



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/23/3957

Re: Property at 30 Priory Square, Kincardine, FK10 4PF (“the Property”)

Parties:

Mrs Tracy Barrett, 80 Standalane, Kincardine, Fife, FK10 4NY (“the Applicant”)

Miss Tracy Wilkinson, 30 Priory Square, Kincardine, FK10 4PF (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Gerard Darroch (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 recovery and possession should be granted in favour of the Applicant.

Background

1. An application was received by the Housing and Property Chamber dated 6th November 2023. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on ground 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 6th December 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 29th January 2024 at 10am by teleconferencing. The letter also requested all written representations be submitted by 27th December 2023.
3. On 7th December 2023, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 7th December 2023.

4. On 27th December 2023 an email was sent from Ms Iona Watson from Frontline Fife to advise that she was now representing the Respondent.
5. On 29th December 2023 an email was received from the Respondent's representative lodging a submission on behalf of the Respondent. It was noted in the submission that the Respondent did not oppose an order being granted but wanted the Order not to be able to be enforced before end of June 2024.

The Case Management Discussion

6. A CMD was held on 29th January 2024 at 10am by teleconferencing. The Applicant was present and represented herself. The Respondent was not present but was represented by Ms Iona Watson, Frontline Fife.
7. The Applicant said that she has concluded the missives for the sale of the Property to Fife Council. She has a flexible date of entry. However, she is concerned that if matters are not completed within this financial year the sale will not be able to proceed as there is funding for the sale from this year's budget. The Applicant believes that this property is to be allocated for temporary housing. Fife Council owns 6 out of 9 of the properties in the block. The Applicant bought the Property as investment when her husband retired. The Applicant and her husband had taken some money from their mortgage when buying the Property to ensure that there was no mortgage on that property. The Applicant's own residential mortgage has risen from £300 per month to £700 as a result of the cost of living crisis. This has put the Applicant under financial pressure. The sale of the Property will be used to reduce her mortgage which will in turn reduce her monthly mortgage payments. The Applicant is concerned that Fife Council may rescind the offer should it go into the next financial year. If that was the case she would need to start again and would accrue legal costs. The Tribunal noted that local authority funding mechanisms for the completion of the purchase of temporary accommodation generally allow for accruals into the next financial year. The Respondent hopes that this is the position but has not heard anything from Fife Council despite her best efforts in trying to contact them for confirmation.. Regardless Fife Council will be aware that the Cost of Living (Tenant Protection)(Scotland) Act 2022 applies here which means that an order cannot be enforced until 31st March 2024. The Respondent would not leave until the 14 day notice has been served after 31st March 2024. Which would mean even without a supersession the enforcement of the Order would not be until the new financial year.
8. Ms Watson confirmed that the Respondent did not oppose an order being granted. The Respondent is looking to be rehoused by Mid Lothian Council. She wants to be closer to her sister who lives in Edinburgh. The Respondent's sister has been in discussions with Mid Lothian Council regarding her being rehoused but that will not be considered until such time as there is an eviction order. The Respondent is concerned for her 16 year old daughter who is in an examination year. If the family is evicted in mid April. Then this will have a very significant effect upon her daughter as that is close to the start of her exams.

As the family are looking to move to Mid Lothian it would not be possible for her daughter to commute to school. It is over an hour away by car and longer by public transport. The Respondent does not drive. The Respondent's daughter would need to be accepted into a new school which may take time. This could not happen until they had their new address to allow them to approach the local school. In addition, the Respondent's daughter needs additional supports for her exams which are in place at her current school. The family are prepared to leave once they have been rehoused. They have started to pack their belongings.

Findings and reason for decision

9. A Private Rented Tenancy Agreement commenced 25th February 2024.
10. The Applicant owns this property and her own residential property. The Applicant has concluded missives with Fife Council for the purchase of the Property.
11. There are no issues with the tenancy or the Respondent in terms of rent arrears or other issues.
12. The Respondent is not opposed to the Order being granted.
13. The Respondent's eldest daughter is sitting exams up to and including May 2024. The Tribunal considered it reasonable to supersede the date of the Order to allow her to complete her exams.
14. There are no issues of reasonableness that prevent an order from being granted.

Decision

15. The Tribunal found that ground 1 has been established and granted an order in favour of the Applicant. The Tribunal superseded the extract until 17th May 2024.

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.

G. Miller

29th January 2024

Legal Member/Chair

Date