



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/2658

Re: Property at 29 McBain Place, Kinross, KY13 8QZ (“the Property”)

Parties:

Mr Angus Nelson, Easter Nether Urquhart Farm, Gateside, Strathmiglo, Cupar, Fife, KY14 7RR (“the Applicant”)

Miss Gemma Grant, 29 McBain Place, Kinross, KY13 8QZ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 7 August 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 1 of Schedule 3 to the 2016 Act (landlord intends to sell). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave and proof of service of same and the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003 and proof of service of same.

2. Following initial procedure, on 29 August 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 17 November 2023 was served on the Respondent by way of Sheriff Officer on 16 October 2023. In terms of said notification, the Respondent was given until 3 November 2023 to lodge written representations. No written representations were lodged by or on behalf of the Respondent.

Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference call on 17 November 2023 at 2pm, attended only by Mr Andrew Cullens, Solicitor of Messrs Jardine Donaldson, Solicitors on behalf of the Applicant. The commencement of the CMD was delayed for 5 minutes to give the Respondent an opportunity to join late, but she did not do so.
5. Following introductions and introductory remarks by the Legal Member, there was discussion regarding the eviction application. The Legal Member explained that, although the application does not appear to be opposed, the Tribunal still requires to be satisfied that the application was technically in order, that the ground for eviction had been established and that it is reasonable in all the circumstances for the Tribunal to grant the eviction order.
6. At the outset of his submissions, Mr Cullens stated that there had been a change in circumstances in that there are now 6 months of rent arrears owing and he wondered if it would be possible to bring in the substantial rent arrears ground at this stage, as that would fall outwith the eviction delay protections in the The Cost of Living (Tenant Protection)(Scotland) Act 2022 (“COLA”) and would allow faster enforcement of an eviction order, should that be granted. The Legal Member confirmed that he could request permission to amend the application today but evidence in support of the new ground would require to be submitted and the further documentation then served on the Respondent giving her sufficient notice in order that she could submit representations or oppose the amended application. The CMD would therefore require to be adjourned to a later date and there was some discussion regarding the likely timeframe for that. Mr Cullens requested a brief adjournment in order that he could take the Applicant’s instructions and this was granted. When Mr Cullens rejoined the call, he indicated that he had instructions to proceed with the application as it is, and he and his client will thereafter look at their other possible options of submitting a payment application in respect of the rent arrears or lodging a further eviction application, on the rent arrears ground.
7. Reference was made to the supporting documentation lodged with the Tribunal and, particularly, the letter from Morgans Estate Agents confirming their instructions to market the Property on behalf of the Applicant once vacant possession has been obtained. Mr Cullens explained that the reason behind the Applicant’s wish to sell is financial, to allow the Applicant to part-fund the

purchase by he and his wife of a property for them to live in themselves. Mr Cullens added that the Applicant's financial position is not being helped by the fact that the Respondent has stopped paying rent and the Applicant is still having to make his mortgage payments over this Property, etc. He confirmed that this is a stand-alone rental Property of the Applicant. In response to questions from the Tribunal Members, Mr Cullens advised that the Respondent did not live at this Property previously under a different tenancy agreement and has only resided there since this tenancy commenced on 9 December 2023. He is aware that the Respondent had only been at the Property for a few months before the Notice to Leave was served and explained that this was because the Applicant was presented with this unique opportunity to purchase the other property mentioned after the tenancy had commenced and this is when he decided to sell. Mr Cullens advised that the Applicant had contacted the Respondent initially to apologise for this and to explain his circumstances. Matters were fairly amicable at that stage and the Respondent had indicated that she would contact the local authority about alternative housing but that it is known that the local authority will await an eviction order before progressing this. There were further discussions between the parties after the Respondent stopped paying rent. Initially, the Respondent had indicated that she would enter into a payment arrangement with the Applicant but then their communications have petered out and nothing is being paid. Following service of the Notice to Leave, Mr Cullens advised that the rent payments stopped in June 2023 and that there are now therefore 6 months of arrears. The Tribunal noted that the monthly rental payments due in terms of the tenancy are £725. As to the Respondent's personal circumstances, Mr Cullens advised that he thinks that the Respondent has children who live with her, but does not know if she is a single parent, currently working or in receipt of benefits or has any health conditions or other vulnerabilities. He confirmed that this is a two or three bedroom semi-detached house. He concluded by asking the Tribunal to find it reasonable to grant the eviction order sought today, particularly bearing in mind that it is understood that the Respondent has already been in contact with the local authority, has not appeared to oppose the application being granted and will have the benefit of the COLA delay before the eviction will be able to take place. All the while, the rent arrears will continue to accumulate, impacting the Applicant's own financial circumstances.

8. The Tribunal adjourned briefly to discuss the application and, on re-convening, advised Mr Cullens that the eviction order will be granted, on the process which will now follow and thanked Mr Cullens for his attendance.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 9 December 2022.
3. The Respondent is still in occupation.

4. The Applicant intends to sell the Property once he obtains vacant possession.
5. A Notice to Leave in proper form and giving the requisite period of notice was sent to the Respondent by email on 13 March 2023 and acknowledged by the Respondent by email on the same date.
6. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 10 April 2023.
7. The Tribunal Application was submitted on 7 August 2023.
8. The Respondent did not lodge any written representations and nor did she attend the CMD.

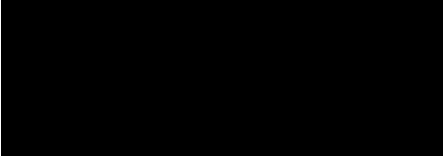
Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral information provided at the CMD by the Applicant's representative, Mr Cullens.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent (28 days as the tenancy had been in place for less than 6 months) and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered that the ground of eviction, that the landlord intends to sell (Ground 1 of Schedule 3 to the 2016 Act, as amended) was satisfied in that all elements of Ground 1 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal had noted that there was supporting documentation with the application from an estate agent indicating that they were instructed and that the Applicant was intending to market the Property for sale when vacant possession is obtained. Mr Cullens had confirmed that the background reason for the Applicant's wish to sell is financial, to enable him to part-fund a property for himself and his wife. He also considers that the ongoing rent arrears situation is impacting negatively on the Applicant's finances and that this should also have a bearing on the question of reasonableness. The Respondent did not appear to wish to oppose the application and the Applicant's understanding is that the Respondent has been in contact with the local authority regarding seeking alternative accommodation. The Tribunal is aware that, if granting the order today, that there will be a delay of some months before the order can be enforced in terms of the COLA protections which may well provide the Respondent with an opportunity to secure alternative accommodation meantime. In all these circumstances, the Tribunal considered it reasonable to grant the eviction order.

4. The Tribunal did not have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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

17 November 2023
Date