



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/22/0901

Property: 19 Dickens Avenue, Clydebank G81 3EN (“Property”)

Parties:

William Mack, 21 Irving Avenue, Clydebank G81 6AY (“Applicant”)

Sinead McGinley, 19 Dickens Avenue, Clydebank G81 3EN (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined not to make an order for possession of the Property.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 18 September 2021 (“Notice to Leave”); copy email from the Applicant’s Representative to the Respondent dated 18 September 2021 attaching Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 28 March 2022; a copy of an email from the Applicant to Caledonia Bureau dated 26 August 2021 in which he stated that his financial situation had changed and he required to sell the Property to raise funds; a copy of a “sole selling rights agreement” in which the Applicant appointed Caledonia Bureau as sole selling agents for the Property and sheriff officer’s execution of service certifying service of the Application on 14 June 2022. The Application was made by Caledonia Bureau on behalf of the Applicant. By email dated 13 June 2022 Caledonia Bureau advised that Clyde Property had taken over management of the Property.

Case Management Discussion

A case management discussion (“CMD”) took place before the Tribunal on 27 July 2022 by teleconference. In advance of the CMD the Respondent had sent a written representation to the Tribunal by email dated 6 July 2022. The Respondent was in attendance. There was no appearance by or on behalf of the Applicant.

The Tribunal noted that they had not had sight of a tenancy agreement between the Applicant and the Respondent. The Respondent told the Tribunal that she did have a copy of a tenancy agreement. She could not recall whether it provided that she was content for communications regarding the tenancy to be by email. The Tribunal asked the Respondent if she had received the notice to leave by post as well as by email. She said she had received it by post but not by recorded delivery.

The Respondent told the Tribunal that she had moved into the Property in August / September 2020. She lived there with 3 children under the age of 12. She said that it had been advertised by Caledonia Bureau as a long term let. As she thought she would be living in the Property for an extended period the Respondent said that she spent a lot of money on the Property. She said that she had replaced carpets and skirting boards and she had replaced the cupboards in the kitchen. She said that she had installed a new floor in the bathroom, replaced the blinds and light fittings and renewed the 13 internal doors.

The Respondent told the Tribunal that she had been in touch with West Dunbartonshire Council and that she had been offered a 3 bedroom flat. The date for her to move in had not been confirmed.

Findings in Fact

The Tribunal made the following findings in fact:

1. A Notice to Leave was served by email on 18 September 2021. It stated that an application for an eviction order would not be submitted to the Tribunal before 21 March 2022.
2. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 28 March 2022.
3. Notice of the date of the case management discussion had been given to the Representative for the Applicant by letter dated 13 June 2022.
4. The Respondent lives in the Property with her 3 children who are under the age of 12.

Reasons for the Decision

The Tribunal determined not to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

In the Application the Applicant stated that he sought recovery of possession of the Property on the basis set out in Ground 1 which is that the landlord intends to sell. The evidence lodged with the application of intention to sell was a copy of a “sole selling agreement” in terms of which the Applicant appointed Caledonia Bureau to sell the Property. On 13 June 2022 Caledonia Bureau told the Tribunal that Clyde Property had taken over management of the Property. As the Applicant did not attend the CMD, the Tribunal was unable to obtain any further information regarding the Applicant’s intention to sell the Property. In those circumstances the ground for eviction had not been established. In any event, in light of the submission from the Respondent, and in the absence of a submission from the Applicant, it was not reasonable to grant an order for eviction.

Decision

The Tribunal refuses to grant an order for possession of the Property.

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:

J Devine

Date: 27th July 2021