

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/21/3021

Re: Property at 75 Park Street, Airdrie, ML6 0JP (“the Property”)

Parties:

Alan and Evelyn Frame Properties, 6 Dundrennan Drive, Chapelhall, ML6 8GT (“the Applicant”)

Ms Lynn Nyguist, 75 Park Street, Airdrie, ML6 0JP (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and David MacIver (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted

Background

1. By application dated 2 December 2021, the applicant sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 31 December 2021 the application was accepted by the tribunal and referred for determination by the tribunal.

3. A Case Management Discussion (CMD) was set to take place on 11 March 2022 and appropriate intimation of that hearing was given to both the landlord and the tenant.

The Case Management Discussion

4. The Case management discussion took place on 11 March 2022. The applicant was represented by her letting agent, Ms Vikki McGuire , Jewel Homes Limited , Atrium Business Centre, North Caldeen Road, Coatbridge, ML5 4EF.the respondent attended personally
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters
6. The tribunal asked various questions of the parties with regard to the application
7. The applicant's representative confirmed that she wished the order sought to be granted and the respondent confirmed that she was not opposed to the order being granted
8. The tribunal noted the information provided by the applicant's representative. It was explained that the applicants (Alan and Evelyn Frame Properties) were a married couple who owned a number of properties which they rented. The property in question was owned by Mrs Evelyn Frame and the landlords' name was simply used by them as a trading name. They have decided that they require to sell some of their properties in order to release certain funds which they require for other purposes.
9. The respondent indicated that she has no opposition to the order being sought. She indicated to the tribunal that she wishes to remove from the property. Upon receipt of the notice to leave she approached the local council seeking assistance in obtaining alternative accommodation. She indicates that she was basically told by the council that they will not assist her unless and until there is an eviction order.
10. The respondent explained that the property is no longer suitable for her needs or for the needs of her family. She suffers health problems which requires her to obtain ground floor accommodation. The present property is an upper flat in a "four in a block" building.
11. She occupies the property with three children. Her twin sons are about to turn 16. She has a seven year old daughter. She needs more room for the family. One of her twins is autistic and requires a room on his own. She stated that her older daughter aged 21 had recently removed from the property owing to the overcrowding and she has now been rehoused by the local council

12. The respondent indicated that she understands the reasons put forward by the landlord in seeking the eviction order and does not wish to oppose the order

Findings in fact

13. The applicant and respondent as respectively the landlord and tenant entered into a tenancy of the property which commenced on 21 May 2018.
14. The tenancy was a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016. ("the Act")
15. The agreed rental was £456.92 every four weeks
16. On 25 May 2021 the applicant served upon the tenant a Notice to Leave as required by the Act. The Notice was served by email upon the respondents and became effective on 28 November 2021
17. The notice informed the respondents that the landlord wished to seek recovery of possession using the provisions of the Act.
18. The notice was correctly drafted and gave appropriate periods of notice as required by law.
19. The notice set out a ground contained within schedule 3 of the Act, namely ground 1 that the landlord intended to sell the let property

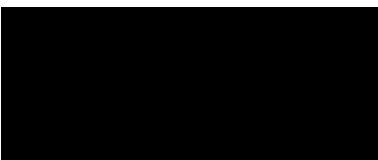
Reasons for the decision

20. The order for possession was sought by the landlord on a ground specified in the act and properly narrated in the notice served upon the tenant.
21. The tribunal was satisfied that the notice had been served in accordance with the terms of the act and that the landlord was entitled to seek recovery of possession based upon that ground.
22. The landlord had provided evidence to the tribunal confirming his ownership of the property as requested after the initial case management discussion.
23. The tribunal accepted the unchallenged evidence of the landlord that he intends to sell the property. The tribunal accepted his evidence that the tenant does not oppose the granting of the order. The tribunal noted the landlords position that he is in no rush to enforce any order and will allow time for the tenant to move voluntarily.
24. The ground for eviction was accordingly established.

25. The ground for eviction under which this application was made is the ground contained in paragraph 1 of schedule 3 of the 2016 Act. The ground is that the landlord intends to sell the let property. When the 2016 Act was originally passed, that ground of eviction was mandatory. The tribunal was required by law to grant the eviction order if satisfied that the ground was established.
26. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on this ground can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact
27. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties
28. The tribunal finds that it is reasonable to grant the order.
29. The tribunal accepts that the landlord is entitled to sell the property and wishes to do so. The tribunal accepts that the tenant is not opposed to the sale of the property and is willing to leave the property once she has obtained alternative accommodation
30. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that the final order should be made at the CMD

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/Chair

11th March 2022
Date