



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/21/3056

Re: Property at 12 St Aethans Drive, Burghead, Moray, IV30 5GP (“the Property”)

Parties:

Elaine Sutherland, 13 Keith Road, Burghead, Moray, IV30 5YJ (“the Applicant”)

Mr Ronald George, 12 St Aethans Drive, Burghead, Moray, IV30 5GP (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property under Ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

Background

1. By application dated 7 December 2021 the Applicant’s representatives Cluny Estate Agents, Forres, applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 4 of Schedule 3 of the 2016 Act. The Applicant’s representatives submitted a copy of the tenancy agreement, Notice to Leave and Section 11 Notice in support of the application.
2. By Notice of Acceptance dated 10 February 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 11 March 2022.

The Case Management discussion

4. A CMD was held by teleconference on 20 April 2022. The Applicant did not attend but was represented by Ms Rebecca Garner from the Applicant's representatives. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the proceedings had been given to the Respondent determined to proceed in his absence.
5. Ms Garner confirmed that the parties entered into a Private Residential Tenancy Agreement that had commenced on 20 December 2019 at a rent of £700.00 per calendar month. She confirmed a Notice to Leave had been served by recorded delivery post and delivered to the Respondent on 5 September 2021. The Tribunal noted a Section 11 Notice had been sent to the Local Authority by email on 7 December 2021. Ms Garner went on to explain that the Applicant had sold her house and was currently living with her mother but wished to move into the rented property as it was on the ground floor and was suitable for looking after her grandchildren. Ms Garner confirmed that the Applicant's grandchildren were not living with her but that she needed the property for childcare. Ms Garner was not aware of any reason as to why the Applicant required a ground floor property. Ms Garner did not think the Applicant had resided in the property previously and believed it had been purchased as a buy-to-let property.
6. In response to a query from the Tribunal Ms Garner said that she understood the Respondent to be an older gentleman in his seventies. She was aware that his biggest issue had been finding another property to live in and went on to explain that she now understood that it was the Respondent's intention to move to Wales. Ms Garner said that the Respondent had a son who lived there and he intended to move to be near to him. She said that she had been verbally told that the keys to the property would be returned on 29 April.
7. Ms Garner confirmed that she had previously been in discussion with the Respondent and his other son with regards to finding another private rented property locally and also social housing but nothing had been suitable.
8. She confirmed that the property consisted of three-bedroom two-bathroom bungalow with lounge and conservatory. The Applicant's home that she had sold was a two bedroom on two floors with a small garden.

Findings in Fact

9. The parties entered into a Private Residential Tenancy that commenced on 20 December 2019 at a rent of £700.00 per calendar month.
10. The Applicant's representatives served a notice to Leave under Ground 4 of Schedule 3 of the 2016 act on the Respondent by recorded deliver post on 2 September 2021. It was delivered on 5 September 2021.

11. The Applicant's representatives intimated a Section 11 Notice to Moray Council by email on 7 December 2021.
12. The Applicant has sold her own home and is currently living with her mother.
13. The Applicant wishes to live in the property which is larger than her previous home and more suitable for looking after her grandchildren.
14. The Respondent has advised the Applicant's representatives that he is shortly to be moving to Wales.
15. The Respondent has verbally intimated his intention to return the keys to the property on 29 April 2022.

Reasons for Decision

16. The Tribunal was satisfied from the documents submitted and the oral evidence provided by Ms Garner that all the procedural requirements with regards to the service of the Notice to Leave and intimation of the proceedings to the local authority had been met. Were it not for the provisions of the Coronavirus (Scotland) Act 2020, Ground 4 of Schedule 3 of the 2016 Act would have been a mandatory ground for granting an order for eviction. However, the Tribunal is required to consider whether in the circumstances it is reasonable for the order to be granted.
17. In reaching its decision the Tribunal considered the Applicant's wish to move into the property because it was larger than her previous property and more suited to her needs given that she had childcare responsibilities for her grandchildren. It also took account of the fact that she had sold her previous property and was currently staying on a temporary basis with her mother. The Tribunal noted that the Applicant wished ground floor accommodation but was not provided with any medical evidence as to why that might be necessary. With regards to the Respondent's circumstances the Tribunal took account of the fact that the Respondent had indicated to the Applicant's representatives that he intended moving to Wales to be close to his son who lived there and that he had provided a verbal date for handing back the keys to the property on 29 April. Balancing the interests of both parties the Tribunal was satisfied that it was reasonable to grant the order.

Decision

18. After carefully considering the documents and oral submissions the Tribunal determined it had sufficient information before it to make a determination without the need for a hearing and determined that the Applicant was entitled to an order for the eviction of the Respondent from the property under Ground 4 of Schedule 3 of the 2016 Act.
19. The decision of the Tribunal was unanimous.

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: Graham Harding

Date: 20th April 2022