

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/21/2872

Property : 106 New Road, Ayr KA8 8JG (“Property”)

Parties:

Linda Johnston, The Walled Garden, Adamton Estate, Monkton KA9 2SQ (“Applicant”)

Patricia Nugent, 106 New Road, Ayr KA8 8JG (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for possession should be made.

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 18 June 2020; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 11 August 2021 (“Notice to Leave”); copy email from the Applicant to the Respondent dated 11 August 2021 attaching the Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 16 November 2021; copy letter signed by the Applicant stating her intention to live in the Property and sheriff officer's execution of service certifying service of the Application on the Respondent on 9 February 2022.

Case Management Discussion

A case management discussion (“CMD”) took place before the Tribunal on 22 March 2022 by teleconference. The Applicant was in attendance. There was no appearance by the Respondent.

The Tribunal noted that the ground relied upon in the Notice to Leave was ground 4, which required 3 months' notice.

The Applicant told the Tribunal that she required to live in the Property. She said that after she bought the Property her mother lived there. She said that she lived in the Property with her mother around 10 years ago. She said that since her mother passed away she had let the Property. She said that she lived in her home called The Walled Garden with her husband. They wanted to downsize as the gardens were too big. She had not started to market the Walled Garden until she had possession of the Property. She said that she had been approached by an estate agent, Stonefield Estate Agents about selling the Walled Garden but she did not want to agree to sell and then have nowhere to move to.

The Applicant told the Tribunal that she did not know who lived in the Property with the Respondent. She said at one stage she believed the Respondent's son lived with her and perhaps two daughters. She understood the son to be around 18 years old. She said that the Respondent was no longer communicating with her. She said that the Council had been in touch with her asking about the Respondent as a tenant. The Tribunal asked the Applicant if she had a genuine intention to live in the Property. She said that she did.

The Applicant had lodged a written submission with the Tribunal in advance of the CMD in which she said that the Respondent was in rent arrears totalling £3,223. She also said that the Respondent was drying clothes in the house without ventilation which was causing mould. She said that the Property was in poor condition. She said that it would need to be renovated before she could move in but that it was a nice house in a nice location.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement which commenced on 18 June 2020 ("Tenancy Agreement").
2. The Notice to Leave was issued by email on 11 August 2021. It stated that an application for an eviction order would not be submitted to the Tribunal before 14 November 2021.
3. In terms of the Tenancy Agreement, the parties had agreed that communications could be by email.

4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 16 November 2021.
5. Notice of the date of the case management discussion had been given to the Respondent on 9 February 2022.
6. The Applicant intends to occupy the Property as her only or principal home for at least 3 months.

Reasons for the Decision

The Tribunal considered whether to grant an eviction order. In terms of section 51 of the Act, the First-tier 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 she sought recovery of possession of the Property on the basis set out in Ground 4 which is that the landlord intends to live in the property. Ground 4 (as amended by the Coronavirus (Scotland) Act 2020) states:

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

(2) The First-tier Tribunal may 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."

The Applicant produced a brief letter in which she said that she intended to live in the Property. At the CMD the Applicant told the Tribunal that was her genuine intention. In the absence of any submission from the Respondent the Tribunal determined that it was reasonable to make an Order for possession of the Property in terms of Section 51 of the Act.

Decision

The Tribunal grants 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.

Legal Member : Joan Devine

Date: 22 March 2022