



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/20/2405

Re: Property at First Floor Left, 33 Combie Street, Oban, PA34 4HS (“the Property”)

Parties:

Ms Kirsteen Lawrie, 5 Towerhill Crescent, Cradlehall, Inverness, IV2 5FZ (“the Applicant”)

Mr Ian Robert Brown, First Floor Left, 33 Combie Street, Oban, PA34 4HS (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondent in respect of the Property.

Background

This is an application for recovery of the Property. The application is dated 11th November 2020. The Applicant is seeking recovery under Ground 1, Part 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 as amended by Schedule 1 (3) (a) of the Coronavirus (Scotland) Act 2020. This ground states that it is an eviction ground that the landlord intends to sell the let property. The date and time of the Hearing was intimated to parties who were given the opportunity to make written representations and/or lodge productions. The Applicant lodged productions. The Respondent made no representations and did not lodge productions.

The Case Management Discussion

A case management discussion was held on 20th January 2020 at 2 pm. It was held by audio conference because of the coronavirus restrictions.

Mrs Chermaine Laurie, managing director of West Properties, letting agents of the Applicant was present and represented the Applicant.

Preliminary Matters

It was noted that the Respondent was not present. The date and time, together with instructions in joining the audio conference was served on the Respondent by Sheriff Officers on 14th December 2020. The Tribunal explained the purpose of a case management discussion.

Documents before the tribunal

1. Private Residential Tenancy Agreement dated 21st and 29th January 2020.
2. Notice to Leave dated 4th May 2020.
3. Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003.
4. Letter from Fiuran property dated 11th November 2020.
5. Letter of Engagement from DM Hall, chartered surveyors, with regard to a Home Report together with associated documentation.
6. Print of Title Sheet for ARG4198 (the Property).

Findings in Fact

1. The Applicant is the owner of the Property.
2. The Applicant and the Respondent entered into a Private Residential Agreement for the Property on 21st January 2020.
3. The start date for the tenancy was 24th January 2020.
4. The monthly rent for the Property is £475 per month.
5. The Applicant intends to place the Property for sale on the open market.
6. The Applicant has engaged estate agents to market the Property as soon as vacant possession is obtained.
7. The Applicant has engaged chartered surveyors to produce a Home Report for the Property.
8. The Applicants gave the Respondent Notice to Leave on 4th May 2020.
9. The Respondent is residing at the Property.

Findings in Fact and Law

1. The Private Residential Agreement dated 21st and 29th January 2020 contains what were then mandatory eviction grounds including Ground 1: “The landlord intends to sell the property for market value within three months of the tenant leaving the property.”
2. The Notice to Leave which was dated and which was served on 4th May 2020 referred to Ground 1 which was being relied on by the Applicants as the reason for seeking recovery of the Property.
3. The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 7th November 2020.

The Law

The following provisions of the Private Housing (Tenancies) (Scotland) (Act) 2016 include the amendments made by the Coronavirus Act 2020

Section 51: First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

(introduced by section 51)

Schedule 3, Part 1

Let property required for another purpose

Landlord intends to sell

1(1) It is an eviction ground that the landlord intends to sell the let property.

(2) The First-tier Tribunal *may* find that the ground named by sub-paragraph (1) applies if the landlord—

(a) is entitled to sell the let property, *and*

(b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, *and*

(c) *the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

Evidence

1. Mrs Laurie referred the tribunal to the letter from Fiuran Property dated 11th November 2020 which stated " We confirm we have been instructed to market the above property for sale."
2. Mrs Laurie referred the tribunal to the documentation from D M Hall which consisted of a terms of engagement letter dated 19th October 2020 together with an invoice, valuation inspection checklist and information sheet on Home Reports.
3. Mrs Laurie said that it is the Applicant's intention to market the Property as soon as she is able to achieve vacant possession and that the documentation from Fiuran and DM Hall evidences this.
4. Mrs Laurie said that the notice period on the notice to leave expired on 7th November 2020 and that the Applicant had taken time off her work for a week from 9th November 2020 and that this was to enable her to put the Property on the market. She said that the Applicant had done this in the anticipation that the Respondent would have complied with the requirements of the Notice to Leave. Mrs Laurie said that this showed how keen the Applicant was to sell the Property.
5. Mrs Laurie said that the Applicant intends to put the Property on the market as soon as she is able and that this will be for market value.

6. Mrs Laurie said that the Applicant had originally lived in the Property and that she had relocated for employment reasons five years previously. She said that she had retained the Property so that she could return to it if her new employment role did not work out.
7. Mrs Laurie said that there were arrears of rent amounting to £1,634.32 but that the arrears only started in April 2019 which was one month prior to service of the Notice to Leave. She said that, whilst the arrears are now causing difficulties for the Applicant, the reason for seeking recovery of the Property was not to do with that. Mrs Laurie said that the Property had had a number of tenants and that, because the Applicant had encountered difficulties in attracting a long-term tenant, she had decided to sell.
8. Mrs Laurie said that a mediation meeting had been held between the Applicant and Respondent on 11th November 2020 but that this had been unsuccessful in arriving at an agreed departure date and a way of dealing with the arrears. She said that there had also been attempts at that meeting to arrange access for the carrying out of a Home Report inspection. She said that the Respondent agreed to this and then did not contact the letting agent so that arrangements could be made.
9. Mrs Laurie said that, on the date of the expiry of the notice period, the Respondent had asked for a copy of the Notice to Leave so that he could take it to a housing provider. She said that this seemed to indicate that the approach to such a housing provider had not been timeously made since it could have been done earlier in the period of notice.
10. Mrs Laurie said that the Respondent is the only occupant of the Property and that he lost his job at the start of the pandemic.

Submissions

Mrs Laurie invited the tribunal to determine the application without the need for a Hearing. She submitted that the tribunal had all the information it needed to make a decision.

Deliberations and Reasons

The tribunal considered that it had sufficient information before it to allow it to determine the application.

The tribunal considered that it required to take a two stage approach in considering the application. Prior to the Coronavirus Act 2020, Ground 1 of Part 1 of Schedule 3 of the 2016 Act was a mandatory ground for eviction. Following the provisions of the 2020 Act, it was a discretionary ground and, before making the order, consideration required to be taken as to whether or not it was reasonable for it to be granted.

The tribunal found the evidence of the Applicant's intention to sell the Property to be convincing. The documentary evidence of Fiuran Property and DM Hall was persuasive. The tribunal also found the evidence of Mrs Laurie to be credible in relation to the Applicant's intention to sell the Property and that she was keen to put this in train as soon as possible.

The tribunal considered if the requirements of Ground 1 were met. It had no difficulty in finding that the Applicant is entitled to sell the Property. It accepted the terms of the Title Sheet which demonstrated ownership of the Property. In terms of the provisions of the Coronavirus Act 2020, the notice period for such an application is six months. The tribunal accepted that the Notice to Leave had been issued more than six months prior to the date of the application and that appropriate intimation had been given to the local authority under the Homelessness Etc. (Scotland) Act 2003.

In considering whether or not it is reasonable to grant the order, the tribunal required to consider all the circumstances. The tribunal considered it reasonable that a landlord may decide to sell a property where it had proved difficult to secure a long term tenant. The tribunal was required to balance this against the Respondent's position on the application. It could not do so because the Respondent had failed to provide any information in this regard. He had the opportunity to submit representations and chose not to do so. He had not attended the Hearing or arranged for someone to represent him. The respondent had ample time during the notice period to find alternative accommodation. During the notice period, the Respondent had accrued arrears of rent. The tribunal noted that the Respondent had lost his job.

Weighing matters, the tribunal considered that it was reasonable to grant the order of eviction.

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.



**Martin J. McAllister
Legal Member
20th January 2020**