



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/23/3116

Re: Property at 39 Florence Court, Perth, PH1 5BL (“the Property”)

Parties:

Mr Herwig Eder as Executor of the late Claudia Eder, Fabriksteig 12/., 9500 Villach, Austria (“the Applicant”)

Mr Robert McDonald, 39 Florence Court, Perth, PH1 5BL (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Angus Lamont (Ordinary Member)

Decision

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 6 September 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/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same and evidence in support of the ground, including documentation in connection with the Confirmation of the Estate of the late landlord and confirming that the Property

was being marketed in Austria, where the Applicant (the late landlord's Executor) lives.

2. Following initial procedure, on 22 September 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 19 December 2023 was served on the Respondent by way of Sheriff Officer on 9 November 2023. In terms of said notification, the Respondent was given the opportunity to lodge written representations. No written representations were lodged by or on behalf of the Respondent prior to the CMD.

Case Management Discussion

4. A Case Management Discussion ("CMD") took place by telephone conference call on 19 December 2023 at 2pm, attended by Mr Alex Robertson of Gillespie Macandrew solicitors, on behalf of the Applicant and by the Respondent, Mr Robert McDonald.
5. Following introductions and introductory remarks by the Legal Member, Mr McDonald was asked to confirm his position in relation to the application. He advised that he did not oppose the application as he understands the reasons behind the Property being sold. He confirmed that the Property is already up for sale and that there was, in fact, a viewing today. He is looking for another property to move to but can move in with his sister temporarily if required. He explained that he used to own his own property but would not now be able to obtain a mortgage due to his age. He is therefore looking for another property to rent, either from the local authority, a Housing Association or another private let.
6. The Legal Member explained that, although the application is not opposed, the Tribunal still requires to be satisfied that the application is technically in order, that the ground for eviction has been established and that it is reasonable, in all the circumstances, for the Tribunal to grant the eviction order.
7. Mr Robertson made reference to the application and the supporting documentation lodged. He explained that the Applicant is the Executor of the late landlord, conform to Confirmation granted by the Sheriff Court in December 2022. The late landlord had entered into a Private Residential Tenancy with Mr McDonald which commenced in April 2019. The Property was managed on behalf of the late landlord by Premier Properties Perth Ltd and following Confirmation, a Notice to Leave was served on Mr McDonald by email on 8 February 2023. A Section 11 Notice was served on the local authority by email on 4 September 2023. Mr Robertson submitted that all of the statutory provisions had been followed and that it was reasonable for the Tribunal to grant the eviction order sought at the CMD today. Mr Robertson referred briefly

to relevant caselaw on reasonableness and submitted that the Tribunal should take into account the whole of the relevant circumstances in considering reasonableness and to consider this in a broad, commonsense way by weighing the effects on each party of granting the order. Mr Robertson confirmed the Applicant's circumstances. He is the brother and Executor of the late landlord and he and his parents are the beneficiaries of her estate. They require the Property to be sold so that the proceeds can be distributed between them. They all live in Austria. The Applicant does not speak very good English and his parents are elderly. It is accordingly not feasible for them to consider keeping the Property on and they do not wish to be landlords of a property in Scotland. Mr Robertson submitted that there is a clear intention to sell, supported by the documentation submitted to the Tribunal and that the process is already underway, as confirmed by the Respondent, Mr McDonald. As to Mr McDonald's circumstances, Mr Robertson referred to what Mr McDonald had stated earlier, that he is clearly not opposing the application and that the granting of an eviction order today will, in fact, assist Mr McDonald's housing application.

8. In response to questions from the Ordinary Member, Mr McDonald confirmed that he works as a tradesman; that he understands the Applicant's position and will be moving out as soon as he is able; and that the local authority is aware of the Tribunal proceedings today, are aware that it is a 'no-fault' eviction and have been quite positive in respect of his housing application.
9. The Tribunal advised that, in the circumstances, the eviction order would be granted today. The Legal Member explained briefly the process which will now follow and regarding the effects of the Cost of Living (Tenant Protection)(Scotland) Act 2022 ("COLA") and that the enforcement of the order would be delayed until 31 March 2024, although it was open to Mr McDonald to vacate the Property earlier if he was able and wished to do so. Parties were thanked for their attendance and the CMD brought to a close.

Findings in Fact

1. The Applicant is the Executor of the late owner and landlord of the Property conform to Confirmation granted on 22 December 2022.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 9 April 2019.
3. The Respondent is still in occupation.
4. The Applicant intends to sell the Property once vacant possession is obtained.
5. The Property is already being marketed for sale.
6. A Notice to Leave in proper form and giving the requisite period of notice was emailed to the Respondent on 8 February 2023.

7. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 6 May 2023.
8. The Tribunal Application was submitted on 6 September 2023.
9. The Respondent does not oppose the application.

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 Robertson and by the Respondent, Mr McDonald.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the requisite period of notice had been served on the Respondent 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 presented to the Tribunal, to grant the eviction order sought. The Tribunal noted that there was supporting documentation with the application showing that the Property was being actively marketed and that this was confirmed by the Respondent who was clearly cooperating with the process and accommodating viewings. The Applicant's representative had addressed the Tribunal in detail as to the background circumstances requiring the Property to be sold. The Respondent was not opposing the application and was intending to vacate the Property as soon as he was able. He had already been in contact with the local authority regarding seeking alternative accommodation. The Tribunal is aware that, in granting the order today, that there will be a delay of several 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 also 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.

N Weir

Legal Member/Chair

19 December 2023
Date