



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/22/2041

Re: Property at 3 Martyrs Place, Bishopbriggs, Glasgow, G64 1UF (“the Property”)

Parties:

Mrs Leanne Paterson (nee McAllister), 2/2 3 Littleton Drive, Glasgow, G23 5PN (“the Applicant”)

Mr Alan Connolly, Ashley Connolly, 3 Martyrs Place, Bishopbriggs, Glasgow, G64 1UF; Unknown, Unknown (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Eviction Order be granted against the Respondent.

Background

1. This application is under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The Applicant seeks an eviction order.
2. A copy of the application was served on the First Named Respondent on 12 August 2022 by Sheriff Officers . The Application was served on the Second Named Respondent by advertisement on the Tribunal website on 30 September 2022 . Both parties were advised that a Case Management Hearing (“CMD”) would take place by teleconference call on 8 November 2022 at 10am.
3. The Respondent made no written submissions to the Tribunal
4. When the application was served on the First Named Respondent by Sheriff Officers he told them (and it is detailed in their report to the Tribunal) that he had been waiting on this documentation so that he could source homeless accommodation with his local authority.

5. The Applicant lodged with the Tribunal the following documentation;-
 - Private Tenancy Agreement
 - Notice to Leave dated 31 March 2022 along with proof of service
 - Section 11 Notice and e-mail to East Dunbartonshire Council
 - Sellers Agreement between the Applicant and Town and Country Estate Agents

The Case Management Discussion

6. The CMD took place by teleconference at the pre-allotted time. The Applicant was present together with her Representative Ms Wooley Solicitor of Bannatyne Kirkwood. The Respondent was not present and was not represented.
7. The CMD was conjoined with an application for a payment order in relation to rent arrears under reference CV/22/2046. At the date of the CMD the rent arrears amounted to £6625.
8. Ms Wooley invited the Tribunal to grant the application for eviction. She said that the Applicant was motivated to sell the Property as she was married last year. Both herself and her new husband owned properties and they want to sell both of these properties in order to purchase a larger family home. They are currently both living in her husband's property. The Fixed Term mortgage over the Property is coming to an end and there will be a significant rise in interest rates so she wants to sell before her mortgage is renewed and higher payments are due.
9. The Applicant clarified that her mortgage's fixed interest rate had finished at the beginning of the year. She said that she had served a Notice to Leave on the First Named Respondent in September 2021 giving him 6 months to leave the Property by the end of March 2022. She had organised a valuation to take place at that time. By that date the First Named Respondent told her that her Notice was technically incorrect and that he would not leave. She said that with her fixed rate finishing at the start of the year that her mortgage had gone up by £150 per month already so far. She is currently awaiting another increase and will probably need to pay another £100 per month in addition. She said that Mr Connolly had advised her that he wants a council house and that until an eviction order is granted that he will not leave the Property.
10. Ms Wooley said that when the Applicant referred to an earlier Notice being served last year which was invalid that this was not in the prescribed format and had been an e-mail sent to Mr Connolly stating that the Applicant would like him to move out. The e-mail had only been sent to Mr Connolly and not to Ms Connolly and therefore the correct Notices to Leave were served in their proper format this year.
11. She said that in relation to the Second Named Respondent that she is currently named on the tenancy agreement although she understands that she has not lived there as her principal home for some time. The Applicant is unaware of her personal circumstances and where she is living now. She did sign the tenancy agreement and the Applicant is unaware of why she did so when she was not residing in the Property as her principal home.
12. Ms Wooley said that the Second Named Respondent is the daughter of the First Named Respondent. The Applicant is unaware of him having any other children. At some point he worked as a window cleaner for the Local

Authority. The Applicant is unaware of his current financial position and personal circumstances. During the earlier stages of these proceedings he had contacted the Applicant to say that he wanted to leave the Property but that he required to “stay put” until these proceedings had ran their course. Part of the reason that he had fallen into arrears was that he had been absent from his work for a period due to illness. Ms Wooley said that she did not believe that the Second Named Respondent had ever contributed to the rent.

13. She said that it was reasonable to grant the eviction order as Miss Connolly does not reside in the Property as her principal residence. Mr Connolly has been aware of the Applicant’s desire to recover the Property since the end of last year. The tenancy is simply not sustainable due to the high level of rent arrears added to the additional costs of the Applicant’s mortgage. This is making the tenancy more and more difficult to sustain and for the Applicant to derive any income from the Property. Additionally, she said that if the Tribunal granted the order for eviction that the First Named Respondent would be entitled to emergency accommodation.

Findings in Fact

14. The Applicant is the landlord of the Property; the Respondent is the tenant of the Property in terms of a private tenancy agreement entered into between the parties.
15. A Notice to Leave dated 31 March 2022 was served on the Respondent.
16. The Notice to Leave intimated that the Applicant was seeking recovery and possession of the Property on the ground that she intended to sell the Property (Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016)
17. The Notice to Leave intimated that proceedings for removal would not be raised before 26 June 2022.
18. The Applicant presented an application to the Tribunal on 28 June 2022 seeking an Order of removal of the Respondent from the Property.
19. A Notice in terms of s 11 of the Homelessness Etc. (Scotland) Act 2003 had been intimated to the relevant local authority.
20. The Applicant intends to sell the Property and has entered into a sale agreement.
21. It is reasonable to grant the order for eviction.

Reasons for Decision

22. Whilst the Respondent did not participate in the CMD, the Tribunal required to consider the application before it. In doing so the Tribunal noted that a Notice to Leave had been served in proper form, that proceedings had been raised only after the period of Notice had expired; That the necessary intimation had been provided to the Local Authority in terms of the Homelessness Etc. (Scotland) Act 2003 and that the requirements of Ground 1 of Schedule 3 of the 2016 Act were met, thus enabling the Tribunal to consider the application for eviction.
23. In the circumstances it appeared that a factual and a legal basis had been made out for an order for eviction to be granted. Given that there was no appearance by or on behalf of the Respondent, there was no information

before the Tribunal to enable it to conclude otherwise than that granting an order for eviction was reasonable and appropriate in the circumstances.

24. The Tribunal also took account of the personal circumstances of the Applicant, that she is recently married and wishes to sell the Property in order to purchase a larger family home. The Tribunal also accepted that given the arrears of rent amounting to £6625 that along with an increase in the Applicant's mortgage rate that the tenancy was no longer viable. The Tribunal also noted that the Respondent had appeared to indicate to both the Applicant and to Sheriff Officers that he was awaiting the Order for Eviction before he could obtain alternative rehousing by the local authority; and that the Second Named Respondent already appears to have left the Property. In all the circumstances the Tribunal concluded that the order for eviction sought was reasonable.

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.

Y. McKenna

8 November 2022

Legal Member: Yvonne McKenna

Date