



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/22/0652

Re: Property at 10 Alloway Court, Kirkintilloch, G66 2RQ (“the Property”)

Parties:

Mr Neil Bellamy, 19 Sutcliffe Road, Flat 1/2, Glasgow, G13 1BY (“the Applicant”)

Mr Keith Bellamy, 10 Alloway Court, Kirkintilloch, G66 2RQ (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in terms of Ground 4 of Schedule 3 of the Act in that the Applicant intends to occupy the let property as his only or principal home for at least 3 months and it is reasonable to grant the order on account of that fact.

Background

1.This application for an eviction order in terms of Rule 109 of the Private Housing (Tenancies) (Scotland) Act 2016 was first lodged with the tribunal on 3rd March 2022 and accepted by the Tribunal on 24th May 2022.A case management discussion was fixed for 3rd August 2022 at 2pm.

The Case Management Discussion

2.Both the Applicant and Respondent attended the case management discussion and represented themselves.

3.The Respondent had asked the Tribunal to note that his address for the purposes of the application was the address of the property in the application, where he had been living for the last 4 weeks before the case management discussion and where he could receive mail. There was no objection from the Applicant to the address being changed and the Respondent's address was changed.

4.The Tribunal had sight of the Application, a private residential tenancy agreement,a Notice to Leave, additional notes, an affidavit from the Applicant, a notice in terms of Section 11 of the Homelessness etc (Scotland)Act 2003, an email confirming receipt of the Section 11 notice and an email regarding the Notice to Leave. The Tribunal also had sight of documents in relation to an assured tenancy at the property and correspondence between the Applicant and the Tribunal. The Respondent confirmed that he had received the application and supporting papers.

5.The Applicant did not wish to add anything to his application, papers and emails and requested that the Tribunal consider these. The parties had entered into a private residential tenancy at the property with effect from 1st September 2021.The Respondent did not recall this but did not dispute that a new tenancy agreement had been signed and the Tribunal had sight of this signed agreement.

6.The Respondent and Applicant are father and son. The Applicant bought the property from the Respondent some years before and had allowed the Respondent to occupy the property as a tenant in successive tenancy agreements since 2008.The Respondent's stepdaughter and her partner and children had been permitted to stay at the address by the Respondent. They are reliant on benefits and the family require to be housed by the local authority and the Respondent advised that the council had no obligation to house his stepdaughter and her family unless an eviction order was in place. He had no objection to the eviction order but had requested that it not take effect before 15th September as he was going on holiday and this date would allow him to return and make appropriate arrangements and allow his stepdaughter and family to approach the council in order to be rehomed. It was said that all parties were willing to leave the property subject to this.

7.The Applicant had signed an affidavit regarding his intention to live at the property as his home. He currently lives in a flat and wishes to live in a house and he cannot afford to buy another and wishes to live in this one. The Respondent indicated that he thought it perfectly reasonable that his son recover the property in order that he live there.

8.The Tribunal legal member raised as an issue the date on the Notice to leave lodged and sent by email to the Respondent. The date in Part 4 of the Notice appeared to be a day short of the required date , being the earliest date when the Applicant could apply to the Tribunal. The Notice to Leave had been served by email during the period of the extended notice periods which applied in terms of the Coronavirus (Scotland) Act 2020.A three months' notice period had been used in terms of the extended notice periods under the Act. The notice period which applied before the 2020 Act was in force in terms of the eviction ground being relied on by the Applicant was 28 days, given that the private residential tenancy had only been in place since September 2021, less than 6 months before the service of the Notice to Leave.

9.The Tribunal considered the terms of para 10 of schedule 1 of the 2020 Act which states -:

(1) where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1-9

(a) the Notice to leave is not invalid due to that error, but

(b) It may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been completed correctly.

10.In terms of Paragraph 10 above in this application the Notice to Leave is not rendered invalid by the date in part 4 being 28th February 2022 and not 1st March as it should have been, and the Applicant did not seek to rely on the notice before the date which could be relied upon had it been completed correctly. Whilst Schedule 1 of the 2020 Act in which paragraph 10 sits has now been repealed in terms of the Coronavirus (Scotland) Acts (early Expiry of Provisions) Regulations 2022,in terms of Regulation 4, paragraph 10 of the 2020 Act remains in force for Notices to Leave served before 30th March 2022 as in this application.

11.The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

12.The Applicant and Respondent entered into a private residential tenancy at the property with effect from 1st September 2021.

13.Prior to that date the parties had entered into an assured tenancy at the property with effect from 2008.

14.The Respondent is the tenant in terms of the tenancy agreement, but his stepdaughter and her partner and family have also been permitted to live at the property.

15.The Respondent and those who have been permitted to live at the property are willing to leave but the Respondent's stepdaughter and her family require social housing and currently have nowhere else to live without assistance from the local authority.

16.The Applicant served a valid Notice to Leave on the Respondent with appropriate notice being given on 26th November 2021.

17.The Applicant intimated a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 to Inverclyde Council on 1st April 2022.

18.The Applicant intends to live in the property as his principal home for at least three months after the property becomes vacant.

19.The Respondent does not object to an eviction order and considers it reasonable that the Applicant recovers the property in order to live in it as his home.

Reasons for Decision

20.The Tribunal was satisfied in all the circumstances that it was reasonable to make an eviction order in this application given that the grounds for eviction were made out and indeed accepted by the Respondent. The issue appeared that those in the property were willing to leave but required an eviction order to be in place to obtain assistance with housing. The appropriate notices had been served and were in proper form. Parties agreed during the case management discussion on the date of 15th September 2022 for leaving the property if an order was granted.

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.

V. Bremner

Legal Member/Chair

3.8.22
Date
