

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/23/3221

Re: Property at 11 Thistle Street, Galashiels, TD1 1LX (“the Property”)

Parties:

Miss Angela Foss, 2 Brockbank, Tweedbank, Galashiels, TD1 3SZ (“the Applicant”)

Mr Gordon McPhail, 11 Thistle Street, Galashiels, TD1 1LX (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 11 Thistle Street, Galashiels, TD1 1LX under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The Applicant’s case is based on Ground 1 (Landlord intends to sell the Property) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

2. The application was accompanied by a Private Residential Tenancy Agreement with a start date of 16 December 2019, a Notice to Leave and email dated 11 April 2023, a quotation from Edingtons Solicitors dated 7 July 2023 and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Scottish Borders Council dated 13 September 2023.
3. On 19 October 2023 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 21 November 2023. The Respondent required to lodge written submissions by 9 November 2023. This paperwork was served on the Respondent by Dale G Barrett, Sheriff Officer, Edinburgh on 20 October 2023 and the Execution of Service was received by the Tribunal administration.
4. On 8 November 2023 the Respondent emailed the Tribunal and enclosed numerous emails between himself and the Applicant’s letting agent.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 21 November 2023 by way of teleconference. Mr McKeown from Jackson Boyd. Solicitors appeared for the Applicant. Miss Foss was also in attendance. Mr McPhail appeared on his own behalf.
6. The Tribunal had before it the Private Residential Tenancy Agreement between the parties with a start date of 16 December 2019, a Notice to Leave and email dated 11 April 2023, a quotation from Edingtons Solicitors dated 7 July 2023, a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Scottish Borders Council dated 13 September 2023 and email correspondence between the Respondent and the Applicant’s letting agent. The Tribunal noted the terms of these documents.
7. Mr McKeown moved the Tribunal to grant an Order for repossession. He submitted there was enough evidence before the Tribunal in support of the Applicant’s position that she needed to sell the property to relocate to England. The Notice to Leave had been served on 11 April 2023 by email by the letting agents. The Tribunal noted the Notice to Leave relied on Ground 1 (Landlord intends to Sell the Property) of Schedule 3 of the 2016 Act. The Tribunal also noted that Clause 4 of the tenancy agreement between the parties allowed for service by way of email. Mr McKeown went on to explain that the Applicant had lived in the Property before renting it out. As she was now moving to England, she no longer wanted to rent the Property. He submitted she had been in contact with local solicitors regarding the sale and the marketing of the Property and referred to the quotation from Edington Solicitors which had been lodged with the application. In the circumstances he submitted it was reasonable to evict.

8. In response Mr McPhail submitted he had moved into the Property at the end of 2019. He accepted that he had received the Notice to Leave. He explained the reason he was still in the Property was that he was finding it difficult to find a private let. He explained that at the moment he was not employed which made letting in the private sector difficult. He had also registered for social housing with Scottish Borders Housing Association but had not been offered anything in his areas of choice so far. He had been offered a property out with his areas of choice but had not accepted that. He explained that he had moved to the Borders from Glasgow and had built up friendships with people in his areas of choice. The Housing Association had since updated his application to reflect his chosen areas. He submitted he had been bidding for houses every week, but without success. He explained he had fallen into arrears since the Notice to Leave as he felt he needed to keep money aside to help pay for a deposit, removal costs and rent for a new property. He also explained he was in regular contact with the homelessness officer who had advised him that the local Council would need to give him temporary accommodation.

Findings in Fact

9. The Applicant and the Respondent entered into Private Residential Tenancy Agreement dated 16 December 2019.
10. The Applicant owns the Property. The Applicant intends to put the Property up for sale when she gains repossession of it to assist in her relocation to England. The email correspondence from Edingtons solicitors indicates they will deal with the sale of the Property.
11. The Applicant's letting agent served a Notice to Leave on the Respondent by way of an email on 11 April 2023. The Notice to Leave required the Applicant to leave the Property by 15 July 2023. The Notice to Leave relied on Ground 1 (Landlord intends to sell) of Schedule 3 to the 2016 Act.
12. The Respondent has registered for housing with Scottish Borders Housing Association and is actively bidding on properties on a weekly basis. He is taking advice from the local Council in seeking rehousing.
13. The Applicant's solicitor served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Scottish Borders Council on 13 September 2023.

14. The Respondent remains in the Property. The Respondent lives alone in the Property.

Reasons for Decision

15. The Tribunal considered the issues set out in the application together with the documents lodged in support.

16. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1, namely the Landlord intends to sell the Property. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.

17. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

18. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicants' intention to sell the Property at Part 2 of the Notice in terms of Ground 1 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 15 July 2023. The Notice to Leave was served on the Respondent by email on 11 April 2023. In terms of Section 54 the notice period of the Notice to Leave is 84 days. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 15 July 2023 which is more than the required notice. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of more than 84 days. Accordingly, the Notice to Leave complies with Section 62.

19. The Tribunal considered the submissions made by both parties. The Tribunal considered the Respondent had not disputed the application and was clearly doing what he possibly could to secure suitable alternative accommodation. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Mr McKeown, that the factual basis of the application had been established and was satisfied the Applicant intended to sell the Property as soon as she regained possession.

20. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of

the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to sell the Property when she obtained possession of it to help her relocation to England and that she no longer wanted to let the Property. The Tribunal was satisfied that the Respondent was actively working with the homelessness team who were helping him secure alternative accommodation and advising him on his housing options. The Respondent lived in the Property alone. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

21. In the circumstances the Tribunal considered that in terms of Ground 1 of Schedule 3 it was reasonable to grant an eviction order under Section 51 of the 2016 Act.

Decision

22. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Shirley Evans

22 November 2023

Legal Chair

Date