

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/0525

Re: Property at 61 Ward Avenue, Redding, Falkirk, FK2 9UN (“the Property”)

Parties:

Mrs Laura Hall, 25 Lochpark Avenue, Carluke, ML8 5AS (“the Applicant”)

Miss Theresa Mary MacDonald, 61 Ward Avenue, Redding, Falkirk, FK2 9UN (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision

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 20 February 2018.
2. The application was dated 11 February 2019 and lodged with the Tribunal on 18 February 2019.
3. The application relied upon a Notice to Leave dated 8 October 2018 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondent by First Class “Signed For” (more normally referred to as Recorded Delivery”) post on that date. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that the

landlord intends to sell. The Notice intimated that an application to the Tribunal would not be made before 3 January 2019.

4. Evidence of an undated section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Falkirk Council was provided with the application.

The Hearing

5. On 9 May 2019, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at the Westfield Community Centre, Falkirk I was addressed by the Applicant and the Respondent.
6. The Applicant confirmed that the application for eviction was still insisted upon. No order for expenses was sought.
7. The Applicant provided further background as to her reasons for wishing to sell and the steps she had taken to advance a sale. She described family commitments that made the role of a responsible landlord difficult to undertake at times and she required to prioritise her family commitments. She did not think acting as a landlord would be sufficiently eased by employing a letting agent to undertake the day-to-day work as she appreciated that she would still have the ultimate responsibility for good letting management. She cited a leak from the Property's bathroom into a downstairs property (owned by the local authority) that had taken two days to resolve, with multiple parties being involved. As she lived many miles from the Property, on consideration of her options, she felt that the best decision for her was to sell the property. The Applicant stated that she had obtained a Home Report, instructed a solicitor in Motherwell, and made initial contact with the local authority over a "council buyback" of the Property. She provided an email showing a Home Report had been provided to her and reference to access to the Property to obtain the Home Report was referred to in the Notice to Leave. She expressed a desire to start the process of selling the Property immediately after vacant possession was obtained.
8. The Respondent was satisfied to see the Property repossessed. She said that relations with the neighbours had been difficult since the leak from her bathroom and she was happy to seek new accommodation. She explained that she was not yet, however, able to seek rehousing from the local authority without evidence that she was being evicted. She was satisfied to have the eviction order granted against her in normal terms.

Findings in Fact

9. On 20 February 2018, the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on that same date ("the Tenancy").

10. In terms of clause 3 of the PRT, the parties agreed that hard copy delivery by "recorded delivery" would be required for communication of notices in terms of the Tenancy.
11. On 8 October 2018, the Applicant drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice that "Your Landlord intends to sell the Let Property" and stating, as evidence of this desire, that the Respondent "made access on 28th August for a home report to be carried out to facilitate the sale of the property" (*sic*).
12. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 3 January 2019.
13. By First Class "Signed For" delivery on 8 October 2018, the Applicant posted a hard copy of the Notice to Leave to the Respondent.
14. On 8 October 2018, the Respondent had been entitled to occupy the Property for not more than six months.
15. The Notice to Leave provided the Respondent with greater than 84 days notice of the Applicant's intentions.
16. On 31 August 2018, the Applicant received a copy of a Home Report for the Property from Graham & Sibbald surveyors so as to advance marketing of the Property for sale.
17. The Applicant intends to place the Property on the market for sale within three months of obtaining vacant possession, so to ease the burden on the Applicant of undertaking the role of landlord as well as her other commitments.
18. On 11 February 2019, the notice period under the Notice to Leave having expired without the Respondent apparently vacating the Property, the Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 Part 1 of the 2016 Act, and providing evidence of her receipt of the Home Report in advance of marketing the Property for sale.
19. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Falkirk Council prior to 17 February 2019 on the Applicant's behalf.
20. On 17 April 2019, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 9 May 2019.

Reasons for Decision

21. The application was in terms of rule 109, being an order for eviction of a PRT. I was satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly served upon the Respondent. In regard to whether a sufficient period of notice was afforded, I was satisfied that, as the Respondent had been entitled to occupy the Property for less than six months, significantly more than sufficient notice had been provided.
22. In regard to whether the Notice to Leave was in sufficient detail, Part 2 of the notice stated that it relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act; that the Applicant sought to sell the Property. No explanation was provided in the first section of Part 3 of the notice though a short, but material, explanation of the supporting evidence was provided in the second section of Part 3 (that is, the description of access being provided to obtain a Home Report). I considered that in the circumstances that the level of detail in the Notice to Leave was sufficient. I was thus satisfied that the requirements of the 2016 Act had been complied with in regard to the Notice to Leave in itself and as a pre-requisite to raising the application.
23. In regard to whether I was satisfied that the Applicant was entitled to rely upon Ground 1 in these circumstances, I was provided with evidence that she had engaged a surveyor to obtain a Home Report. I regarded this as sufficient in itself but the Applicant's further submissions as to steps being taken to instruct a solicitor and investigate a sale to the local authority gave further context to the Applicant's actions. The Applicant convincingly explained that she would be advancing a sale very promptly on obtaining vacant possession as she wished to discontinue owning the Property, with all the responsibilities that entailed, as soon as possible. In all the circumstances before me, I was satisfied that Ground 1 was well founded by the Applicant. In any case, the application was effectively consented to by the Respondent.
24. 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. I was thus satisfied to grant an order for eviction.

Decision

25. In all the circumstances, I grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in normal terms.

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.

J Conn

Legal member/Chair

Date

9 May 2019