



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/22/2968

Re: Property at 17 Ben Vorlich Place, Darnley, Glasgow, G53 7WX (“the Property”)

Parties:

Mr Mohammed Imran Ghafoor, 18 Harvie Ave, Glasgow, G77 6LG (“the Applicant”)

Mr Amarjit Singh, Mrs Santhok Kaur, residing at 17 Ben Vorlich Place, Darnley, Glasgow, G53 7WX; (“the Respondents”)

Tribunal Members:

Jim Bauld (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for an eviction order should be dismissed as unnecessary

Background

1. By application dated 19 August 2022, the applicant sought an eviction order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 24 November 2022, the application was accepted by the tribunal and referred for determination by the tribunal.
3. A Case Management Discussion (CMD) was set to take place on 8 March 2023 and appropriate intimation of that hearing was given to the parties

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 8 March 2023 via telephone case conference. The applicant was not present but was represented by his letting agent, Mr Mahmood Ullah of Letsbwise Glasgow Limited, 217 Paisley Road West, Glasgow G51 1NE. The respondents attended and took part personally in the telephone case conference.
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.

Discussion at the CMD

6. Prior to the tribunal commencing, the respondents had advised the tribunal clerk that they had now removed from the property and had been attempting to return the keys to the property to the letting agent that morning.
7. The tribunal thereafter noted from Mrs Kaur that she confirmed that the respondents have now emptied the property and had removed from it. She indicated that she had tried to return the keys to the letting agent's office but that the office has been closed.
8. Mr Ullah indicated to the tribunal that he was in his office and that it was open. He also indicated that even if the keys were to be returned, he would prefer the tribunal to grant an eviction order to protect his client's position.
9. The tribunal explained to Mr Ullah that the granting of an eviction order was a matter for the tribunal's discretion and that the papers which had been lodged with the tribunal contained no information which would allow the tribunal to grant such an order. The basis of the eviction application was ground 5 in schedule 3 of the 2016 Act. That ground is based upon the landlord requiring to recover a property to allow a family member to live in the property. Mr Ullah seemed to believe that the ground being used related to the landlord requiring the property for himself.
10. The tribunal indicated to Mr Ullah that it had been provided with no details at all of the identity of the family member involved, their need for the property, the current housing situation or their family composition. Mr Ullah seemed or be under the impression that the tribunal was simply there to "rubber stamp" any application made by a landlord. The tribunal indicated to him that was not the situation and that any request for an eviction required to be supported by appropriate evidence, both in regard to the existence of the ground being used and to confirm why it would be reasonable to grant the order.

11. It was they noted from Mrs Kaur that she was in her car and was close to the letting agent's office and was willing to attend immediately to deliver the keys. The tribunal confirmed with both parties that they were willing to meet to allow the keys to be returned, and accordingly the tribunal determined to adjourn proceedings for a short period of time to allow that to take place. The tribunal adjourned at approximately 10:20 am.
12. The tribunal hearing resumed at 10:45 am. Mr Ullah confirmed that he had met with Mrs Kaur and she had returned the keys to the property. He indicated, in response to a question from the tribunal that he would wish to attend the property to confirm that the respondents had removed.
13. The tribunal indicated to parties that if the respondents had removed then the tenancy would be treated as terminated consensually in terms of section 50 of the 2016 Act.
14. Section 50 is in the following terms

50 Termination by notice to leave and tenant leaving

- (1) A tenancy which is a private residential tenancy comes to an end if—
 - (a) the tenant has received a notice to leave from the landlord, and*
 - (b) the tenant has ceased to occupy the let property.**
- (2) A tenancy comes to an end under subsection (1) on the later of—
 - (a) the day specified in the notice to leave in accordance with section 62(1)(b), or*
 - (b) the day on which the tenant ceases to occupy the let property.**
- (3) For the avoidance of doubt, a tenancy which is to come to an end under subsection (1) may be brought to an end earlier in accordance with section 48.*

15. That section indicates that a private residential tenancy comes to an end if a tenant has received a Notice to Leave (NTL) from the landlord and tenant has ceased to occupy the left the property. In this case a NTL had been served upon the respondents on 12 May 2022. The section indicates that the tenancy comes to an end on the day upon the later of one of two dates, the date specified in the NTL or the date upon which the tenant ceases to occupy the property. The date specified in the NTL was 12 August 2022
16. It was agreed that Mr Ullah would attend at the property at some point over the next day or so. He would then email the tribunal to confirm that he was satisfied that the property was now empty. If so, the tenancy would be treated as having terminated consensually as at 8 March 2023 being the date upon which the

tenants had ceased to occupy the property, which date is obviously later than the date specified in the NTL.

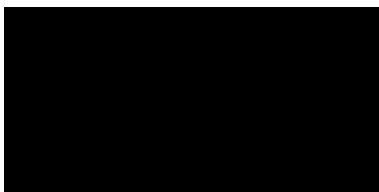
17. Mrs Kaur indicated that the respondents did not have a new permanent address. She stated they would be staying in hotel accommodation until they find another house. She agreed that the tribunals' decision could be sent to the respondents by email at the address shown on the application.
18. On that basis, the tribunal adjourned, and indicated that it would issue a decision upon receipt of further correspondence from Mr Ullah.
19. By email dated 15 March 2023. Mr Ullah's office confirmed that the keys had been returned as previously noted. He did not confirm that he had attended at the property, taken entry to it, confirmed that it was empty and that was the longer occupied by the respondents. The tribunal will assume that to be the case.

Decision

20. The tribunal determines that the private residential tenancy between the parties has been consensually terminated in terms of section 50 of the 2016 Act, that termination occurred on 8 March 2023 and that the tribunal does not require to determine the application for an eviction order.
21. The tribunal accordingly determines to dismiss this application

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.



08/03/2023

Legal Member/Chair

Date

