



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/23/2980

Re: Property at 21 Atholl View, Prestonpans, EH32 9JF (“the Property”)

Parties:

Mr Stephen Cormack, 25A Appin Drive, Prestonpans, East Lothian, EH32 9SB (“the Applicant”)

Miss Kirsty Doran, 21 Atholl View, Prestonpans, EH32 9JF (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

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

1. On 28th August 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property using Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) 2016.

2. Lodged with the application were: -
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 12th February 2019 and a rent of £700 per month
 - ii. Copy Notice to Leave dated 1st June 2023;
 - iii. Copy email dated 1st June 2023 to the Respondent serving the Notice to Leave;
 - iv. Section 11 Notice;
 - v. Quote for estate agency and conveyancing

3. The Application was served on the Respondent by Sheriff Officers on 24th November 2023.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Ms Gray of Professional Property Letting. There was no attendance by the Respondent or any representative on her behalf.
5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
6. Miss Gray sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. She said that the Applicant lived abroad and did not wish to be a landlord anymore. He owned the property, was entitled to sell it, and wished to do so. He had consulted a solicitor/estate agent and obtained a quote for fees. Ground 1 was read out to her and she confirmed that in terms of the ground the Applicant intended to sell or market for sale within three months of the Respondent vacating.
7. The Tribunal were satisfied that the ground had been established, and asked Miss Gray to address the Tribunal on reasonableness. Miss Gray reiterated that the Applicant did not wish to be a landlord anymore and was entitled to sell the property. She said that he did not have any other rental properties. She said that the Respondent is a single woman, aged around forty, with no dependants. The property is a two bedroomed flat. The rent is paid in full by housing benefit. The Applicant visited the property just before Christmas and the Respondent informed him that she was not going to move. Miss Gray said that when the section 11 notice was served the local authority said that they would not be able to house the Respondent without an eviction order.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 12th February 2019;
- c. A Notice To Leave, dated 1st June 2023, was served timeously and correctly;
- d. The Application was served on the Respondent by Sheriff Officer on 24th November 2023;
- e. The Applicant owns the property;
- f. The Applicant intends to sell the property or market it for sale within three months of the Respondent vacating;
- g. The Applicant has had contact with a solicitor/estate agent regarding selling the property;

- h. The Respondent is a single woman with no dependants;
- i. There are no rent arrears.

Reasons for Decision

8. It is usually mandatory to grant an application under Ground 4 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal’s power to issue an eviction order), the words “or must” are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii)sub-paragraph (3) is repealed,

(iv)in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h)in paragraph 10(2) (not occupying let property)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i)in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(k)in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(ba)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

9. The Tribunal now has to decide if it is reasonable to grant the eviction order.
10. The Tribunal were of the view in this case that the Applicant had established Ground 1 through provision of the email from the solicitor/estate agent.
11. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Applicant's agent was able to give details that the Respondent was a single person with no dependents. The Tribunal also noted that the Respondent had not joined the conference call or offered any opposition or defence. The Tribunal considered in those circumstances that it was reasonable to grant the order.

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.

A Kelly

22/01/2024

Legal Member/Chair

Date

