



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/23/1210

Property : 15 Northgate, St Giles Road, Elgin IV30 1PY (“Property”)

Parties:

Steven Cox t/a L&S Properties, Strathlene House, Calcots, Elgin IV30 8NB (“Applicant”)

Caelum Backhouse and Lilia Lee, 15 Northgate, St Giles Road, Elgin IV30 1PY (“Respondent”)

Moray Citizens Advice Bureau, 6 Moss Street, Elgin IV30 1LU (“Respondent’s Representative”)

Tribunal Members:

Joan Devine (Legal Member)

Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Private Residential Tenancy Agreement dated 11 and 12 January 2022 which commenced on 14 January 2022; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 29 November 2022 ("Notice to Leave"); photograph of the Notice to Leave being hand delivered; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 19 April 2023; home report for the Property dated 4 October 2022 and sheriff officer's execution of service certifying service of the Application on 9 January 2024.

Case Management Discussion

A case management discussion (“CMD”) took place before the Tribunal on 26 February 2024 by teleconference. The Applicant and the Respondent were in attendance. The Respondent was represented by Sonia Hayward of the Respondent’s Representative. Mr Leese told the Tribunal that his birth second name is Backhouse but he has used the name “Leese” for many years. He said that “Backhouse” was his correct legal name.

Ms Hayward told the Tribunal that the Respondent did not oppose the application but did not currently have alternative accommodation. She said that a general housing application for a ground floor property had been submitted to the Council but a homeless application would not be accepted by the Council until an eviction order was granted. She said that the Property is on the third floor and that Ms Lee has health issues which mean a third floor property is not suitable for her. She said that a functional housing form had been completed but the outcome was not yet known. Ms Hayward said that she anticipated that the outcome would be that the Respondent would be awarded additional points that would push their housing application up the list. Ms Hayward said that the Respondent would like for an eviction order to be granted as it would allow their housing application to be progressed. She said that Moray Council would provide temporary accommodation once the homeless application was submitted.

The Applicant told the Tribunal that he had owned a number of rental properties all of which had been sold. He said the Property was the last one. He said that there had been an issue around rent arrears but that the rent had been paid regularly for the last while. He said he understood the Respondent had health issues to consider and he had no desire to rush them out of the Property. The Tribunal noted that the Application proceeded on the basis of ground 1 and 1A but that no information had been provided regarding financial hardship.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement for the Property dated 11 and 12 January 2022 which commenced on 14 January 2022.
2. A Notice to Leave was served on the Respondent by hand delivery on 29 November 2022. It stated that an application for an eviction order would not be submitted to the Tribunal before 22 February 2023.

3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 19 April 2023.
4. The Applicant holds title to the Property and is entitled to sell the Property.
5. The Applicant intends to sell the Property or at least put it up for sale within 3 months of the Respondent ceasing to occupy it.

Reasons for the Decision

In terms of section 51 of the Act, 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 applies.

In the Application the Applicant stated that he sought recovery of possession of the Property on the basis set out in ground 1, which is that the landlord intends to sell and ground 1A, which is that the landlord intends to sell to alleviate financial hardship. The evidence lodged with the application of intention to sell was a copy home report. The Tribunal considered the evidence provided as well as the oral submission from the Applicant and determined that ground 1 for eviction had been established. There had been no information placed before the Tribunal regarding financial hardship. In those circumstances the Tribunal determined that ground 1A had not been established.

In light of the submissions made by the Applicant and the Respondent's Representative, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal determined to grant an order for possession of the Property.

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.

**Joan Devine
Legal Member**

Date : 26 February 2024

