

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/22/2468

Re: Property at 152 Strathleven Drive, Alexandria, G83 9PH (“the Property”)

Parties:

Mr Callum Ide, 25 FINGAL AVENUE, FERRY VILLAGE, RENFREWSHIRE, PA4 8FT (“the Applicant”)

Mr David McGlashan, 152 Strathleven Drive, Alexandria, G83 9PH (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Angus Lamont (Ordinary Member)

Decision

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

On 22nd July 2022 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.

Lodged with the application were: -

1. Copy Tenancy Agreement purporting to be a Short Assured Tenancy showing a commencement date of 1st January 2020 and a rent of £800 per month
2. Copy Notice to Leave dated 22nd April 2022
3. Copy Section 33 Notice
4. Copy emails confirming the Respondent had received the Notice to Leave

On 22nd August 2022 the Tribunal wrote to the Applicant seeking further information including Section 11 Notice and evidence of intention to sell. Both were provided.

The Application was served on the Respondent by Sheriff Officers on 21st December 2022.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented himself. The Respondent also represented himself.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.

The Applicant sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. He said that he was looking to sell the property due to personal issues including separation and having care of his two year old son for fifty per cent of the week.

The Respondent said he accepted that the Applicant wished to sell the property.

On the basis of what had been said the Tribunal were satisfied that the ground had been established.

The tribunal explained that they now had to be satisfied about the reasonableness of granting the order. Both parties said that they were keen that a decision be made today so that they had certainty.

The Applicant said that he is now caring for his son for fifty percent of the week. He is having to work from home as he cannot afford the nursery fees. He does have another rental property which is owned by a Limited Company. He is not intending to sell it. He does have a mortgage on the property at issue here. His father has been diagnosed with a medical condition and he wishes to use some of the money to assist him.

The Respondent said that he did want to leave the property but he was having difficulty finding somewhere else to live. He occupies the property with his fiancée, six year old child and his fifty eight year old mother, who is suffering ill health as a result of covid. His mother is not able to work and is currently rehabilitating.

The Respondent said that his mother’s health condition gives extra points with the Council’s housing lists, but he is not getting any support from the Council. They have told him that he does not need to leave the property until all procedures are gone through, and accordingly he and the family are not considered homeless. He has been told that accommodation is likely to be bed and breakfast style.

The Tribunal asked if the Respondent had sought advice from a housing advice service. He said that he had not, but he had contacted his local councillor. He said that the Applicant had been very fair with him.

Findings in Fact

1. The parties entered into a tenancy agreement, which becomes a Private Residential Tenancy Agreement in, line with the Act, in respect of the property;
2. The tenancy commenced on 1st January 2020;
3. A Notice To Leave, dated 22nd April 2022, was served timeously;
4. The Application was served on the Respondents by Sheriff Officer on 21st December 2022;
5. The Applicant wishes to sell the property;
6. The applicant is experiencing financial difficulty de to separation and caring for his child;
7. The Respondent wishes to leave the property;
8. The Respondent has not been able to secure alternative accommodation;

Reasons for Decision

The tribunal found that the ground of eviction had been established.

It is usually mandatory to grant an application under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal's power to issue an eviction order), the words "or must" are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (a), the word "and" is repealed,

(iii)after paragraph (b) insert ", and

"(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii)sub-paragraph (3) is repealed,

(iv) in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h) in paragraph 10(2) (not occupying let property)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i) in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j) in paragraph 13(2) (criminal behaviour)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(k) in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

The Tribunal now has to decide if it is reasonable to grant the eviction order. The Tribunal therefore had to exercise its discretion in applying the facts. In this case it was clear that the Respondent did want to leave the property but was having difficulty in securing alternative accommodation or assistance from the local authority. The Tribunal considered in those circumstances that it was reasonable to grant the order, but to extend the normal time limit. Accordingly the Tribunal granted the order, with the earliest date for eviction being 20th April 2023..

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/Chair

16 February 2023

Date