



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/22/2091

Re: Property at Flat 7, 10 George Street, Paisley, PA1 2JB (“the Property”)

Parties:

Ms Anneliese Kenny, Mrs Laura Kenny, 164 Rannoch Drive, Bearsden, G61 2BJ (“the Applicants”)

Mr Scott McDonald, Flat 7, 10 George Street, Paisley, PA1 2JB (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. The Applicant seeks an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a Tenancy agreement, Notice to Leave, Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, a rent statement, a statement from the Applicants regarding their reasons for selling the property and email correspondence between the Applicants and the selling agent regarding a valuation of the property for sale. The application is based on ground 1 of schedule 3 of the 2016 Act, the landlord intends to sell the let property.

2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer on 1 November 2022. Both parties were notified that a case management discussion ("CMD") would take place by telephone conference call on 7 December 2022, and they were required to participate. On 2 December 2022 the Applicants submitted a further written statement.
3. The CMD took place on 7 December 2022 at 2pm. The Applicants were represented by Mr Thomas. The Respondent did not participate and was not represented.

Case Management Discussion

4. The Tribunal noted that Mr Thomas had sent an email to the Tribunal on 23 November 2022. This indicated that an inspection of the property had been carried out on 22 November 2022. The Respondent had not been present. Mr Thomas noted that, although most furniture was still in place, the washing machine and fridge freezer had been removed. In response to questions from the Tribunal Mr Thomas said that there has been no contact from the Respondent for several months. Although there were missing items, most of the furniture, some clothes, shoes, toiletries were still in the property and there was bedding on the bed. It therefore appeared that the Respondent was still occupying the property, at least some of the time. Mr Thomas also confirmed that he has spoken to neighbours on a few occasions, but none have been able or willing to confirm if the Respondent still resides there.
5. The Tribunal advised Mr Thomas that it could not consider the statement submitted on 2 December 2022. Due to the holiday weekend, there had been insufficient time to send a copy of this to the Respondent and it had been lodged late. In response to questions from the Tribunal Mr Thomas confirmed that the email sending the Notice to leave had been sent to the email address used by the Respondent when he had communicated with them about tenancy related matters. It had been delivered/received.
6. Mr Thomas referred the Tribunal to the statement lodged from the Applicants which was submitted with the application. He said that the Applicants decided to sell the property due to financial hardship. The property had been purchased as an investment and they thought it would be a straightforward enterprise which would provide a regular income. Issues developed with late and irregular payments, and they considered selling. The rent payments stopped altogether in March 2022, and they are now desperate to sell. The arrears are substantial. Despite this, they are unable to claim benefits due to having the property which is not their home. The property is their only rental property, and the Respondent is their first tenant. It has been valued at £90,000 and there is a mortgage over it.
7. Mr Thomas advised the Tribunal that the property is a one bedroom flat. The Respondent is the sole tenant. A partner appeared to reside with him when he first moved in. However, they contacted her by telephone when they could not

get in touch with the Respondent, and she said that they had separated. It is understood that he has no dependants. The arrears of rent now stand at £5114.50. The agents were contacted by the CAB at one point who advised that they were assisting him with housing and benefits, but no further information has been forthcoming. An application was made for direct payments from Universal Credit, but they were told that the Respondent is not in receipt of this benefit. It is therefore assumed that he is working. He was working at the start of the tenancy but told them that he had changed job during the pandemic. In response to questions from the Tribunal, Mr Thomas said that they received a call in August 2022 from the Respondent's sister who spoke of mental health issues and a suicide attempt. However, they have been unable to verify this information and Mr McDonald has not responded to emails and calls offering to assist him.

Findings in Fact

8. The Applicants are the owners and landlords of the property.
9. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
10. The Applicants are entitled to sell the property.
11. The Applicants intend to sell the property when it becomes vacant.
12. The Respondent has incurred rent arrears of £5114.50.
13. The Applicants have suffered financial hardship because of the rent arrears and the delay in selling the property caused by the Respondent's continued occupation of same.

Reasons for Decision

14. The tenancy started on 10 May 2021. The application to the Tribunal was submitted with a Notice to Leave dated 1 April 2022 together with an email to the Respondent enclosing the Notice to leave, also dated 1 April 2022. Clause 4 of the tenancy agreement stipulates that correspondence, including formal notices, are to be sent by email. The Notice was sent to the Respondents using the email address specified in the tenancy agreement.
15. The Notice to leave states that an application to the Tribunal is to be made on ground 1, landlord intends to sell the let property. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 28 June 2022. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicants have complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority by email. The

Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.

16. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 1 of Schedule 3 (as amended by section 43 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(1) It is an eviction ground that the landlord intends to sell the let property. (2) The Firsttier 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 ”
17. The Tribunal is satisfied that the Applicants, as owners of the property, are entitled to sell same. From the documents submitted with the application, and the information provided at the CMD, the Tribunal is also satisfied that the Applicants intend to market the property for sale when it becomes vacant. They have obtained a valuation of the property from their agents and submitted a statement to the Tribunal which explains why they intend to sell the property.
18. The Tribunal notes that the Applicants have decided to sell the property partly because of the substantial rent arrears which have accrued. These have caused them to experience financial hardship. They are currently struggling to pay both the mortgage for the property and for their home. They have been unable to access state benefits because of their continued ownership of the property. This has also impacted on their ability to pay their bills.
19. The Respondent did not participate in the CMD and did not lodge written submissions. The only information available to the Tribunal was provided by the Applicants representative. It was noted that the Respondent resides at the property alone. He is thought to be in employment, although there has been no recent contact from him to confirm that this is the case. The letting agent was contacted by a family member who spoke of mental health issues. However, it has not been possible to verify this information as the Respondent has failed to respond to emails and calls from the letting agent.
20. Having regard to the information available about both parties, the Tribunal is satisfied that it would be reasonable to grant the eviction order.
21. The Tribunal concludes that the Applicants have complied with the requirements of the 2016 Act, that the eviction ground has been established, and that it would be reasonable to grant the eviction order.

Decision

22. The Tribunal determines that an eviction order should be granted against the Respondent.

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 Bonnar

Josephine Bonnar, Legal Member

7 December 2022