



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/23/1589

Re: Property at 9 Ambleside Avenue, Dundee, DD3 0AG (“the Property”)

Parties:

Mr Ryan Brown, 9 Carslea Road, Dundee, DD2 5AW (“the Applicant”)

Louise Baird, Mr Darren Robertson, 9 Ambleside Avenue, Dundee, DD3 0AG (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained:
 - a. the tenancy agreement,
 - b. the notice to leave with evidence of service
 - c. section 11 Notice with evidence of service

- d. email from estate agents and lawyer confirming that an offer to sell had been received dated 30 August 2022
3. The applicant's agent appeared at the case management discussion on 3 November 2023. The respondents did not appear. Service of the application and the date of the case management discussion had been made on the respondents by sheriff officers. The tribunal was prepared to proceed with the case management discussion in the absence of the respondents.

Discussion

4. The applicant's agent advised that the applicants were seeking an order for recovery of the possession of the property under the ground 1 (intention to sell). The applicant wanted the property back, in order that it could be sold. They only had one property which they rented out. The agent advised that they had been trying to sell it for a while. They had received an offer to sell previously, but the notices had not been correct and the tenants had not left.
5. The agent advised that the tenants were keen for the order to be granted, they had been in touch with the council and had been offered a property, he understood that they had now been given the keys for their council house.

Findings in Fact

6. The Tribunal found the following facts established: -
7. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 18 October 2019.
8. The tenant was Louise Baird and Darren Robertson.
9. The landlord was Ryan Brown and Suzanne Brown.
10. The property was 9 Ambleside Avenue, Dundee.
11. There was submitted a notice to leave dated 10 February 2023, stating that an application would not be made until 8 May 2023. It sought eviction under ground 1 - your landlord intends to sell the let property.
12. The notice to leave had been emailed to the tenants by recorded delivery mail. There was evidence of service.
13. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. It had been emailed to the local authority.
14. There was a copy of an email sent on 30 August 2022 from lawyers confirming that they had received an offer to purchase the property.
15. The title deeds for the property show that the landlords are the owners of the property.

Reasons for Decision

16. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.
17. The ground which the Applicant seeks eviction under is ground 1. It is in the following terms :-

It is an eviction ground that the landlord intends to sell the let property.

The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord— (a) is entitled to sell the let property, and (b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it.

Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)— (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property, (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

18. The applicant's agent appeared. The respondents did not appear. The applicants agent confirmed that the applicants wished to proceed to sell the property. The applicants had submitted documentary evidence in support of the application. The documentary evidence confirmed that the applicants had received an offer to sell the property. The evidence was not recent, however the agent explained that the applicants had originally tried to serve the notice to leave themselves but the notices had been incorrect. They then sought advice from the agent, he served the correct notices. He advised that the applicants still wished to sell the property. He advised that the tenants were keen to move and had been offered a house from the council. They were not opposed to the order being granted.
19. It appeared that the terms of ground 1 were met. The tribunal required to proceed to consider if it would be reasonable to grant the order. We took into account that the respondent had been offered a property from the council and were keen for the order to be granted. Given these reasons the tribunal was prepared to grant the order for recovery of possession.

Decision

20. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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

Date 3rd November 2023