



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/22/3372

Re: Property at Flat 1, 20 Station Road, Dumbarton, G82 1NR (“the Property”)

Parties:

Miss Kareen Buttle, 10 Scapesland Terrace, Dumbarton, G82 2AF (“the Applicant”)

Miss Ainsley Sutherland, Flat 1, 20 Station Road, Dumbarton, G82 1NR (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be determined without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, received on 12 September 2022, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 1 of Schedule 3 to the 2016 Act, namely that the landlord intends to sell the Property. She stated that this was due to personal circumstances with increasing mortgage rates and the fact that she was getting married and would be moving house herself.

The application was accompanied by copies of a Notice to Leave, dated 16 June 2022, citing Ground 1 of Schedule 3 to the 2016 Act as the Ground being relied on and advising that an application to the Tribunal for an Eviction Order would not be made before 11 September 2022, and an email of 7 September 2022 from David Muir Estates, Dumbarton, confirming that they are instructed to market the Property for sale when the Respondent has vacated it and some redecoration has been carried out.. The Applicant also provided proof of delivery of the Notice on 17 June 2022.

On 10 February 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written

representations by 3 March 2023. The Respondents did not make any written representations to the Tribunal.

On 21 February 2023, the Applicant advised the Tribunal in an email that there was an issue of water penetration in the Property which caused dampness in the bedroom and that communal repairs, organised by the property factors, are under way. As a result of delays in this work, the Respondent stopped paying rent, and there were arrears of £1,020 as at 21 February 2023. A further problem arose in January 2023, when water leaked from the Property into the shop beneath. The Applicant's plumber has advised that the bathroom needs to be stripped to get to the root of the issue. He had reported that the floor area under the bath was extremely wet, possibly the result of the bath having overflowed, but this was denied by the Respondent. The Applicant thought the bathroom floor was unsafe and contacted the Environmental Health Department of West Dunbartonshire Council. They attended the Property and decided that it is below habitable standards. The Respondent had declined an offer of temporary homeless accommodation from the Council and had told the Applicant that she was going to look for somewhere herself.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 16 March 2023. The Applicant was present. The Respondent was not present or represented.

The Applicant told the Tribunal that the Private Residential Tenancy Agreement between the Parties commenced on 10 September 2020 at a rent of £380 per month. She advised that, late in the afternoon of the previous day, she had received a message from the Respondent to say she was moving out, had the keys to another house and hoped to hand the keys of the Property back on the morning of the Case Management Discussion. This had not yet happened, and the Applicant said that she still wished an Eviction Order, in case the Respondent did not move out as indicated.

The Applicant told the Tribunal that the communal works are now under way, and she will be liable for a share of the cost, as well as the full cost of the internal repairs to the bathroom and bathroom floor. She had called in the Environmental Health Department as she was concerned about the possibility that the bath might fall through the floor into the pharmacist's shop below. She has three investment properties, but with rising costs of borrowing, repair costs and restrictions on rent increases, she has decided to sell them all. One is already sold and the tenant in the other one is in the process of leaving voluntarily. She had decided that it was no longer financially viable for her to continue as a landlord. She had kept her rents low, recognising that her tenants were on benefits. She understood that the Respondent has no dependent children and that she does not work. She was not aware of the Respondent having any particular health issues.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.

Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in Schedule 3 to the 2016 Act applies. Ground 1 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to sell the let property and that the Tribunal must find that Ground 1 applies if the landlord is entitled to sell and 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 the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of those facts. Ground 1 goes on to state that evidence tending to show that the landlord has that intention includes (for example) a letter of engagement from a solicitor or estate agent concerning the sale, or a recently prepared Home Report.

The Tribunal was satisfied that the requirements of Ground 1 in respect of service of the Notice to Leave had been complied with and that the Applicant intends to sell the Property. The only question for the Tribunal to decide, therefore, was whether it would be reasonable to issue an Eviction Order on account of those facts.

The Tribunal noted the reasons given by the Applicant for wishing to sell the Property, and the fact that she had instructed estate agents to market it when it is vacant and redecoration works have been carried out. The Tribunal recognised that the Applicant would also have to sort out the problems in the bathroom before starting the sale process. The Tribunal also noted that it appears that the Respondent has secured alternative accommodation, but that, as she had not yet handed back the keys, the Applicant is seeking the comfort of an Eviction Order, in case the Respondent does not move out as anticipated.

Having considered carefully all the evidence before it, the Tribunal decided that it would be reasonable to issue an Eviction Order. In the event that the Applicant advises the Tribunal that the keys have been returned to her and she no longer regards the Order as necessary, the Tribunal will consider a Review of its Decision, having regard to the stigma that may attach to the Respondent of an Eviction Order being made against her.

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.

George Clark

Legal Member/Chair

16 March 2023
Date