



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/23/0009

Re: Property at Lovehall Farm Cottage, Lovehall Road, Wellbank, Angus, DD5 3QF (“the Property”)

Parties:

Smithfield Farms a partnership, Smithfield, By Monikie, Brought Ferry, DD5 3QD (“the Applicant”)

Mr Alexander John Knight, Mrs Rosette Knight, Lovehall Farm Cottage, Lovehall Road, Wellbank, Angus, DD5 3QF (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

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

1. Introduction

This Case Management Discussion (CMD) concerned an Application for an Eviction Order in respect of a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The CMD took place by teleconference. Parties were advised on the procedure of a CMD and the rules regarding them.

2. Attendance and Representation

The Applicant was not present but represented by Rebecca Walker, Ledingham Chalmers LLP, Johnstone House, 52-54 Rose Street, Aberdeen, AB10 1HA.

The Respondent Rosette Knight was present and unrepresented.

3. Preliminary Matters

There were no preliminary matters raised other than the Applicant's representative seeking to confirm the Respondent had not lodged written representations. The Respondent confirmed she had not.

4. Case Management Discussion.

For the Applicant

The Applicant's representative set out that the applicant sought an Eviction Order in order that in terms of Ground 5, John Hair Junior could move into the property. She referred to the statement lodged by John Hair junior who is the son and partner of the partnership and who seeks to move into the property.

The Applicant's representative set out further that the background is that John Hair junior is part of the Applicant's farming business and he is in partnership with his parents. He works long hours. The property has a history of being in the family. She said that the property concerned is part of the family inheritance and that family members have moved between the property and the farmhouse when they become more senior. John Hair junior has a partner and seeks to start a family. He is not able to move out of the farm property he shares with his parents due to commitments on the farm and seeks to move into the property.

The Applicant's representative referred to John Hair Junior's statement further which sets out his responsibilities on the farm and that he works 12/13 hours a day for 6 or 7 days a week. She said he needs to be close to the farm and is 27 years of age. The cottage is located close to the farm and used to be occupied as a family home for his parents. There is another rental property occupied by other tenants. The Applicant's representative set out that there was a previous Notice to Leave in 2021 but it was not effective and fresh proceedings had to be raised.

For the Respondent

The Respondent explained that when they first moved in to the property they were advised it was a long term let. She said further that at that time John Hair junior was 23 years of age and she was shocked as they had explained it would be long term to the receive a Notice to Leave. The matter has been ongoing

for 2 years as the previous Notice to Leave was defective and the Respondent had sought advice from Shelter.

The Respondent said she has been actively trying to arrange alternative accommodation and had so far been unable to get a property that was affordable. She said she felt it was a horrible situation and that it has been very stressful to remain in a property when the family wish to make other plans. She has been bidding on suitable properties with Angus Council. The Respondent explained that she has split up from her husband and resides at the property with her 3 girls aged 15, 16 and 18 years. They are all still at school and she works part time. They are all healthy. She said that the application for eviction because of the previous application that was refused has been going on for 2 years.

Findings in Fact and Reasons for Decision.

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The evidence was not in dispute. Parties were in agreement on the material facts.**
- 2. The Applicant sought an Order for Eviction on the ground that the Applicants family member in terms of Ground 5, intends to move into the property. This was agreed.**
- 3. The Tribunal was satisfied that the Applicants were the heritable proprietor of the Property as a copy title was lodged with the Application alongside further legal documents. This was not disputed.**
- 4. There was a PRT in place between parties dated 28th August 2019. This was agreed.**
- 5. A Notice to Leave was sent to the Respondent on 15th September 2022.**
- 6. The Tribunal was satisfied on balance in terms of Schedule 3, Part 1 Ground 5 of the 2016 Act that the Applicant's family member namely the son of the family John Hair Junior intended to move into the property.**
- 7. The Tribunal found that the requirements of Ground 5 of Part 1, Schedule 3 to the Act had been met.**
- 8. The Tribunal was also satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period. There was no challenge to same.**
- 9. The Tribunal noted the Local Authority under the Homelessness etc. (Scotland) Act 2003 had been notified.**
- 10. The Tribunal spent some considerable time looking at reasonableness. Whilst the material matters and the Ground were not in dispute the Respondent had 3 teenage daughters and had been trying for some time to find alternative accommodation without success. The Applicant's son and the Applicant's farming partner had now been seeking to move into the property for 2 years and he was 27 years of age. He also sought to**

start a family and live independently from the farm and his parents but required to remain on the farm. None of which was in dispute. In all the circumstances the Tribunal considered it was reasonable on balance looking at the competing positions that the Applicants son be able to move into the property. The Tribunal found an Order in its discretion was reasonable in terms of the Coronavirus (Scotland) Act 2020.

11. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.
12. The Application will be affected by the Cost of Living (Protection for Tenants)(Scotland) Act 2022 and the order cannot be enforced in accordance with same.

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.

Karen Kirk

12th April 2023.

Legal Member/Chair

Date