



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/23/2731

Property : 30 Parkview Gardens, Arbroath DD11 4JN (“Property”)

Parties:

Wallace Prow, 77 Keptie Street, Arbroath DD11 3AN (“Applicant”)

Anne Prow, 77 Keptie Street, Arbroath DD11 3AN (“Applicant’s Representative”)

Lisa Swankie, 30 Parkview Gardens, Arbroath DD11 4JN (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Tenancy Agreement dated 28 July 2022; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") which was not dated ("Notice to Leave"); document signed by the Respondent confirming receipt of the Notice to Leave on 17 May 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 10 August 2023; written representation from the Applicant and sheriff officer's execution of service certifying service of the Application on 18 October 2023.

Case Management Discussion

A case management discussion (“CMD”) took place before the Tribunal on 23 November 2023 by teleconference. The Applicant was in attendance and was represented by the Applicant’s Representative. The Respondent was also in attendance and was accompanied by Sally Russell as a supporter.

The Tribunal noted the written representation lodged by the Applicant. Mrs Prow told the Tribunal that she and the Applicant had been living in temporary accommodation for a year since they had to leave the tied house they were occupying due to flooding. She said the Applicant had lost his job. Mrs Prow said that she and the Applicant had moved six times since leaving the tied house. She said that they were living in a caravan until mid-November when they were evacuated due to flooding. She said that they are currently living with their son and grandson in a two bedroom property. She said that was a temporary arrangement and they have nowhere to go. Mrs Prow told the Tribunal that the Applicant is presently unable to work and that she has also been signed off her work as the situation has impacted her mental health.

The Respondent told the Tribunal that she is not being difficult about leaving the Property. She said she had seen the written representation lodged by the Applicant. She said she is a nursing student at Dundee University. She said she is on placements every six weeks. She said she lives in the Property with her daughters aged 15 and 19. Her younger daughter is at a local school and her older daughter is working. She said she has been in touch with the local authority about alternative accommodation. They had told her she needed to go through the Tribunal process and have an eviction order granted before they could help her. She said she had looked at the private rented sector but it was too expensive. She said that the paper work she has from the local authority says she will be given priority. In response to a question from the Tribunal the Respondent said she did not dispute anything said by Mrs Prow.

The Tribunal noted that the Cost of Living (Tenant Protection)(Scotland) Act 2022 would impact any order granted.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement for the Property dated 28 July 2022.
2. A Notice to Leave was served on the Respondent on 17 May 2023. It stated that an application for an eviction order would not be submitted to the Tribunal before 10 August 2023.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 10 August 2023.
4. The Applicant holds title to the Property and is entitled to sell the Property.
5. The Applicant intends to live in the Property as his only or principal home for at least 3 months.

Reasons for the Decision

In terms of section 51 of the Act, the First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 4 which is that the landlord intends to live in the Property. The evidence lodged with the application of that intention was a written representation from the Applicant and a communication from the Applicant's provider of home insurance. The Tribunal considered the evidence provided and the oral submission from Mrs Prow. There were no factual matters in dispute between the Parties. The Tribunal determined that the ground for eviction had been established.

The Tribunal considered the question of reasonableness. Then Tribunal considered the oral representations by Mrs Prow and the Respondent. The Tribunal determined that it was reasonable to grant an order for eviction. The ground for eviction founded upon was ground 4, not ground 4A. In those circumstances the Cost of Living (Tenant Protection)(Scotland) Act 2022 would impact the order granted.

Decision

The Tribunal determined to grant an order for possession of 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.

J Devine

**Joan Devine
Legal Member**

Date: 23 November 2023