



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/3897

Re: Property at 6 Kingfisher Road, Inverurie, AB51 6AH (“the Property”)

Parties:

Mr Phillip Charles Milne, 3 Maitland Path, Inverurie, AB51 4ZT (“the Applicant”)

Mrs Anita Strachan, 6 Kingfisher Road, Inverurie, AB51 6AH (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 6 Kingfisher Road, Inverurie, AB51 6AH under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees, and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The Applicant based his

application on Ground 1 (Landlord intends to sell the Property) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

2. The application was accompanied by a Private Residential Tenancy Agreement dated 28 April 2018, a letter dated July 2023 from the Applicant to the Respondent, a letter dated 2 August 2023 from Messrs Peterkins to the Respondent, a Notice to Leave dated 3 August 2023, recorded delivery proof of delivery dated 4 August 2023 and Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Aberdeenshire Council dated 3 November 2023.
3. On 18 March 2024 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 17 April 2024. This paperwork was served on the Respondent.

Case Management Discussion

4. The Tribunal proceeded with the CMD on 17 April 2024 by way of teleconference. Mr Kingdon from Peterkins, solicitors appeared for the Applicant. The Respondent appeared on her own behalf.
5. The Tribunal had before it the Private Residential Tenancy Agreement dated 28 April 2018, a letter dated July 2023 from the Applicant to the Respondent, a letter dated 2 August 2023 from Messrs Peterkins to the Respondent, a Notice to Leave dated 3 August 2023, recorded delivery proof of delivery dated 4 August 2023 and Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Aberdeenshire Council dated 3 November 2023. The Tribunal noted the terms of these documents.
6. Mr Kingdon moved the Tribunal to grant an Order for repossession. He submitted the Applicant wanted to sell the Property. The Applicant is 82 years of age and suffers from various health issues. The Applicant is not physically or mentally well enough to continue to be a landlord. The Applicant’s wife died in 2012 and he wants to sell his own home and the Property to move to somewhere more suitable. The Applicant has engaged Peterkins in the sale of the Property.
7. Mrs Strachan advised the Tribunal that she lived at the Property with her two children aged 14 and 18. Her daughter has ADHD. She explained that she worked and that when she had first taken the tenancy on she received some help financially with the rent as she worked part time. She no longer has that assistance and wishes to move into a local authority house as she is struggling to pay the rent. She explained she is on the waiting list for rehousing and that her children would be moving with her. She needed an order from the Tribunal before she could get rehoused.

Findings in Fact

8. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement dated 3 November 2018.
9. The Applicant is elderly and suffers from various health issues and no longer wishes to be a landlord. He wishes to sell the Property and his own home to buy a more suitable property to live in. The Applicant has engaged Peterkins solicitors to act for him in the sale of the Property.
10. The Applicant's agent served a Notice to Leave on the Respondent by way of recorded delivery post on 3 August 2023. This was received by the Respondent on 4 August 2023. The Notice to Leave required the Respondent to leave the Property by 29 October 2023. The Notice to Leave relied on Ground 1 (Landlord intends to sell) of Schedule 3 to the 2016 Act.
11. The Respondent is seeking help and assistance from Aberdeenshire Council in seeking rehousing. She lives in the Property with her two children. The Respondent is in employment.
12. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Aberdeenshire Council on 3 November 2023.

Reasons for Decision

13. The Tribunal considered the issues set out in the application together with the documents lodged in support.
14. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1, namely the Landlord intends to sell the Property. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
15. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
16. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to sell the Property at Part 2 of the Notice in terms of Ground 1 of schedule 3. The Notice to Leave

specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 29 October 2023. The Notice to Leave was served on the Respondent by way of recorded delivery post on 3 August 2023. In terms of Section 54 the notice period of the Notice to Leave is 84 days. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 29 October 2023. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice. Accordingly, the Notice to Leave complies with Section 62.

17. The Tribunal considered the submissions made by Mr Kingdon and Mrs Strachan. The Tribunal considered the Respondent had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Mr Kingdon that the factual basis of the application had been established in relation to Ground 1 and was satisfied the Applicant intended to sell the Property as soon as he regained possession to fund the purchase of a suitable home.

18. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to sell the Property when he obtained possession. The Tribunal accepted Mr Kingdon's submissions that the Applicant no longer had the physical or mental ability to continue to act as a landlord. It was clear to the Tribunal that the relationship between the parties was good and that the Respondent had accepted she would have to move. The Tribunal considered that although the Respondent had children, the Respondent had sensibly sought advice on her housing options and had applied for social housing. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

19. In the circumstances the Tribunal considered that in terms of Ground 1 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

20. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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

17 April 2024

Date