



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) Scotland Act 2016

Chamber Ref: FTS/HPC/EV/20/1162

Re: Property at 46 Sharphill Road, Saltcoats, KA21 5QT (“the Property”)

Parties:

Mr Robert Paterson, Ground Floor Flat, 1/43 West Main Street, Darvel, KA19 0EB (“the Applicant”)

Mr William Hendrie, 46 Sharphill Road, Saltcoats, KA21 5QT (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision

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

Background

1. The Applicants submitted an application for repossession of the Property from the respondent dated 12th May 2020.
2. In support of their application they lodged the following documents:-
 - a. A copy of the lease between the Applicant and the Respondent with a commencement date of 20th November 2018
 - b. A copy of a Notice to Leave dated 8th February 2020
 - c. Letter from the Respondent confirming he received the Notice to Leave by hand on 8th February 2020
 - d. S11 notice addressed to North Ayrshire Council
 - e. A copy of an e-mail to North Ayrshire Council enclosing the S11 Notice dated 10th May 2020
 - f. Affidavit of Robert Paterson deponed before Michelle Rankin solicitor and Notary Public dated 28th June 2020.

3. A Case Management Discussion (CMD) was held by teleconference in view of the current Covid 19 pandemic, at 2pm on 15th September 2020.
4. The papers and intimation of the CMD were served on the Respondent by Sheriff Officers.
5. Both the Applicant and Respondent attended the CMD. Neither was represented.
6. The Tribunal also had sight of a Land Certificate showing the Applicant was the sole owner of the Property.

The Case Management Discussion

7. The Convener made introductions and explained the purpose of the CMD which is to explore the issues and to determine whether a full hearing is required or not. The Convener confirmed that the tribunal can make any decision at a CMD that it can make after a full hearing.
8. There were no written representations received from the Respondent.
9. The Applicant confirmed that he was seeking an order for repossession today. He had submitted in his application and the papers lodged with it that he had to leave his previous house as his partner was selling it and the Affidavit he had lodged confirmed this, advising the house was to be sold on 10th July 2020. The Applicant confirmed that he is currently staying in rented property but this is temporary and he wishes to move back into his home at the Property once the Respondent leaves. The Applicant has stated in his Notice to Leave that was served on the Respondent that he requires to move back as he and his partner have health issues that require him to live on the one level.
10. The Respondent was invited to give his views and he advised that he understands he has to leave the Property he is not contesting the eviction application and has been in discussions with the Council about a new property but does not have one as yet. He confirmed he believes he is on the waiting list and if the order is granted the Council advised he will probably get emergency accommodation.
11. The Respondent asked when he would have to leave if the order was granted and the Legal Member confirmed that the order could not be enforced for at least 30 days after today's date to allow for the time to appeal.

Findings in Fact

12. The parties entered into a lease of the Property which commenced on 20th November 2018
13. The Rent due in terms of the lease is £380 per calendar month payable in advance
14. The Respondent who is the tenant is still living in the Property.
15. A notice to leave was served on the Respondent on 8th February 2020 by hand delivery confirming that no proceedings would be raised before 3rd May 2020 and advising that the Landlord intended to live in the Property as his main home.
16. These proceedings were raised on 12th May 2020 and the application included a copy of the Notice to Leave and evidence of the Applicant's

intention in the form of an affidavit sworn in front of a solicitor and notary public.

17. The Applicant, who is currently renting temporary accommodation, intends to return to live in this Property.

- **Reasons for Decision**

18. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 4 of Schedule 3 of the Act as the relevant ground of eviction.

19. There is evidence of how the ground is met namely the Affidavit dated 28th June 2020.

20. The Notice also set out the relevant notice period which expired on 3rd May 2020

21. The Application was lodged on 12th May 2020 it was therefore lodged after the expiry of the Notice period and within 6 months from the date of the expiry of the notice period and therefore complies with Section 55 of the Act.

22. Ground 4 of Schedule 3 of the Act states

(1) It is an eviction ground that the landlord intends to live in the Property.

(2) The First Tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes for example an affidavit stating the landlord has that intention.

23. The Tribunal accepted the verbal averments and written affidavit statement from the Applicant who was credible in his evidence that he wishes to return to the Property to live as his main home. Due to the sale of his previous home he is currently living in rented accommodation and wants to move back into his own house.

24. The Respondent appreciates he is required to move out but has not been offered a house by the council and understands he needs an order from the Tribunal before he will be offered accommodation in the short term.

25. The Tribunal is satisfied in terms of S 51 (1) of the Act that one of the eviction grounds named in Schedule 3 of the Act, namely Ground 4, is met, the Tribunal has no discretion and therefore determined that the order for eviction sought by the Applicant should be granted.

- **Decision**

The Tribunal grants the order for possession against the Respondent.

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.

 J Todd

15th September 2020

Legal Member/Chair

Date