



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/19/3975

Re: Property at Whitebrae House, East Brucehill, New Deer, Turriff, AB53 6YJ ("the Property")

Parties:

Mr David McAllan, Mrs Sarah McAllan, 1006 Country Club Crescent, London, Ontario, N6C 5S1, Canada ("the Applicants")

Miss Claire Louise Rose, Mr Stuart Roy Berry, Whitebrae House, East Brucehill, New Deer, Turriff, AB53 6YJ; Whitebrae House, East Brucehill, New Deer, Turriff, AB53 6YJ ("the Respondent")

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an Eviction Order must be granted against both Respondents in terms of Grounds 1 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

This is an application in terms of Rule 109 of the Tribunal rules received on 13th December 2019. The Applicants seek an Eviction order in terms of Grounds 1 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 as it is stated that the landlord Applicants intend to sell the let property and that the Respondents are in three or more months of consecutive rent arrears.

The Application was accepted by the Tribunal on 9th January 2020. By letter of 31st January 2020 the Tribunal advised parties of the date, time and venue of the Case Management Discussion and invited parties to make written representations by 21 February 2020. No such representations were received from the Respondents.

Case Management Discussion

A Case Management Discussion took place at Banff Sheriff Court on 6 March 2020. The Applicant Mr David McAllan was present along with a Mr Gordon as a supporter. He was also represented by Mr Duffill Solicitor as local agent for the Applicants' representative. The Respondents did not attend the Case Management Discussion. The Application and supporting papers had been served on the Respondents at the Property by Sheriff Officers on 4th February 2020.

The Applicants' representative requested that the Tribunal proceed in absence of the Respondents and in terms of Rule 29 of the Tribunal Rules of Procedure this request was granted as the application and papers had clearly been served on the Respondents.

The Tribunal in dealing with the Application had before it the following documents:-

The Application with paper apart, the tenancy agreement, two notices to Leave giving Ground 1 as the Eviction ground, an e mail with these Notices attached, a Notice in terms of Section 11 of the Homelessness etc (Scotland) 2003, an email with said Notice in terms of the Homelessness etc (Scotland) Act 2003 attached, a Terms of Business Letter from Brown and Macrae Solicitors, Fraserburgh, a letter regarding outstanding rent, two Notices to Leave giving Ground 12 as the Eviction ground, an email with these Notices attached and a number of bank statements.

From the documents lodged by the Applicants it appeared that the tenancy started on 1st February 2019 and the monthly rent payable was £1250. The Applicant Mr McAllan advised the Tribunal that he was not aware of any issue with arrears of rent being due to a delay or failure in the payment of any benefit. He understood that the

Respondent Miss Rose had a job and also ran a business and that the Respondent Mr Berry ran a business. No rent at all had been paid since August 2019. Rent when paid had been paid by the Respondents directly into the Applicants' Bank account by bank transfer.

As far as the proposed sale of the property is concerned the Applicants had lodged a letter of engagement with Brown and McRae solicitors and Mr McAllan confirmed it was intended to sell the property as soon as possible after the Respondents left it and certainly within 3 months of that date.

The Tribunal considered the Notices to Leave which had been lodged and served on the Respondents by email. In the case of the Notices to leave in respect of Ground 12 these were properly served and gave the correct Notice period. In the case of the Notices to Leave under Ground 1 the date which was stated as the earliest date at which the parties could apply to the Tribunal was incorrect and was a few days after the correct date. The Tribunal was prepared to accept that this was a minor error in the document in terms of section 73 of the Private Housing (Tenancies) (Scotland) Act 2016 and not one which affected the validity of the Notice to Leave as it gave the Respondents more notice of a possible application to the Tribunal than was required under the Act.

Having considered the Application, supporting documents and representations the Tribunal was prepared to grant an eviction order under Grounds 1 and 12 of the 2016 Act against both of the Respondents.

Findings in Fact

1. The Applicants and Respondents entered into a Private Residential Tenancy with effect from 1 February 2019.
2. The monthly rent payable was £1250.
3. No rent has been paid since August 2019 and the rent has been continuously in arrears for more than 3 months.
4. The Respondents at no time advised the Applicants that rent payments were being made by benefit payments paid to them or on their behalf and there is no information to suggest that the rent arrears are due to failure or delay in payment of any benefit.

5. In September 2019 the Applicants approached a solicitor to instruct the sale of the Property and by letter of 3rd September 2019 these solicitors provided a detailed breakdown of costs to market and sell the property.
6. The Landlord Applicants are entitled to sell the Property.
7. At the case management discussion the Applicant Mr McAllan confirmed the Applicants' intention to proceed to sell the Property as soon as possible.
8. Notices to Leave in appropriate form were timeously served on both Respondents in respect of both Grounds 1 and 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
9. A notice in terms of the Homelessness etc (Scotland) Act 2003 was sent to the local authority in this matter.

Reasons for Decision

The Tribunal was satisfied that the Notices to Leave were in proper form subject to the observation above regarding a minor error in the Ground 1 Notices as far as the earliest date the matter could proceed to the Tribunal. From the information and papers presented the Eviction Grounds were clearly met in respect of both Grounds 1 and 12 (2) (a) of Schedule 3 of the Act and accordingly the Tribunal must grant an eviction order under Section 51 of the Act.

Decision

The Tribunal granted an Eviction Order in favour of the Applicants and against the Respondents as the Eviction Grounds under Grounds 1 and 12 are met. The Applicants are entitled to sell the property and intend to do so within 3 months of the Respondents leaving the Property and the rent has been continuously in arrears for a period in excess of 3 months.

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.

Valerie Bremner

Legal Member/Chair

6th March 2020

Date