

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 (Act)

Chamber Ref: FTS/HPC/EV/21/3114

Re: Property at 11 Mayfield Crescent, Loanhead, EH20 9RJ (“the Property”)

Parties:

Mr Gordon Hunter, 24 Edgar Street, Dunfermline, KY11 7EY (“the Applicant”)

Miss Claire Williams, 11 Mayfield Crescent, Loanhead, EH20 9RJ (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.

Background

This is an application under Rule 109 of ***The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)*** and section 51(1) of the Act for eviction and recovery of possession on Ground 4 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application dated 13 December 2021;
2. PRTA commencing 16 November 2020;
3. Notice to Leave dated 8 September 2021;
4. Sheriff Officer Certificate of Service of Notice to Leave dated 9 September 2021;
5. Section 11 Notice;
6. Email of Applicant dated 6 August 2021;

7. Written Representations from the Respondent dated 16 February 2022 with attachments;
8. Written Submissions from Applicant dated 23 February 2022 enclosing evidence of sale of Applicant's Property at 32 Fieldfare View, Dunfermline, KY11 8FY.

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The Applicant participated and was represented by Mr Kemp, Solicitor. The Respondent participated along with a supporter.

The Tribunal heard from Mr Kemp in support of the application to recover possession. The Applicant had sold his Property in Dunfermline, was now in rented accommodation and needed to recover possession so that he could live in the Property. The Applicant faced uncertainty in his employment due to the pandemic. Redundancies were being made and whilst he had not been selected there was a degree of risk. The Applicant moved into his rented accommodation at the end of September 2022 and was paying £600 per month in rent. It was reasonable in the circumstances to grant the order sought so that the Applicant could protect his financial situation if he were to lose his job.

The Respondent had lodged written submissions in advance. She doubted the veracity of the Applicant's intention to live in the Property. She needed somewhere long term for stability for herself and her daughter with her being in nursery in the local area. She had been searching for alternate accommodation but had been unsuccessful so far due to the pandemic, lack of suitable rental properties available and increase in demand for rental properties which meant there were not a lot of properties available. The situation was causing her stress and anxiety and having a detrimental impact on her daughter's health and wellbeing.

The Respondent confirmed that she had been in touch with the local authority and local housing associations as well as monitoring the private rented sector. The local authority were being particularly non responsive. She did have family in the area but none that could provide accommodation for her and her daughter.

Decision and Reasons

The Tribunal then considered the eviction application before it.

The Tribunal had regard to the terms of Ground 4 which are in the following terms:

Landlord intends to live in property

4(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 (a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3)References to the landlord in this paragraph—

(a)in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b)in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4)Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

The Tribunal then considered the documentary and oral evidence it had received from the Parties and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 16 November 2020;
2. The Applicant is the owner of the Property and intends to occupy the let property as his only or principal home for at least 3 months;
3. Notice to Leave had been served on the Respondent by Sheriff Officers on 9 September 2021;
4. Section 11 notification had been served on the local authority;
5. The Respondent is experiencing difficulties in sourcing alternate accommodation for herself and her daughter despite making all reasonable attempts to do so;
6. The uncertainty of the situation is occasioning stress and anxiety to the Respondent and is having an impact on her daughter's health and welfare;
7. The Applicant needs the Property for accommodation for himself;
8. The Applicant is currently residing in rental accommodation at a cost of £600 per month in rent.

The Tribunal considered all of the evidence and submissions. The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought. The Tribunal were satisfied that the Applicant clearly needed the Property to live in. The Tribunal were also satisfied that the Respondent was trying but having difficulties in sourcing alternate accommodation. Granting the order would occasion further stress, anxiety and disruption to the Respondent and her daughter. The Tribunal sought to balance the competing interests of the Parties and determined that it would be reasonable to grant the order but to postpone execution of the order to 5 July 2022 under Rule 16A of the Tribunal Procedure Rules. This would allow the Respondent further time to source alternate accommodation. The Tribunal did not require to hear any further evidence.

The Tribunal was satisfied that Ground 4 had been established and accordingly granted the application for eviction and recovery of possession.

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.

A. Strain

4 March 2022

Legal Member/Chair

Date