



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/20/0502

Re: Property at 23 West Avenue, Uddingston, G71 6HB (“the Property”)

Parties:

Mr Colin Adams, 18 Campbell Street, Hamilton, ML3 6AS (“the Applicant”)

Ms Lisa Munro, 23 West Avenue, Uddingston, G71 6HB (“the Respondent”)

Tribunal Members:

Steven Quither (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order is to be granted under S51 of the 2016 Act

1. BACKGROUND

The Respondent has occupied the Property since about February 2017, the exact initial basis of which occupation was unclear. However, what seems to have happened is that between then and sometime in 2019, steps were taken to regularise her occupation, most notably after about November 2018 when the present agents for the Applicant took over management of the Property from previous agents who, for whatever reason, had not been able to regularise the Respondent’s occupation by means of a valid lease in any form. Thereafter, agreement was reached that the Respondent would pay £600 rent per month after an initial period of paying £400 and the present agents assisted the Respondent in drawing up a payment plan to address all matters of rent outstanding. A Private Residential Tenancy Agreement (“PRT”) was drawn up in March 2019 reflecting this rent and confirming the start date of occupancy under that Agreement was to be backdated to 5 November 2018. Despite this being sent to the Respondent for signature, she failed to do so, despite sundry follow up attempts to get her to do so, including visits to the Property, which were not well received, particularly by her son, who also appears to have taken up occupancy at some time during Autumn or so of

2019. Attempts to complete a PRT involving all 3 parties were similarly unsuccessful.

Throughout this time, the Applicant was living in “tied” accommodation, through his employment as a public house licensee. However, through a combination of circumstances, most notably a deterioration in his health following upon the death of his wife and a general downturn in the fortunes of the public house concerned, which has been further compounded after commencement of these proceedings by the coronavirus “lockdown”, he is requiring to give up that work and, consequently, lose his present accommodation which goes with it. Accordingly, he now seeks to live in the Property as his only or principal home, in essence to live out his retirement there, hence this application. An e-mail from the Applicant to his agents confirming his intention formed part of the documentation before me.

2. CASE MANAGEMENT DISCUSSION

Despite having apparently been written to on both 18 June and 23 July and a telephone call having been made to her shortly before the CMD commenced, to which there was no reply, the Respondent did not attend. The Applicant was represented by his agent, Mr Pittams. The information in the preceding paragraph was provided by Mr Pittams in the application itself, additional information provided in response to issues I raised prior to the CMD and verbally at the CMD itself. I had no reason to doubt the truthfulness of any such information he provided to me. He confirmed and clarified that he was only seeking to proceed under Ground 4 as stated in the Application, as opposed to the additional rent related grounds in the Notice to Leave, for the reasons previously stated. I was content to exercise my discretion for him to do so under s52 of the 2016 Act, despite the fact that an incorrect period of notice had been given in the Notice to Leave of 28 days as opposed to 84 days for this ground, on the basis that that leave period would have expired at about the beginning of April 2020 and the CMD, which the Respondent had apparently chosen not to attend, was now taking place on 24 July. Accordingly, I did not feel the Respondent had been occasioned any prejudice by the incorrect notice being stated on the Notice to Leave. I considered it just to exercise my discretion in this manner and allow the Application to so proceed. Since the Application was to proceed solely on Ground 4, I did not need to consider any issues arising out of rent arrears stated to be due.

3. FINDINGS IN FACT

Based on the documentation produced prior to and representations made at the CMD, I was satisfied that the parties had agreed the basic requirements of a lease between them and that the only issue preventing this from being formalised was the recalcitrance of the Respondent, for which I did not feel, acting justly, the Applicant should be penalised. I was satisfied about the intention of the Applicant to live in the Property as his only or principal home, a property which he had owned since 9 June 2016 in terms of the copy Land Certificate provided to me.

4. REASONS FOR DECISION

Since I was satisfied as to the matters referred to in the preceding paragraph, I was bound to grant the order sought, Ground 4 being a mandatory ground for repossession. I took the view I could accept the letter produced in evidence as tending to show and confirm the Applicant’s intention.

5. DECISION

To grant the order for eviction/possession sought by the Applicant, which I accordingly now do.

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.

Steven Quither

Legal Member/Chair

24 JULY 2020

Date