



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/23/3655

Re: Property at 15 Durward, East Kilbride, Glasgow, G74 3PB (“the Property”)

Parties:

Miss Debra Davidson, 11 Minehead Way, Stevenage, Hertfordshire, SG1 2HU (“the Applicant”)

Miss Rebecca Linney, 15 Durward, East Kilbride, Glasgow, G74 3PB (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

Background

1. On 16th October 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 31st October 2019 and a rent of £695 per month;
 - ii. Copy Notice to Leave dated 20th June 2023;
 - iii. Copy email dated 20th June 2023 to the Respondents serving the Notice to Leave;
 - iv. Section 11 Notice and proof of service;

- v. Email from HomeConnexions confirming they are instructed to market the property for sale.
3. The Application was served on the Respondent by Sheriff Officers on 1st December 2023.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Miss Wooley of Bannatyne, Kirkwood & France, Solicitors. There was no attendance by the Respondents or any representative on her behalf.
5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
6. Miss Wooley sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. She said that the Applicant intended to sell the property, or at least put it up for sale, within three months of the Respondent vacating it. She said that the Applicant wished to sell the property so that she could relocate to be nearer to her children and grandchildren. This was her only property and she is currently renting in Stevenage. Her family are in Southampton so she makes a 200 mile round trip every time she visits them. She wishes to purchase a home near to them, and the sale proceeds will allow her to put down a deposit. Miss Wooley also made reference to the email from HomeConnexions which had been lodged with the application.
7. The Tribunal were satisfied that the ground had been established, and asked Miss Wooley to address the Tribunal on reasonableness. Miss Wooley said that she had limited information about the Respondent. She understood that the Respondent is a single parent with two school aged children. She is in part time employment and has some benefits. There has been no contact between the parties since the Notice to leave was served.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 31st October 2019;
- c. A Notice To Leave, dated 20th June 2023, was served timeously and correctly;
- d. A section 11 notice was served on the local authority;
- e. The Application was served on the Respondent by Sheriff Officer on 1st December 2023;

- f. The Applicant intends to sell or market for sale the property within three months of the Respondent vacating;
- g. The Applicant wishes to sell to enable her to put a deposit down on a property nearer to her family;
- h. The Respondent is a single parent with two school aged children;
- i. The Respondent has not made contact with the Applicant since the Notice to Leave was served.

Reasons for Decision

8. It is usually mandatory to grant an application under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal’s power to issue an eviction order), the words “or must” are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii)sub-paragraph (3) is repealed,

(iv)in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h)in paragraph 10(2) (not occupying let property)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i)in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j)in paragraph 13(2) (criminal behaviour)—

- (i) in the opening words, for “must” substitute “may”,
- (ii) after paragraph (a), the word “and” is repealed,
- (iii) after paragraph (b) insert “, and
- “(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,
- (k) in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—
- “(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

9. The Tribunal now has to decide if it is reasonable to grant the eviction order.

10. The Tribunal were of the view in this case that the Applicant had established Ground 1 by provision of the email from HomeConnexions and the submissions by the solicitor. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal accepted the Applicant’s reasons for wishing to sell , and noted that there had be no attempt by the Respondent to contact the Applicant, nor had she appeared at the CMD. The Tribunal considered in those circumstances that it was reasonable to grant the order.

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

29th January 2024

Date