



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/23/1728

Re: Property at 169 HIGH STREET,, DALKEITH, EH22 1BB (“the Property”)

Parties:

ROBERT P. SLIGHT & SONS LIMITED, UNIT B WALLYFORD ESTATE, MUSSELBURGH, EH21 8QJ (“the Applicant”)

MR JOHN FRIEL, 169 HIGH STREET,, DALKEITH, EH22 1BB (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicant submitted an application under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order to evict the Respondent from the property.
2. By decision dated 31 July 2023, a Convenor of the Housing and Property Chamber having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. The Tribunal intimated the application to the parties by letter of 21 September 2023 and advised them of the date, time and conference call details of today’s CMD. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the

procedure to have been fair. The Respondent was invited to make written representations by 12 October 2023. No written representations were received from the Respondent.

The case management discussion

4. The CMD took place by conference call. The Applicant was represented by Mr John MacAulay and the Respondent joined the conference call personally and represented himself. The Respondent opposed the application for an eviction order. He explained that although he understands that the Applicant wishes to sell the property, he would like the opportunity to purchase the property. He has been a good tenant, has always paid his rent on time and has never been troublesome to the Applicant. When he first moved into the property, he lived with his girlfriend, but that relationship ended. He now has friends living with him and some of those friends are also employed by him. There are 4 adults and 3 children aged 17, 14 and 13 living with him. They are all related and they are not entitled to public funds, so he provides them with accommodation. He does not charge them rent. It is not a temporary arrangement for the friends to live with him and that will subsist for as long as they need the accommodation. The Respondent did not obtain the Applicant's consent for other persons to share the accommodation with him.
5. The Applicant's position is that it is unwilling to sell the property to the Respondent because the trust has been broken as a result of the Respondent breaching the tenancy agreement. The Applicant owns other rental property and intends to sell all of them. The Applicant no longer intends to rent out property. The Applicant arranged for an inspection of the property. The Applicant's representative lodged video evidence on 30 October 2023, which has not been viewed by the Tribunal members or by the Respondent. The video shows a tour around the property which is a 3 bedroomed property. There were several beds in the kitchen and living area. The main bedroom could be seen, but the other 2 bedrooms had been padlocked. The Applicant believes there are approximately 10 people living in the property. The Applicant also believes that the property is not the principal home of the Respondent. The Applicant's position is that the Respondent has breached clause 11.1, 11.2 and 11.3 of the tenancy agreement. It was submitted that it was reasonable in all of the circumstances to grant an order for eviction.

Findings in Fact

6. The parties entered into a private residential tenancy which commenced 5 September 2018.
7. The Applicant's representative served the Notice to Leave on the Respondent by sheriff officer on 16 December 2022.
8. The Applicants intend to sell the property.

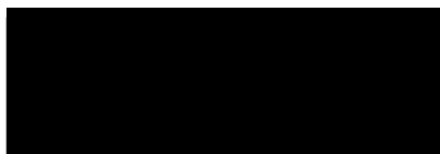
9. The Respondent breached clause 11.3 of the tenancy agreement.

Reason for Decision

10. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Respondent accepted that the landlord intends to sell property. Although he indicated a desire to purchase it, the Applicant is not obliged to sell the property to him. The Respondent did not accept that he had breached clause 11.1 or 11.2 of the tenancy agreement on the basis that the property is his principal home and he continues to reside there. However, the Respondent accepted that he has other people living with him and did not obtain the written consent of the Applicant, as required by clause 11.3 of the tenancy agreement. It was concerning that there appears to be 5 adults and 3 children living in a 3 bed roomed property. The information from the Respondent was that this was not a temporary situation. The Tribunal was satisfied that grounds 1 and 11 of the Act were established. The Tribunal observed that the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022 apply and therefore there would be a delay in the execution of any order for eviction, which would give the Respondent time to identify alternative accommodation. The Tribunal was satisfied that it was reasonable to grant the order evicting the Respondent from the property.

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

31 October 2023
Date