



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016

Reference number: FTS/HPC/EV/23/2599

Order granted on 5 December 2023.

Re: Property at 26/9 Haymarket Crescent, Livingston, West Lothian, EH54 8AP (“the Property”)

Parties:

Simon John Campbell, residing at 61 The Willows, Highworth, Swindon, SN6 7PH (“the Applicant”)

Mr Lee McAlister and Ms Jodie Ferns, both residing at 26/9 Haymarket Crescent, Livingston, West Lothian, EH54 8AP (“the Respondents”)

Tribunal Members:

Paul Doyle (Legal Member)
Gordon Laurie (Ordinary member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) makes an order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 1 of schedule 3 to the 2016 Act.

Background

The Applicant sought recovery of possession of the Property in terms of Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (the "2016 Act"). The Applicant had lodged with the Tribunal Form E dated 03/08/2023. The documents produced were a Tenancy Agreement (which commenced on 29/06/2021); a Notice to Leave served on 14/04/2023, and a Notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003. A copy title sheet was lodged with the Tribunal which showed that the applicant is the heritable proprietor of the Property.

Case Management Discussion

A case management discussion took place by telephone conference at 2.00pm on 5 December 2023. The Applicant was represented by Mr C McQueenie of Mavor & Co. The respondents were both present but not represented.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondents entered into a Private Residential Tenancy Agreement for the Property on 29 June 2021.
2. The rent in terms of the Tenancy Agreement was £650.
3. On 14 April 2023 the Applicant served a Notice to Leave on the Respondents. The Applicant wants to sell the Property.
4. On 14 April 2023 the Applicant instructed Mavor & Co, Aberdeen, to market the Property for sale at a price of £130,000.
5. On 03 August 2023, the Applicant submitted an application to the tribunal.
6. The Applicant seeks recovery of possession of the Property in terms of Ground 1 of part 1 of schedule 3 to the 2016 Act. On the facts as we find them to be, the Applicant
 - (a) is entitled to sell the let property,
 - (b) intends to sell the Property for market value within 3 months of the tenant ceasing to occupy it, and
 - (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.
7. The Respondents have been trying to arrange alternative accommodation and do not want to stay in the property any longer than they have to. They have a 2 year old child. Both of the Respondents work in Livingston. They have arranged their work schedule around their child's needs. They are concerned that they might lose their employment if they cannot stay in the Livingston area. They are willing to move but have not been able to find suitable alternative accommodation. They have applied to the local authority for housing. They rely on public transport.
8. This is the only rental property the Applicant owns. He wants to realise the capital tied up in the property to pay for necessary private health care.

Reasons for the Decision

9. We balance the interests of the parties. The Respondents are protected by the 6 month delay in enforcement of any order created by the Cost of Living (Scotland) Act 2022. That is sufficient protection to serve their interests and gives them adequate time to make alternative accommodation arrangements.

10. The Respondents do not offer opposition to the application. They simply need more time to find alternative accommodation. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the Property.

11. The Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The basis for possession set out in Ground 1 of part 1 of schedule 3 to the 2016 Act is established. The Respondents offer no defence to the application other than to ask for further time to find alternative accommodation. For these reasons, the Tribunal determined to grant an Order for possession.

Decision

For the foregoing reasons, the Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 1 of part 1 of schedule 3 to the 2016 Act.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

