



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/22/2572

Re: Property at 3/1 29 Kirkwood Street, Rutherglen, G73 2SN (“the Property”)

Parties:

Mr Patrick McVey, 42 Davieland Road, Giffnock, G46 7LU (“the Applicant”)

Mr Alan McClelland, 3/1 29 Kirkwood Street, Rutherglen, G73 2SN (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted under Ground 1 (Landlord intends to sell).

STATEMENT OF REASONS

1. This Application called for its Case Management Discussion by teleconference on 9 May 2023. The Applicant was represented by Mr Gardiner. The Respondent was represented by Ms Ashe.
2. In this Application the Applicant seeks an eviction order. He claims that he intends to sell the Property and that it is reasonable to grant the eviction order. At the CMD, Mr Gardiner advised that full rent has not been paid by the Respondent since October 2021. There are now substantial arrears. The only rent paid during that period is the rent paid directly from the local authority in respect of housing benefit. There is a monthly shortfall of £100. The Respondent has not engaged with the Applicant despite attempts to do so. The Applicant no longer wishes to be a landlord, and therefore wants to sell the Property.

3. Ms Ashe confirmed that the Respondent did not oppose the Application. He accepts that the Landlord intends to sell the Property. He also accepts that it is reasonable to grant the eviction order. The Respondent's position is that he cannot afford the shortfall in rent. He wishes to obtain social housing in order that he will not have any shortfall to make up. He cannot be housed until after an eviction order is granted. He lives alone at the Property. His children visit at weekends, but the Property is not their principal home. He has applied to the local authority for housing. He requires additional support for ongoing medical issues.
4. In terms of Rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, the Tribunal can do anything at a CMD that it may do at a Hearing, including make a decision. In terms of Rule 2, the Tribunal must have regard to the overriding objective to deal with proceedings justly when making a decision; including the need to avoid unnecessary delay.
5. In all of the circumstances, the Tribunal was satisfied that Ground 1 is established. The Tribunal is also satisfied that it is reasonable to grant the eviction order. The Respondent has no desire to remain in the Property, but cannot gain access to alternative social housing without the Tribunal making the order sought.
6. In terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022, tenants are afforded protection from eviction where an order for eviction is granted in proceedings raised after paragraph 1 of Schedule 2 of the 2022 Act, which was 28 October 2022. This application was submitted to the Tribunal on 26 July 2022, but was incomplete. The complete application was not finally submitted until 6 March 2023, and then served on the Respondent thereafter. The date that the proceedings were raised within the meaning of the 2022 Act was the date of service of the application on the Respondent, which was after 28 October 2022. Accordingly, the eviction order granted cannot be enforced until the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted as specified above, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.
7. For the purposes of section 51(4) of the 2016 Act, the Tribunal determined that the Private Residential Tenancy between the parties shall also end on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted as specified above, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 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.

A Upton

9th May 2023

Legal Member/Chair

Date