



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/22/0766

Re: Property at 11 Glen Crescent, Stevenson, Ayrshire, KA20 3EE (“the Property”)

Parties:

Mrs Elizabeth Tortolano, Mr Aldo Tortolano, 9 Abbotsford Gardens, Newton Mearns, G77 6JF (“the Applicant”)

Elizabeth Connolly, 11 Glen Crescent, Stevenson, Ayrshire, KA20 3EE (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

Background

The Applicant seeks an Eviction Order under Ground 1 of Schedule 3 of the Act in that it is said that the Applicant wishes to sell the let Property.

The Application is accompanied by a copy of the Notice to Leave founded upon and the relevant notice under s 11 of the Homelessness (Etc.) (Scotland) Act 2003. The Notice to leave was dated 11 October 2021 and was said to have been hand delivered to the Respondent on 11 October 2021 providing notice that no Application would be submitted to the Tribunal seeking an Eviction Order before 12 March 2022. There was an email produced from the Respondent acknowledging receipt of having personally received the Notice to Leave on 11 October 2021

When the Application called for a Case Management Discussion CMD on 8 July 2022, The Tribunal had been concerned about the lack of information regarding the Respondent's circumstances. The Respondent had appeared personally at the CMD and informed the Tribunal that she lived in the Property with her ten-year-old son, Stephano, who had pronounced disabilities and required a wheelchair. The Respondent herself received treatment for bi-polar disorder and had other health issues of her own.

The Respondent's ex-partner also lived in the house to help care for Stephano who required 24 hour care. The family had only moved into the Property in March of 2021 and had received the Notice calling upon them to vacate the Property some seven months later. The Property was thirty seconds away from *Lockhart Campus*, which the Respondent explained was the specialist school that Stephano attended which was in part why they moved into the Property. The Respondent didn't explicitly oppose the order being granted, but the Tribunal had little confidence that her views on the matter and its implications had been fully considered at that time.

The Tribunal had considered that much further information would be required from both parties before the Tribunal could consider making a decision or even assigning a Hearing. It was explained to both parties that the information sought and actions required would be set out in Directions and that both sides should consider the Directions to be made carefully and ensure that they are complied with.

The Tribunal took care to ensure that The Respondent's email address was noted and that she gave her consent to have that as the primary means by which she received communications from the Tribunal.

The Application was continued to today's date to allow the Tribunal to further consider the Application having received the further information set out in the Directions. The Applicants complied with those Directions and lodged further detailed information in support of the Application and addressing the reasonableness of granting the Eviction Order. Nothing further had been heard from the Respondent who had failed to comply with the terms of the Directions made.

CMD

The Application called for a continued CMD by conference call at 10 am on 24 August 2022. The Applicants were again personally present on the call. There was no appearance by the Respondent. The details of the CMD and information about how to join the conference call had been intimated to the Respondent by email as specifically requested by her at the previous CMD. The Tribunal delayed the start of the CMD by ten minutes to allow the Respondent extra time to join in case she was having difficulties. There was still no appearance on behalf of the Respondent. Having heard

again from the Applicants and having considered all the documentation before the Tribunal, the Tribunal made the following findings in fact.

Findings in Fact.

1. *The Applicants and the Respondent entered into a tenancy at the Property that commenced on 27 March 2021;*
2. *The Applicants were the landlord and the Respondent was the tenant;*
3. *The Applicants served a Notice to leave in respect of Ground 1 of Schedule 3 of the Act dated 11 October 2021 which was hand delivered to the Respondent on 11 October 2021;*
4. *The Notice to Leave provided the Respondent with notice that no Application would be submitted to the Tribunal seeking an Eviction Order before 12 March 2022;*
5. *The Applicants have complied with the terms of s 11 of the Homelessness (Etc.) (Scotland) Act 2003;*
6. *The Applicants wish to sell the Property;*
7. *The Applicants wish to liquidate assets to increase their cash savings consequent to the First Applicant, Mrs Tortolano, losing her primary source of income;*
8. *The Respondent has failed to comply with Directions made by the Tribunal which were considered necessary to properly understand the Respondent's domestic circumstances and those of her family;*
9. *The Respondent has failed to engage with the Tribunal process;*
10. *Ground 1 of Schedule 3 of the Act is established, and the Applicants have competently served all notices required in support of the Application;*
11. *It is reasonable that an Eviction Order is made as the Respondent has failed to provide the Tribunal with information which might otherwise have given the Tribunal cause to consider otherwise.*

Outcome

Having made the above findings in fact, the Tribunal decided to grant the Application and made an Eviction Order.

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.



24/08/2022

Legal Member/Chair

Date