



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/23/4044

Re: Property at 74 Langlaw Road, Mayfield, EH22 5AS (“the Property”)

Parties:

Mr Nyo Logan, 8 Dundas Road,, Eskbank, EH223EN (“the Applicant”)

Miss Danielle Shiels, 74 Langlaw Road, Mayfield, EH22 5AS (“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 74 Langlaw Road, Mayfield, EH22 5AS 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 11 (Breach of tenancy) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

2. The application was accompanied by a Private Residential Tenancy Agreement dated 21 October 2022, text messages between the parties, a Notice to Leave dated 10 October 2023, recorded delivery proof of delivery dated 13 October 2023 and Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Midlothian Council dated 11 October 2023.
3. On 13 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 22 April 2024. This paperwork was served on the Respondent.

Case Management Discussion

4. The Tribunal proceeded with the CMD on 22 April 2024 by way of teleconference. Mr Logan the Applicant appeared on his own behalf. Ms Shiels the Respondent appeared on her own behalf.
5. The Tribunal had before it the Private Residential Tenancy Agreement dated 21 October 2022, text messages between the parties, the Notice to Leave dated 10 October 2023, recorded delivery proof of delivery dated 13 October 2023 and Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Midlothian Council dated 11 October 2023. The Tribunal noted the terms of these documents.
6. Mr Logan moved the Tribunal to grant an Order for repossession. He submitted that in about June last year he discovered that the Respondent had a dog in the Property. He texted the Respondent about the dog as she did not have permission to keep the dog. This was in breach of the tenancy agreement. The Tribunal noted the text messages between the parties regarding the dog and that in terms of Clause 35 of the tenancy agreement the Respondent had agreed to obtain permission from the Applicant before keeping a pet. Mr Logan explained he did not like dogs and certainly did not want them in his Property. In addition, he explained that he was intending to move back into the Property as he was sofa surfing between family and friends.
7. In response Ms Shiels submitted that the Applicant was aware she had a cat which had been agreed with him. However, when she got her toy cockapoo she stupidly forgot to ask for permission. She has never denied she had the dog at the Property. She explained her ex-partner took the dog a few times a week to work and that it went to dog daycare twice a week. The dog was never left alone in the Property. When she got the Notice to Leave she started

to try to find a private let but had not been able to find one. She felt she had no choice but to do that. She was happy to cut ties with the Applicant as she did not want to keep coming back to the Tribunal. She wanted to move on as she had to think about her two-year-old daughter.

8. Mr Logan raised concerns about damage to the Property. Ms Shiels explained there was no damage to the Property. Mr Logan also expressed concerns that he had family members who were allergic to dog hair. Ms Shiels explained her dog was hypoallergenic.
9. On being questioned by the Tribunal, Mr Logan confirmed he had given permission for the cat, but not the dog. He felt that dogs created more mess than cats. He had not carried out any inspections and confirmed the Property had a garden. However, Ms Shiels had known for some time he needed to move back into the Property as he had nowhere else to stay permanently after going away travelling. He had withdrawn another eviction action based on him wanting to move back into the Property.
10. Ms Shiels submitted she did let her dog into the garden and that no problems had been caused by her dog. However, she confirmed she wanted to be settled and accordingly wanted to move on from the tenancy. She submitted she needed a bit longer than 28 days to find a new tenancy.

Findings in Fact

11. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement dated 21 October 2022.
12. In terms of clause 35 of the tenancy the Respondent agreed not to keep a pet without the Applicant's permission. The Applicant gave permission for the Respondent to keep a cat at the Property.
13. In about June 2023 the Respondent obtained a toy cockapoo dog. The dog lives in the Property with the Respondent. The Applicant did not give permission for her dog to remain in the Property.
14. The Applicant served a Notice to Leave dated 10 October 2023 on the Respondent by way of recorded delivery post on 11 October 2023. This was received by the Respondent on 13 October 2023. The Notice to Leave required the Respondent to leave the Property by 11 November 2023. The Notice to Leave relied on Ground 11 (Breach of Tenancy Agreement) of Schedule 3 to the 2016 Act.
15. The Respondent is trying to find alternative accommodation. She lives in the Property with her two year old daughter.

16. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Midlothian Council on 11 November 2023.

Reasons for Decision

17. The Tribunal considered the issues set out in the application together with the documents lodged in support.

18. 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 11, namely a breach of tenancy. 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.

19. 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.

20. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states the Ground of eviction and specifies the date the landlord expects to become entitled to make an application for an eviction. The Notice to Leave was served on the Respondent by way of recorded delivery post on 11 October 2023. In terms of Section 54 the notice period of the Notice to Leave is 28 days. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 11 November 2023. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice. Accordingly, the Notice to Leave complies with Section 62.

21. The Tribunal considered the submissions made by Mr Logan and Ms Shiels. The Tribunal considered the Respondent had not disputed she had a dog. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by both parties that the factual basis of the application had been established in relation to Ground 11.

22. 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 it was clear to the Tribunal that both parties accepted there was a dog at the Property. It was also clear to the Tribunal that the relationship between the parties was strained. The Tribunal accepted that the Respondent felt that in the interests of herself and her daughter she wanted to cut ties and find somewhere else to live. The Respondent had accepted she would have to move. The Tribunal considered that although the Respondent had a young daughter, the Respondent was sensibly looking for alternative housing. Further the Tribunal considered that the Applicant was sofa surfing and had no permanent home.

The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

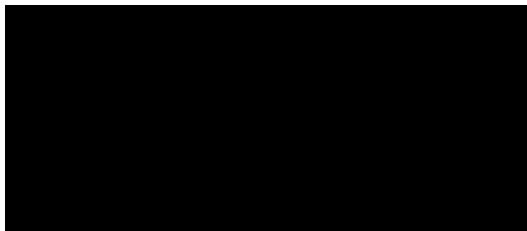
23. In the circumstances the Tribunal considered that in terms of Ground 11 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

24. The Tribunal granted an order for repossession. The Order will be suspended for a period of three months to allow the Respondent time to secure alternative accommodation. 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.



S.Evans

Legal Chair

22 April 2024

Date