



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/23/3346

Re: Property at Skelbister Sanday, Orkney, KW17 2BA (“the Property”)

Parties:

Mr Barry Walsh, Mrs Michelle Walsh, Skelbister Steading, Sanday, Orkney, KW17 2BA (“the Applicant”)

Miss Caitlin Mitchell, Skelbister Sanday, Orkney, KW17 2BA (“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 dated 19th September 2023 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 video conference. Parties were advised on the procedure of a CMD and the rules regarding them.

2. Attendance and Representation

The Applicants were present and unrepresented.

The Respondent was not present but was represented by Steven Dunbar, Orkney Citizen’s Advice Bureau in Court representation Project.

3. Preliminary Matters

This case management discussion was fixed by the Tribunal alongside an evidential hearing for case number ending 0735. This separate application was also seeking an order for eviction in terms of Section 51 of the Act. This application relates to Ground 4 that the landlord intends to live in the property. Case ending 3346 seeks an order based on Ground 11, breach of tenancy agreement.

The Applicant advised that this application was his original position to seek to reside in the property and the subsequent application on breach of tenancy arose following alleged issues with the tenancy terms.

The Respondent's representative confirmed the Respondent as Ground 4 would be subject to the Cost of Living (Protection for Tenants)(Scotland) Act 2022 and the order cannot be enforced except in accordance with same, was not opposed to an order. There was animosity between parties but the Respondent sought time and assistance to obtain alternative housing.

There were no other preliminary matters raised.

4. Case Management Discussion.

For the Applicant

The Applicant submitted he sought an order for Eviction based on Ground 4, Schedule 3, that he intended to reside in the property as his only or principal home for at least 3 months. The Applicants set out that the property was their home address before they had rented same out. They explained that their need to reside in the property had become more desperate. The Applicant's work as a software engineer had changed and he had a need for more space and could not work remotely. Both Applicants are residing in a cramped caravan with 4 dogs and this is not effective for work and for normal life purposes. They have one further property they rent out next door to this property which is to become vacant but that property was lived in by their in-laws who are now deceased. They wish to return to live in their own home.

The Applicants set out that the caravan they are residing in is outside Malton in North Yorkshire but he will not reveal the addresses of official certified campsites they reside in. The property will be their principal home but the touring caravan on the property may assist with renovations. He said the plan was for the Applicant's to reside in the property for at least 6 months and the indefinite future.

For the Respondent

The Respondent's representative explained that there is an extreme housing shortage on Orkney and no housing application will be accepted without an order for eviction. The Respondent doubts the intention of the Applicants who have continued to live on a mobile basis for some time now. However the Respondent's priority is to be accommodated elsewhere and she does not oppose an order. The Respondent's representative set out he did not oppose an order being considered at this Case Management Discussion without formal evidence. The Respondent did not comply with previous directions issues under application ending 0735 as her position had changed. He could confirm she does have mental ill health and that an application for housing will be made and she will be assisted with this.

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. The Application was not opposed. There was no objection to a substantive decision being made at this CMD.**
- 2. The Applicants sought an Order for Eviction on the ground that the Applicants in terms of Ground 4, intend to occupy the property as their only or principal for home for at least 3 months. The Tribunal was satisfied that the Applicant's intended to reside in the property as their only or principal home. This was not in dispute.**
- 3. The Tribunal was satisfied that the Applicants were the heritable proprietors of the Property as a copy title was lodged with the Application. This was not disputed.**
- 4. There was a PRT in place between parties dated 12th September 2020.**
- 5. A Notice to Leave was sent to the Respondent on 20th December 2022.**
- 6. The Tribunal was satisfied on balance that the Applicant's were in terms of Schedule 3, Part 1 Ground 4 of the 2016 Act intending to reside in the property.**
- 7. 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.**
- 8. The Tribunal noted the Local Authority under the 2011 had been notified.**
- 9. The Tribunal considered reasonableness. Whilst the ground was not in dispute the Applicants set out they required to reside in the property. The lack of space for them was affecting their life and work prospects. The Respondent sought alternative housing and did not oppose the application. In all the circumstances the Tribunal considered it was**

reasonable on balance looking at the competing positions that the Applicants be able to reside in 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.

10. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.

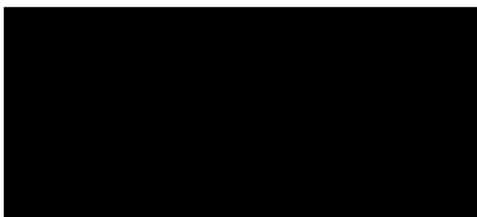
11. The Application will be affected by the Cost of Living (Protection for Tenants)(Scotland) Act 2022 and the order cannot be enforced except in accordance with same.

Reasons for Decision

The Tribunal heard evidence of the Applicants regarding their personal circumstances. This was supported by Affidavit evidence. The Respondent sought alternative accommodation and did not oppose the application. She had been now with the help of the Citizen's Advice Bureau liaising with the local authority to seek alternative accommodation. 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.



Legal Member/Chair

13 December 2023

Date

