



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/22/2233

Re: Property at 42 Main Street, Linlithgow Bridge, Linlithgow, West Lothian, EH49 7PS (“the Property”)

Parties:

Malcolm John Henderson, PO Box 31, Northbridge, Western Australia, WA 6865 (“the Applicant”)

Christopher Old, 42 Main Street, Linlithgow Bridge, Linlithgow, West Lothian, EH49 7PS (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The PRT in question was by the Applicant to the Respondent commencing on 21 June 2018.
2. The application was dated 15 June 2022 and lodged with the Tribunal on or around that date.
3. The application relied upon a Notice to Leave dated 14 September 2021 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, served upon the Respondent by email on 15 September 2021 in accordance with the provisions of the PRT. The Notice relied upon Ground 1 of Schedule 3 Part 1 of

the 2016 Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of the notice simply stated “Owner is looking to sell the property”. (The application papers did, however, include a letter from Halliday Homes to the Applicant dated 21 March 2022 regarding commencement of marketing of the Property.) The Notice intimated that an application to the Tribunal would not be made before 17 March 2022.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon West Lothian Council on 9 May 2022.

The Hearing

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 14 September 2022 scheduled for 14:00. We were addressed by the Applicant’s agent, Ruthven Bell, solicitor, of Jackson Boyd LLP.
6. There was no appearance for the Respondent and no correspondence had been sent by him to the Tribunal. The Applicant’s agent stated that no contact had been received from the Respondent either prior to the application (when debt recovery correspondence was issued by his firm for a period) or since lodging of the application. We had already held back commencement of the CMD until 14:05 but the Respondent, nor anyone on his behalf, dialled in (nor did anyone do so prior to the conclusion at around 14:30). In all the circumstances we were satisfied to consider the application in the absence of the Respondent.
7. At the CMD, the Applicant’s agent confirmed that the application for eviction was insisted upon. He explained that the Applicant now resided in Australia where he was employed in the oil industry and that he expected to reside there for some time to come. The Applicant’s father had previously assisted him in attending to the letting of the Property but his father had health issues and the Applicant no longer felt it appropriate to place this burden upon him, and had thus made the decision to cease letting the Property and instead sell it.
8. In regard to the Respondent and the Property, he believed that the Respondent lived alone. He was unaware whether or not the Property was specially adapted, or whether there was any reason for the Property being specially required by the Respondent due to its nature or location. He assumed that the Respondent was not on benefits as no mention was made of it in his file. The Respondent was in arrears, having not paid rent due in February 2022 and since. Due to the lack of communication, the Applicant was unaware as to the reason for non-payment but attributed it to the Notice to Leave having been issued. The Applicant had commented to his agent in April 2022, prior to the application being raised, that the Respondent had previously stated that he would leave the Property but then “changed his mind” the day before the proposed vacating date.
9. No motion was made for expenses.

Findings in Fact

10. On 21 June 2018, the Applicant and the Respondent entered into a Private Residential Tenancy agreement commencing on that date (“the Tenancy”).
11. On 14 September 2021, the Applicant’s agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicant wished to sell the Property.
12. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 17 March 2022.
13. The Applicant’s agent emailed the Respondent a copy of the Notice to Leave on 15 September 2021, all in terms of clause 4 of the Tenancy Agreement.
14. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 1 of Schedule 3 Part 1 of the 2016 Act.
15. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon West Lothian Council on 9 May 2022.
16. The Applicant has instructed Halliday Homes to act on his behalf in regard to the marketing of the Property and received a letter with terms of business from them on 21 March 2022.
17. The Applicant resides in Australia at present and no longer wishes to remain a landlord of the Property due to the administrative difficulties of doing so from Australia, and the burden that continuing to act as a landlord places upon his relatives remaining in Scotland.
18. On 2 August 2022, a Sheriff Officer acting for the Tribunal intimated the CMD of 14 September 2022 upon the Respondent.

Reasons for Decision

19. The application was in terms of rule 109, being an order for eviction of a PRT. The Tenancy Agreement specified that any Notice to Leave could be served by email and there was no reason to doubt that the Notice to Leave, served by email, was received by the Respondent. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
20. Ground 1 of Schedule 3 to the 2016 Act (as temporarily amended) applies if:
 - (1) *...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,*
- (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.*

21. The terms of business letter from Halliday Homes constitutes evidence under paragraph (3)(a) and, combined with the submissions by the Applicant's agent on the Applicant's reasons for seeking to sell the Property, we agreed that paragraphs (2)(a) and (b) were satisfied.
22. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We were satisfied that the Applicant's reasons for seeking eviction were sufficient. In considering a counter-argument, none was advanced. In any event, no submissions were provided that suggested any special reason why it would be unreasonable to evict, and we could discern none from the papers nor from the information we sought from the Applicant's agent.
23. In all the circumstances before us, we were satisfied that Ground 1 was well founded by the Applicant and reasonable to grant. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we were thus satisfied to grant an order for eviction at this time.

Decision

24. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, further to ground 1 of Schedule 3 of that 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.



Legal Member/Chair

14 September 2022

Date