



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/22/3389

Re: Property at Daldravaig Cottage, Killin, FK21 8UA (“the Property”)

Parties:

Mr Michael Stroyan, Boreland House, Boreland Estate, Killin, FK21 8TT (“the Applicant”)

Mr Brian Higginbotham, Mrs Fiona Higginbotham, Daldravaig Cottage, Killin, FK21 8UA; Daldravaig Cottage, Killin, FK21 8UA (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member) and Sara Hesp (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the applicant was entitled to an order for the eviction of the Respondents from the property.

Background

1. By application dated 15 September 2022 the Applicant’s representatives, Brodies LLP, Solicitors, Glasgow, applied to the Tribunal for an order for the eviction of the Respondents from the property under Grounds 3, 11 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicants submitted copies of a tenancy Agreement, Notice to Leave, Customer Ledger, Pre-action letter and Title Sheet in support of the application.
2. Following further correspondence between the Applicant’s representatives and the Tribunal administration, by Notice of Acceptance dated 31 October 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

The Case Management Discussion

3. A CMD was held by teleconference on 14 February 2023. The applicant did not attend but was represented by Mr Calum MacPherson from the Applicant's representatives. The Respondents attended in person.
4. It was agreed that the Respondents entered into a Private Residential Tenancy that commenced on 1 January 2019 at a rent of £395.00 per calendar month. At that time the Landlord was Mark Stroyan. Mr Macpherson confirmed that the Applicant became landlord following the vesting of the Boreland estate in his name on 30 March 2021.
5. It was also agreed that the Respondents had been served with a Notice to Leave by recorded delivery post sent on 17 February 2022 giving the Respondents six months' notice under Grounds 3, 11, 12 and 14 of Schedule 3 of the 2016 Act. Mr MacPherson confirmed the Applicant was not seeking to insist on Ground 14.
6. With regards to Ground 11 Mr Macpherson submitted that the Respondents had permitted their daughter Hannah and her three children to live in the property without written permission in breach of clause 12 of the tenancy agreement. For the Respondents, Mrs Higginbotham said that the previous landlord had known that her daughter was staying in the property as she had moved in a few days before she and her husband had. Mrs Higginbotham accepted they had never got anything in writing but explained that when they moved in it was on the basis that they paid no rent but looked after the then landlord's mother who lived next door. Mrs Higginbotham explained that her daughter helped the landlord with her mother and also helped the landlord and did work for him. She went on to say that her daughter had also done work for the current landlord including looking after his dog and planting a hedge in his garden. She spoke of there being an unwritten agreement.
7. For the Applicant, Mr MacPherson referred the Tribunal to the Affidavit lodged by the Applicant and reiterated that there had been no written agreement as required in terms of the tenancy agreement. He also submitted that the property was relatively small and with the number of people living in it this could be exacerbating its condition.
8. With regards to the arrears of rent both Respondents did not dispute that £5925.00 of rent was unpaid but argued that they had been advised not to pay rent because of the condition of the property. Mrs Higginbotham said that she had contracted COPD as a result of the dampness in the property. Mr Higginbotham said that they had been advised not to pay rent until the problems with the condition of the property had been put right.
9. Mrs Higginbotham went on to say that in the past the Respondents had been friendly with the Applicant and on one occasion he had been at the property and asked if they were happy with the house and she had told him not really because of the dampness. She said the applicant had said he would knock it

down and build them a new one however she was later told by her other daughter who worked for the applicant that the plan was to demolish the property and build a holiday home.

10. For the Respondent Mr Macpherson submitted that the property had reached the end of its useful life and that it was not economic to repair. He explained that attempts had been made to negotiate a settlement with the Respondents but this had not been achieved. There were now 16 months of rent arrears. The Respondents had not previously sought to have their rent abated due to the condition of the property.
11. The Respondents confirmed that they no longer wished to remain in the property due to its poor condition and that they were on the local authority housing waiting list. Mrs Higginbotham advised the Tribunal that she and her family wished to remain in the Killin area in order that her grandchildren could remain at the same school. She said she thought they might be rehoused within about two months.
12. After a short adjournment Mr MacPherson advised the Tribunal that if the Tribunal were to grant an order for eviction only on Ground 3 of Schedule 3 of the 2016 Act and the Respondents were to withdraw their application under reference FTS/HPC/RP/21/2957 the Applicant would also withdraw his application for rent arrears under reference FTS/HPC/CV/22/3390. The Respondents confirmed their agreement to this proposal subject to the order for eviction being postponed for a reasonable period to allow them to be rehoused.

Findings in Fact

13. The Respondents entered into a Private Residential Tenancy of the Property that commenced on 1 January 2019 at a rent of £395.00 per calendar month.
14. The Applicant is the Respondents' landlord.
15. The Respondents were served with a Notice to Leave dated 17 February 2022 by Recorded Delivery post.
16. Intimation of these proceedings was sent to Stirling Council by way of a Section 11 Notice by email on 15 September 2022.
17. The Applicant intends to demolish the property and rebuild it.
18. It would not be possible for the Respondents to remain in the property once demolition works commenced.

Reasons for Decision

19. The Tribunal was satisfied from the written representations, documents and oral evidence that the Respondents had entered into a Private Residential tenancy

that commenced on 1 January 2019. It was also satisfied that the Respondents had been properly served with a valid Notice to Leave and that the local authority had been given notice of the proceedings.

20. The parties were in agreement that the property was in poor condition and the Tribunal was satisfied that it was the Applicant's intention to demolish the property and build a new property in its place. The Respondents accepted this and understood they could not remain in the property indefinitely but required a reasonable period of time to be rehoused. The Tribunal was therefore satisfied that it was reasonable that the order should be granted under ground 3 of Schedule 3 of the 2016 Act and did not require to determine the application under the remaining grounds given the agreement reached between the parties.

Decision

21. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing finds the Applicant entitled to an order for the eviction of the Respondents from the property under ground 3 of Schedule 3 of the 2016 Act but with the coming into effect of the order being postponed for a period of three months.

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.

**Graham Harding
Legal Member/Chair**

**15 February 2023
Date**

