



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/23/3608

Re: Property at 2 Winton Court, Tranent, EH33 2PR (“the Property”)

Parties:

Angela Paterson, John Paterson, 63 Hunterfield Terrace, Gorebridge, EH23 4BG (“the Applicant”)

Mr David Jeffrey, 2 Winton Court, Tranent, EH33 2PR (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. On 11th October 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 under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 20th May 2018 and a rent of £625 per month;
 - ii. Copy Notice to Leave dated 5th July 2023;
 - iii. Sheriff officer’s citation of service dated 6th July 2023 serving the Notice to Leave;
 - iv. Section 11 Notice and proof of service;
 - v. Terms of Business letter from J&E Shepherd, Surveyors

3. The Application was served on the Respondent by Sheriff Officers on 13th December 2023.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Mr Gray of Gilson Gray, Solicitors. There was no attendance by the Respondent or any representative on his 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. Mr Gray sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. He said that the Applicants intended to sell the property, or at least put it up for sale, within three months of the Respondent vacating it. He said that neither of the Applicants are currently in employment. The First Named Applicant is a housewife and the Second Named applicant is self employed. He has not been able to work recently due to health issues and it will be the middle of the year before he is back on his feet and able to work. They are currently relying on the rent for income. Their situation has changed since the Notice to Leave was served as there were no health issues at that time. The intention then had been to use the free proceeds of sale to buy a new house.
7. Mr Gray told the Tribunal that he had limited information about the Respondent. He is a single tenant but there are two other occupants of the property. The Applicants are not sure if they are children or a partner and a child. The Respondent is 43 years of age. He has an entitlement to benefits and his rent is paid by universal credit. However, the Applicants spoke to him in December 2023 when the rent fell in to arrears. The arrears have not been cleared.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 20th May 2018;
- c. A Notice To Leave, dated 5th July 2023, was served timeously and correctly;
- d. A section 11 notice was served on the local authority;
- e. The Application was served on the Respondent by Sheriff Officer on 13th December 2023;
- f. The Applicants intend to sell or market for sale the property within three months of the Respondent vacating;
- g. Neither Applicant is in work, the First Named Applicant being a housewife and the Second Named Applicant being self employed but currently unable to work due to health issues;

- h. The Applicants are finding it difficult financially and need to sell the property to provide funds
- i. The Respondent is a single tenant aged 43;
- j. The Respondent's rent in the main is met by benefits.

Reasons for Decision

8. It is usually mandatory to grant an application under Ground 1 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

"(d)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 by provision of the terms of business letter from the surveyor and the submissions by the solicitor. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal accepted the Applicants’ reasons for wishing to sell , and noted that there had be no attempt by the Respondent to contact the Applicant, nor had he appeared at the CMD. 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.

Alison Kelly

29th January 2024

Legal Member/Chair

Date