



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/23/2287

Re: Property at 6 Tolquhon Place, Ellon, Aberdeenshire, AB41 9GP (“the Property”)

Parties:

Mrs Victoria Nicholson, Aultbed Farmhouse, Glenrinnes, Dufftown (“the Applicant”)

Miss Kerri Robertson, 6 Tolquhon Place, Ellon, Aberdeenshire, AB41 9GP (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Sandra Brydon (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 present and represented by Elaine Elder, Aberdeen Considine, 5-9 Bon Accord Crescent, Aberdeen, AB11 6DN.

The Respondent was present.

3. Preliminary Matters

The Applicant's representative set out that she sought an order in respect Ground 1 of schedule 3 only and all the additional information sought was in regards to reasonableness.

The Respondent apologised as she had not been able to lodge written representations in advance of the hearing.

There were no preliminary matters raised.

4. Case Management Discussion.

For the Applicant

The Applicant's representative submitted she sought an order for Eviction based on Ground 1, Schedule 3. A Notice to Leave was intimated on 6th April 2023 on the basis that the Applicant wishes to sell the property to allow her and her husband to buy a home together. The Applicant's representative relied on the marketing quote lodged. She stated that repairs may be required and the intention thereafter was to place the property on the market for sale thereafter.

The Applicant's representative submitted an order would be reasonable as the Respondent has had 3 months notice which expired in July 2023. The Respondent has failed to provide information of any steps taken to secure alternative accommodation. The Eviction cannot take place until after March of next year. By then the Respondent will have had over a year to secure accommodation. The Applicant's representative said the relationship has broken down between parties. She asked the Tribunal to grant an order.

The Applicant directly told the Tribunal that there is a mortgage on the property and there is equity but she was not happy to disclose anything further on that with the respondent present. She said both her and her husband work full-time and she has a 14 year old son who resides with them. They live in an attached property to her husbands farm work and they have no other property. This is their only asset which is required to allow a new property with land to be purchased to reside in. They cannot afford to do so without selling this property

For the Respondent

The Respondent said she moved into the property in 2017. She split up with her husband more than 3 years ago. She got into another relationship which was highly toxic and abusive. She also suffered poor physical health and there had been an initial Notice to Leave separate from the current Notice to Leave relied upon. The Respondent said since that eviction notice over a year and a half ago the family have been living in boxes since. They wish to find alternative

accommodation and she is not opposed to an order. She has been applying for alternative housing and is in contact with the local authority.

The Respondent said she resides with her 3 children, who are 14 years, 17 years and 19 years. Her daughter is just back at school 3-4 weeks after attempting suicide. Her older children both have autism. The local authority have accepted the family requires a 4 bedroom house but she has been unable to secure anything. She was not opposed to the order.

Findings in Fact.

- 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 Applicant in terms of Ground 1, intends to sell the property within 3 months of the Respondent not occupying same. This was not in dispute.**
- 3. The Tribunal was satisfied that the Applicant was 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 14th July 2019.**
- 5. A Notice to Leave was sent to the Respondent on 6th April 2023.**
- 6. The Tribunal was satisfied on balance that the Applicant was in terms of Schedule 3, Part 1 Ground 1 of the 2016 Act intending to sell the property.**
- 7. The Tribunal found that the requirements of Ground 1 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 2016 Act had been notified.**
- 10. The Tribunal spent time looking at reasonableness. Whilst the Ground was not in dispute the Applicant set out she required to release the equity in the property to fund a purchase of a family home. The property was her family's only asset and they were currently residing in a linked property to her husband's employment. The Respondent has 3 children, and she has poor health. Her son's are autistic and her daughter has had to have a period off school. They are seeking local authority housing and do not want to reside in the property. In all the circumstances the Tribunal considered it was reasonable on balance looking at the competing positions that the Applicant is able to sell the property. The Tribunal found an Order in its discretion was reasonable in terms of the Coronavirus (Scotland) Act 2020. The Respondent did not oppose the Order.**

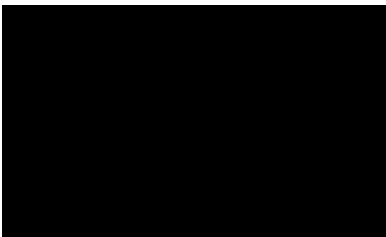
- 11. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.**
- 12. The Application will be affected by the Cost of Living (Protection for Tenants)(Scotland) Act 2022 and the order cannot be enforced except in accordance with same.**

Reasons for Decision

The Tribunal heard credible evidence of the Applicant's representative that the Applicant is seeking to sell the property. There are non relevant interpersonal relationships between parties and this has caused a breakdown in relationship which was not relevant to the decision before the Tribunal. The Respondent did not dispute the position but explained she was seeking alternative housing with the local authority. The Tribunal weighed up the circumstances and determined on balance that an order for Eviction was reasonable but would be subject to Cost of Living (Protection for Tenants)(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.



17th November 2023

Legal Member/Chair

Date