Tribunal at the same time in relation to rent arrears accrued under the terms of the Tenancy Agreement, under Rule 111 and case reference FTS/HPC/CV/19/2277.
 5. The Respondent submitted written representations dated 8 September. She stated that the landlord had served two differing Notices to Leave. Firstly, a Notice to Leave dated 29 April 2019 served on the basis that she had breached a term of her tenancy agreement (ground 11) and that she had association with person who has relevant conviction or engaged in relevant anti-social behaviour (ground 15). Secondly, the Notice to Leave lodged with the Application and dated 14 June 2019 which relied on Ground 1 as aforesaid. The Respondent submitted that there was “*confusion*” regarding the basis of the landlord’s application and that she considered that the reason for her eviction was “*numerous items requiring repair/replacement, which should have been completed prior to my moving in date and as yet have still not been completed*” The Respondent went on to lodge emails suggesting issues with the cooker, tiles on bathroom floor and a radiator.

6. The Applicant submitted that they had tried to effect repairs in the property but had been refused access. They had purchased a new cooker which they had been unable to install because of access being refused. Workmen had attended at the property and been threatened with physical violence by someone staying in the property. They could not send any further workmen to the property given the threats being made towards them. It was the Landlord's intention to sell the property, regardless of the issues experienced with the Respondent and in this regard, a subsequent Notice to Leave had been served on Ground 1.

- Findings in Fact

7. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement which commenced on 4 March 2019;
- (ii) The Applicant is the heritable proprietor of the Property;
- (iii) The Applicant is entitled to sell the Property;
- (iv) The Applicant intends to sell the Property
- (v) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 1 of Schedule 3 to the 2016 Act;
- (vi) The Applicant has provided a letter of engagement from an estate agent regarding the marketing of the Property.

- Reasons for Decision

8. The Tribunal was satisfied that the terms of Ground 1 of Schedule 3 to the 2016 Act had been met, namely that the Applicant intends to sell the property and intends to do so within 3 months of the Respondent ceasing to occupy it. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the Applicant was entitled to serve a further Notice to Leave in June relying on Ground 1, and raise an application on that basis, regardless of a prior Notice to Leave having been issued on differing grounds in April. The Tribunal was satisfied that no stateable defence had been submitted to the Tribunal by the Respondent in relation to Ground 1, and that the application should be granted as sought.

- Decision

9. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

F Watson

Legal Member/Chair

1/10/19

Date