



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/22/1211

Re: Property at Hotspurs, Chesterknowe, Midlem, Selkirkshire, TD7 4QL (“the Property”)

Parties:

Alison Trainer, 2 Hennessy Street, Brunswick, Victoria, 3056, Australia (“the Applicant”)

Jane Adam, Hotspurs, Chesterknowe, Midlem, Selkirkshire, TD7 4QL (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs M Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.

Background

1. This is an application received in the period between 26th April and 9th June 2022 and made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’). The Applicant is the landlord of the Property, and the Respondent is the tenant, in terms of a private residential tenancy agreement that commenced on 4th June 2018.
2. The Applicant lodged a copy of the tenancy agreement, copy Notice to Leave dated and served 10th August 2022 stating that an application for an eviction order under ground 3 would not be submitted before 15th February 2022, with evidence of service, copy section 11 notice with evidence of service, email correspondence between the property management agency and the Respondent, property plans and invoices, local authority letter and power company warning notice.

The Case Management Discussion

3. A Case Management Discussion took place by telephone conference on 31st August 2022. The Applicant was not in attendance and was represented by Ms Sandham, Solicitor. The Respondent was in attendance.
4. Ms Sandham moved the Tribunal to grant an eviction order. The Property is old and in need of renovation. There have been access issues which have meant it has been impossible to obtain a full appraisal of the work required. There has been no contact from the Respondent.
5. The Respondent indicated that she was not opposing the order as she is in the process of purchasing a property, and wishes to leave the Property as soon as possible. There is a proposed entry date of 30th September 2022 for her new property, however, it was her position that she may require a further period of two weeks in case there is any issue with the purchase.
6. The Respondent said she has had four years of maintenance and repairing issues which have been reported and ignored by the Applicant and her property management agent. The agent would say they would take instructions from the Applicant, and nothing would be done. The Respondent would wait in for tradesmen and they would not attend. It was incorrect to say there had been no contact.
7. The Respondent lives with her three children, who are 12, 16 and 17. She is a sole parent without any living relatives with whom she could stay if the order was executed before the entry date for the new property. She said she did not want to have to find temporary accommodation for a short period in that situation. It was her position that, having endured years of repairing and maintenance issues, a short period of grace ought to be provided to her.
8. There was some discussion about granting the order and extending the period before which it could be executed for a further period of two weeks beyond the usual 30 day appeal period. Ms Sandham said it would be preferable if vouching of the purchase had been produced. There was some discussion about continuing the CMD to allow this to be done, however, the Tribunal indicated a further CMD was unlikely to be fixed in the near future. The Tribunal offered Ms Sandham an opportunity to take instructions from her client on this matter. Ms Sandham said it would be her preference to extend the period for two weeks, as discussed, and that vouching should be provided if there was any further delay with the entry date. The Respondent said a period to mid-October would give her sufficient time to ensure the purchase was concluded.
9. The Tribunal adjourned to consider matters.

Findings in Fact and Law

10.
 - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 4th June 2018.
 - (ii) Notice to Leave has been served upon the Respondent.
 - (iii) The Applicant intends to refurbish the Property.
 - (iv) The Applicant is entitled to refurbish the Property.
 - (v) It would be impracticable for the Respondent to continue to occupy the Property given the nature of the refurbishment.
 - (vi) It is reasonable to grant an eviction order.

Reasons for Decision

11. Ground 3 of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016 (“the Act”) provides that it is an eviction ground if the Landlord intends to refurbish the let property, the landlord is entitled to do so, and it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord, and the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts. The Tribunal is satisfied that Ground 3 has been established.
12. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.
13. The Tribunal took into account the representations made regarding the circumstances of both parties. The Respondent is in the process of purchasing a property and she is not opposing the order. In all the circumstances, it is reasonable to grant the order sought.
14. The Tribunal considered it appropriate in all the circumstances to extend the period before which the eviction order can be executed to 17th October 2022 to allow the Respondent’s property purchase to conclude and entry to be given.

Decision

15. An eviction order in respect of the Property is granted which cannot be executed prior to 12 noon on 17th October 2022.

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.

H Forbes

Legal Member/Chair

31st August 2022
Date