



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) In respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/21/2551

Re: Property at 16 Bardnaclavan Place, Janetstown, Thurso, KW14 7XG (“the Property”)

Parties:

Mr John Dunbar, Athenry, Janetstown, Thurso, KW14 7XF (“the Applicant”)

Mrs Kim Miller, 16 Bardnaclavan Place, Janetstown, Thurso, KW14 7XG (“the Respondent”)

Ross and Cromarty Citizens Advice Bureau, North Highland Housing and Homelessness Project c/o Citizens Advice Bureau, Suie House, Market Square, AIness Ross-shire IV17 (“the Respondent’s Agents”)

Tribunal Members:

Karen Moore (Legal Member) and Janine Green (Ordinary Member)

Decision

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

Background

1. By application received between 18 October 2021 and 24 November 2021 (“the Application”), the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on the Ground 5 of the Act that that a member of the landlord's family intends to live in the Property. The Application comprised a copy of an assured tenancy agreement between the Parties, albeit that the tenancy commenced on or around 31 January 2019 and so is private residential tenancy in terms of the Act, and comprised a letter from the Applicant’s estranged wife stating that she intends to live in the Property, copy Notice to Leave in terms of Ground 5 of

Schedule 3 to the Act dated 19 August 2021 and copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Highland Council, being the relevant local authority.

2. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 4 February 2022 at 14.00 by telephone conference.

CMD

3. The CMD took place on 4 February 2022. The Applicant took part and was not represented. The Respondent was not present and was represented by Ms. Yvonne Hutchison of the Respondent's Agents.
4. The Tribunal explained that the purpose of the CMD was to identify the issues between the Parties, to determine if the Ground for the Order is satisfied and to determine if it is reasonable to grant the Order. The Tribunal explained that "intent" in legal terms is a firm and unequivocal intention to act and is not a notional intent. The Tribunal explained that the onus is on the Applicant to establish the Ground on which the Application is raised and that the Tribunal must be satisfied that it is reasonable to issue an eviction order on account of those facts.
5. The Tribunal asked Ms. Hutchison to provide the Respondent's view on the Application. Ms. Hutchison stated conclusively that the Respondent did not oppose the Application and is happy to remove from the Property. She explained that the Respondent is being supported by Ross and Cromarty Citizens Advice Bureau and North Highland Housing and Homelessness Project and that she had made in excess of thirty bids for alternative accommodation to no avail. Ms Hutchison explained that the Respondent has health issues and uses a mobility scooter. Recent legislation changes have meant that the pool of properties with charging facilities available for let is restricted. However, the Respondent has widened her search to the whole of Highland district area. She explained that the Respondent has a number of pets and her daughter visits overnight and so she requires alternative accommodation suitable for those purposes.
6. The Tribunal explained that regardless of the fact that the Respondent did not oppose the Application, the Tribunal must be satisfied that the Ground for the Application is met and that it is reasonable to issue an eviction order on account of those facts. With regard to the information lodged as part of the Application, the Tribunal invited the Applicant to expand on the information lodged with the Application. The Applicant advised that he and his wife have been living apart for over two years, that his wife is in rented accommodation for which he pays and that the situation is causing both stress and anxiety and that he has been unable to work. He explained that they do not yet have a formal legal separation agreement and that the Property will be part of his settlement with his wife.

7. The issues for the Tribunal is to determine if the eviction Ground is established and if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussionincluding making a decision*” adjourned briefly to consider if the information before it at the CMD was sufficient to make a decision without further procedure. The Tribunal took the view that it had sufficient information and so proceeded to determine the Application.

Findings in Fact

8. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a tenancy of the Property between the Parties which began on or around 31 January 2019;
 - ii) The Applicant intends that a member of his family, namely, Mrs. Deirdre Dunbar, his estranged wife intends to live in the Property as her main home and residence;
 - iii) The Applicant has carried out the statutory processes required by the Act and
 - iv) The Respondent does not oppose the Application and is taking steps to remove from the Property and that with the assistance of Ross and Cromarty Citizens Advice Bureau and North Highland Housing and Homelessness Project;
 - v) The Application process has been stressful for the Applicant and Mrs. Dunbar and
 - vi) The Respondent has health and mobility issues.

Decision and Reasons for Decision

9. The Tribunal had regard to all the information before it and to its Findings in Fact. The Tribunal determined that the Ground for eviction has been met.
10. The Tribunal then considered if it could be satisfied it is reasonable to issue an eviction order on account of those facts and on all of the information before it. The Tribunal had cognisance of the fact the Application was not opposed, that the Respondent is being advised and supported by housing professionals and that the Parties both have health concerns arising from the Application process. The Tribunal was therefore satisfied that it is reasonable to issue an eviction order. However, the Tribunal had regard to the Respondent’s specific housing needs and took the view that it was appropriate to defer the date on which the eviction order comes into force and on which the tenancy ends is sixty days from today’s date.

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.

Karen Moore

Legal Member/Chair

4 February 2022
Date