



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/21/1562

**Re: Property at 295 Old Edinburgh Road, Glasgow, G71 6AR
 (“the Property”)**

Parties:

**Umali Limited, 77 Victoria Street, Larkhall, ML9 2BL
 (“the Applicant”)**

**Ms Clare Bauldie, 295 Old Edinburgh Road, Uddingston, G71 6AR
 (“the Respondent”)**

Tribunal Members:

**Ms. Susanne L. M. Tanner Q.C. (Legal Member)
 Ms. Elizabeth Currie (Ordinary Member)**

Decision

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

was satisfied that Ground 1 in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that (a) the landlord 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 three months of the Respondent ceasing to occupy it; that it was reasonable for the tribunal to issue an eviction order; and made an order for eviction in terms of Section 51 of the 2016 Act;

The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. On 28 June 2021, an application for eviction was made by the Applicant to the tribunal. At that time civil proceedings were ongoing in respect of rent arrears (CV/21/1415) and a second Case Management Discussion had been fixed in the civil proceedings for 6 October 2021. The eviction application was sifted by a legal member with a view to both cases being joined for the purposes of further procedure.
2. The Applicant originally sought the Respondent's eviction from the Property on the basis of Grounds 1 and 12 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act"); and the Application was originally made against the Applicant and one other (the guarantor under the tenancy agreement).
3. Following requests for further information by a legal member of the tribunal, the Applicant confirmed that it was only seeking the Respondent's eviction from the Property on the basis of Ground 1 and that it wished to proceed only against the sole Respondent. The Application was so amended.
4. The tribunal's administration obtained a copy of the Title Sheet for the Property which showed the Applicant as registered proprietor of the Property.
5. On 24 August 2021, the Application was accepted for determination by the tribunal. A Case Management Discussion ("CMD") teleconference was fixed for the same date and time as the joined civil application, on 6 October 2021 at 1000h.
6. Both parties were notified by letters dated 6 September 2021 of the date, time and arrangements for joining the Case Management Discussion ("CMD") in relation to the Application to take place on 6 October 2021 at 1000h by teleconference. The Respondent was invited to make written representations in response to the Application by 27 September 2021. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.
7. The Application paperwork and notice of the CMD was successfully served on the Respondent by Sheriff Officers.

8. The Respondent did not submit any representations in the specified time period.

CMD: 6 October 2021, 1000 Teleconference

9. Mr Murray and Mr Lasan attended on behalf of the Applicant.

10. The Respondent attended.

11. The CMD took place after the CMD in the related civil application (in which there was an additional Respondent, the guarantor under the lease agreement).

12. The Respondent stated that she is not opposing the eviction order being made as she no longer wishes to live in the Property. She has made arrangements to move into her parents' house with her son. She had previously been looking for other options but she since has decided that living with her parents is the best option at present due to personal reasons. Her dad finished decorating a room for her son to move into last Friday (2 October 2021). She now intends to move on Saturday 10 October 2021. She needs to borrow a van to move furniture to storage and get people to help her to move things. She stated that it had not been feasible to do this prior to the expiry of the period of notice on 30 September 2021. She stated that her son is seven and that he is presently unwell but that he was well enough to move on Saturday (10th October 2021).

13. Mr Murray for the Applicant stated that despite the Respondent's stated intention to leave the Property on 10 October 2021, he wishes to seek the eviction order. He referred to numerous failed promises to leave, including two in the last week which have been evidenced by What's App messages produced yesterday.

Preliminary Issue – application made before expiry of period of notice – Section 54(1) of the 2016 Act

14. The tribunal raised the preliminary issue of the application being made before the expiry of the period of notice, which had been drawn to parties' attention in the papers issued prior to the CMD. It was accepted by the Applicant that the Application was made in breach of Section 54(1).

15. The Applicant submitted written submissions prior to the CMD submitting that it would be reasonable to entertain the Application despite the breach of Section 54(1), in terms of Section 52(4) of the 2016 Act.

16. The tribunal ensured that Ms Bauldie understood the nature of this legal issue and she confirmed that she did.

17. During oral submissions, Mr Lasan adopted the Applicant's written submissions that it would be reasonable for the tribunal to entertain the Application for the reasons given, subject to adding an additional point and withdrawing a point, as referred to further below.
18. Mr Lasan stated that in addition to what was contained in the written submissions, he was also relying on the fact that 6 months have elapsed as at today's date (6 October 2021). The Notice to Leave was served on 27 March 2021 and expired on 30 September 2021. He stated that the Respondent remains in the Property despite promising to leave on a number of occasions before and after 30 September 2021, and failing to do so. He submitted that these are additional reasons why it is reasonable for the application to be entertained.
19. Mr Lasan proceed to refer to five (out of six) grounds in his written submissions as to why he submitted it was reasonable for the tribunal to entertain the application. He withdrew the second ground in his submissions, confirming that he now had contact details for the guarantor and that a payment plan had been entered into with the guarantor and adhered to (as discussed in the civil proceedings). The other grounds advanced in support of his position can be summarised as follows:
- 19.1. There are criminal proceedings against the Respondent which involve the Applicant as well as civil proceedings for rent arrears. He stated that everything is so intertwined and that although the criminal case has not gone to court yet, the Respondent has been charged. He stated that as a result, there are grounds for thinking that she will not cooperate with the end of tenancy.
- 19.2. There is an ongoing civil application for rent arrears. There have been numerous breaches of payment plans. There have been similar breaches of intent to leave the Property. The NTL expired on 30 September 2021. The Applicant assumed that she would leave before that date. The Applicant incurred costs in relation to instruction of an agent inspections. There has been no meaningful cooperation by the Respondent in relation to the eviction. Mr Murray added there have been three separate promises to leave the Property this week. He referred to What's App messages which were lodged on 5 October 2021. He stated that all of those promises have been reneged upon. The Applicant has asked a number of times for the Respondent's financial position to assist her and enter into a financial agreement. In relation to inspection of the Property, the Applicant recently appointed a third party through its letting agent and Ms Bauldie cancelled the appointment within a couple of hours of being arranged.
- 19.3. Mr Lasan stated the Respondent asked to borrow the sole remaining key for the Property which has left the Applicant with a key. The Respondent has refused to return it or to provide a copy.

- 19.4. Mr Lasan stated that the Respondent claims that she has made modernisations to the Property but the Applicant has not been able to inspect or confirm the state of the Property. That is a worry on the part of the Applicant as to the condition of the Property. The Applicant did managed to get a Gas Safety Certificate but has been unsuccessful in obtaining any other access.
- 19.5. For all of the above reasons, the Applicant submitted that it would be reasonable to entertain the application despite the fact that it was made before the expiry of the period of notice.
20. Ms Bauldie did not submit that it was unreasonable for the proceedings to be entertained despite the fact that the Application was made before the expiry of the period of notice, as she confirmed that she was not opposing an eviction order being granted. However, she wished to provide her position in relation to some factual matters, which can be summarised as follows:
- 20.1. She stated that the criminal proceedings had not gone to court. The Procurator Fiscal has not made a decision as to whether to prosecute. She has been interviewed and charged but no proceedings have been commenced.
- 20.2. She accepted that she failed to allow agents into the Property on multiple occasions but stated that there were various reasons for this. One of them was that the agent they were sending was Mr Graham Murray's father, and she does not feel comfortable with him being in the Property. She stated that there had been threats to force access and that she had recorded them.
- 20.3. Ms Bauldie accepted that she made a request to borrow the key in February 2021 and also accepted that she has retained the key. She stated that she has not returned it to the agent because she was not comfortable after the threats by Mr Murray senior to come into the Property.
- 20.4. Ms Bauldie stated that if the Applicant had changed the agent she would have been more than happy to oblige. She stated that she had also sent pictures to the Applicant to show improvements and condition. She did not know the date and stated that it was a few months ago on What's App.
21. In response, Mr Murray stated that it was incorrect that pictures were sent. We obtained one photo from Ms Bauldie, which was a photo of the gas cooker, which allowed the Applicant to instruct a gas engineer. He stated that there have been no photographs of modernisations. He stated Ms Bauldie has claimed multiple modernisations to the Property. He stated that any changed required written consent and such consent had not been given. He stated that the Applicant has arranged with a letting agent to conduct the inspection three times and clarified that it is Fineholm lettings, which manages other properties for the Applicant and not his father.

22. In further response, Ms Bauldie stated that she has not cancelled the inspection three times. She stated that she had not been given any times. It was provisionally in for Monday 5 October 2021. She let them know that it was not feasible for her. She stated in the message not to book this as she was not fully ready to commit to an appointment. She stated that there has never once been confirmation about who was coming to the property. Most of the discussions about inspections have happened prior to 30 September and a couple have been arranged since then. She did not think it was reasonable to arrange an end of tenancy inspection for the last day of the tenancy. She does agree that there have been cancellations but not that it has been cancelled three times. She repeated her intention to move out of the Property on Saturday (10 October 2021). She is moving bigger things on 9 September and will hand the keys back Saturday (10 October 2021) in the late afternoon.
23. The tribunal adjourned to consider the preliminary matter as to whether the application should be entertained and reached a decision that it was reasonable to entertain the application, as outlined below.
24. The tribunal reconvened. The tribunal determined that it was reasonable to consider the Application despite the requirements of Section 54(1) regarding the giving of notice not being met. In reaching this decision the tribunal relied on the parties' submissions which are summarised above and the fact that the Application is not opposed. In particular, the tribunal had regard to the fact that six months have now passed since the Notice to Leave was issued and that the notice period expired on 30 September 2021. The Respondent has failed to leave the Property at the expiry of the period of notice. There are also ongoing civil proceedings in respect of substantial rent arrears. The Applicant wishes to sell the Property and the Respondent has restricted or denied access (whether or not she has personal reasons for that relating to the identity of the agent, it has prevented the Applicant from carrying out inspections, valuations and other preparations for sale).

Ground 1, Schedule 3, 2016 Act

25. In relation to the ground relied upon to seek eviction, which is Ground 1, Mr Lasan stated that it is the Applicant's intention to use Fineholm Lettings as an agent to take the necessary steps to put the Property up for sale within three months of the tenancy ending. A date will be fixed for the Home Report to be carried out. The reasons for selling are due to the significant financial losses in respect of the Property. The Applicant has a mortgage on the Property.
26. The Respondent did not make any submissions in relation to the eviction ground relied upon as she did not oppose the eviction order being made.

Discretion in relation to Ground 1

27. As Ground 1 has been amended (at the present time) to introduce a test of reasonableness, the tribunal turned to consider that discretionary matter.
28. The Applicant submitted that it would be reasonable for the tribunal to make the order in the circumstances. The Application is not opposed and the Respondent has secured alternative accommodation which is available now.
29. The Respondent confirmed that the Application is not opposed and did not wish to make any additional submissions in relation to this point.

30. The tribunal makes the following findings-in-fact:

- 30.1. The Applicant has been the registered proprietor of the Property since 24 January 2020.
- 30.2. There is a Private Residential Tenancy between the Applicant and the Respondent dated 7 April 2020.
- 30.3. The start date of the tenancy was 6 April 2020.
- 30.4. The Notice to Leave dated 27 March 2021, which was served on the Respondent by email on the same date, includes notice that the ground upon which eviction is sought is the landlord's intention to sell the Property.
- 30.5. The Notice to Leave expired on 30 September 2021.
- 30.6. The Respondent did not move out of the Property on or before 30 September 2021.
- 30.7. The Respondent did not move out of the Property on 3 October 2021, despite having stated her intention to the Applicant that she intended to do so.
- 30.8. Due to the Respondent failing to remove herself from the Property on 30 September, or on 3 October 2021, the Applicant required to cancel a number of property inspections which were scheduled on or after 30 September 2021, which were to be carried out by the Landlord's appointed agent(s).
- 30.9. The Application to the tribunal was made on 28 June 2021.

- 30.10. As at 6 October 2021, more than six months have elapsed since the Notice to leave was served.
- 30.11. The Respondent intends to move out of the Property and return the keys to the Applicant on 10 October 2021.
- 30.12. The Applicant has secured alternative accommodation for her and her son at her parents' house which was available as at 6 October 2021.
- 30.13. The Applicant has instructed an agent to carry out the steps necessary to market the Property for sale, which will commence once the Respondent has moved out of the Property.

31. Findings in fact and law

- 31.1. The Application was made in breach of Section 54(1) of the Private Residential Tenancies (Scotland) Act 2016 ("the 2016 Act").
- 31.2. The tribunal is satisfied that it is reasonable to entertain the Application made in breach of Section 54(1), in terms of Section 52(4) of the 2016 Act.
- 31.3. The tribunal is satisfied that the facts required in para 1 of Schedule 3 to the 2016 have been established, in that the Applicant is entitled to tell the let Property and intends to sell it for market value, or at least put it up for sale within three months of the Respondent ceasing to occupy it.
- 31.4. The tribunal is satisfied it is reasonable to make an eviction order.

Discussion

- 32. As noted above, the tribunal determined in accordance with Section 52(4) of the 2016 Act that it would entertain the Application made in breach of Section 54(1) of the 2016 Act, for the reasons given above.
- 33. The tribunal finds that Ground 1 has been established, namely that the Applicant has title to sell the Property and that the Applicant intends to sell the Property or at least to put the Property up for sale within three months of the Respondent ceasing to occupy it.
- 34. The tribunal considered that it was reasonable to make the eviction order in the circumstances. In particular, the Respondent has confirmed that she does not oppose the Application and that she has secured alternative accommodation for

her and her seven year old son at her parents' house, that a room has been decorated for her son and that the alternative accommodation is ready for them to move into. She has also indicated that arrangements have been made to rent a van to move her larger items of furniture to storage on Saturday 10 October 2021 and that she will hand the keys to the Property back on the afternoon of Saturday 10 October 2021. The tribunal also took into account the matters discussed in relation to the Applicant's inability to progress inspection of the condition of the Property or to organise a Home Report because of repeated access issues and that they now intend to wait until they have vacant possession of the Property to instruct the same. In all of the circumstances the tribunal decided that it was reasonable to make the order and did so.

35. Both parties stated that they understood that the order had been made. Ms Bauldie, the Respondent, confirmed that she was intending to move out on Saturday 10 October 2021 in any event.

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.

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Ms. Susanne L. M. Tanner Q.C.
Legal Member/Chair

6 October 2021