



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/23/3803

Re: Property at 54 Robertson Road, Dunfermline, KY12 0AP (“the Property”)

Parties:

Mr Steven Richardson, First Floor Flat, 23 Guildhall Street, Dunfermline, KY12 7NR (“the Applicant”)

Mrs Elizabeth Kirkham (formerly McMaster), 54 Robertson Road, Dunfermline, KY12 0AP (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Gordon Laurie (Ordinary Member) (“the tribunal”)

Decision

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

Background

1. On 26 October 2023, the Applicant submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.
2. On 15 November 2023, the application was accepted for determination by the Tribunal.
3. A case management discussion was held by teleconference on 17 April 2024.

The case management discussion

4. The Applicant and the Respondent were present.

Preliminary Matters

5. The Legal Member explained the purpose of a case management discussion. He explained that the tribunal had not only to consider whether the ground for eviction was valid but also if it was reasonable to grant the order.
6. The Respondent said that, since the tenancy commenced, she had married and that she now was Mrs Kirkham.
7. The Applicant said that an order of eviction was sought for the reasons set out in the application and in his signed statement dated 19 October 2023. Because of changed circumstances, he wants to live in the Property.
8. The Respondent said that she was “not contesting anything” and, when asked for clarification, said that she accepted the reasons given by the Applicant for wanting to recover the Property to live in. She said that the local authority would not entertain her application for housing unless an order of eviction had been granted.

9. Findings in Fact

- (i) The Applicant owns the Property.
- (ii) The Applicant and the Respondent entered into a private residential tenancy agreement in respect of the Property.
- (iii) The tenancy commenced on 27 April 2018.
- (iv) The monthly rent due under the private residential tenancy is £550.
- (v) The Applicant had served a notice to leave requiring the Respondent to vacate the Property by 18 October 2023.
- (vi) The Respondent continues to reside in the Property with her husband.
- (vii) The appropriate intimation had been made to the local authority in terms of section 11 of the Homelessness etc (Scotland) Act 2003.

10. Findings in Fact and Law

- (i) The Applicant intends to live in the Property.
- (ii) It is reasonable to grant the order of eviction

11. Documents before Tribunal

- (i) Private residential tenancy agreement.
- (ii) Copy Notice to Leave dated 24 July 2023.

- (iii) Copy Section 11 intimation to the local authority dated 16 October 2023.
- (iv) Title Sheet for the Property FFE85293.
- (v) Signed statement by the Applicant dated 19 October 2023.

12. The Law

Section 51 of the 2016 Act as amended:

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Ground 4, Part 1 of Schedule 3 of the 2016 Act (as amended)

Let property required for another purpose

Landlord intends to live in property

4(1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months, and

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

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in subparagraph (2) includes (for example) an affidavit stating that the landlord has that intention.

Discussion

13. The Applicant said that he had separated from his wife some four years previously and is living in a two- bedroom flat which he owns. He said that he and his wife have two daughters aged 15 and 19 who live with each of them “one week on, one week off.”
14. The Applicant said that the flat he is living in is not suitable and that more space is needed. He is a self -employed gas engineer. He said that he has tools worth around £5000 and stock worth £2000 which he has to keep in his van. This is difficult because the flat he is living in has no dedicated parking and the van requires to be parked overnight in public car parks or on the street. He said that he lives in a property on a pedestrian precinct so he is not able to park outside it. He said that there are security issues and that, although he has not experienced theft from the van, tradesmens’ vehicles are often broken into. His written statement discloses that he also requires storage for spares in connection with his work and that the Property would provide this whereas his current flat does not.
15. The Applicant said that the Property is a three -bedroom flat with dedicated off-street parking. He said that, prior to putting it on the letting market, he had lived in it.
16. The Applicant said that the Respondent is a model tenant and that he is sorry to have to have her leave.
17. The Respondent said that she is 60 and that her husband is nearly 64. They both work and have lived in the Property for six years. She said that, prior to that, they had been in private lets which, for various reasons, they had to leave because landlords wanted the properties back. She said that this would be the third time in eight years that they have had to move.
18. The Respondent said that, when the Notice to Leave had been received, she made efforts to find another property. She said that private lets were expensive and that the supply did not meet the demand. The Applicant said that many were unaffordable for her. She also expressed concerns about entering into such a let in future because of the history she had experienced with private lets and being unable to rely on one to be a long term home. She said that the local authority would not progress an application for housing until there was an order from the Tribunal although it had showed them a couple of properties. She said that one had been offered and had been completely unsuitable.

19. The Respondent said that her life had been in “limbo” since she knew that she had to move from the Property and that she and her husband could not make plans for the future until the matter was resolved.
20. The Respondent said that neither she nor her husband had any health issues.

Reasons for Decision

21. The tribunal saw no reason for determination of the application to be continued to a Hearing. It considered that it had all the necessary information to determine the application.
22. The tribunal was satisfied that the Notice to Leave was in appropriate terms and had been served on the Respondent. The tribunal was satisfied that the appropriate notice had been served on the local authority under the Homelessness etc (Scotland) Act 2003.
23. The tribunal considered that it required to take a two-stage approach to the application. It required to first determine if there was sufficient evidence to support the ground that the Applicant intended live in the Property and then, if the ground was met, it was reasonable to grant the order of eviction.
24. The tribunal accepted that there was convincing evidence that the Applicant intended to live in the Property. This consisted of the Applicant’s written statement and his position with regard to needing more space for his daughters and having off street parking for his works van.
25. The Respondent did not challenge the Applicant’s position that he intends to live in the Property and, in fact, said specifically that she was not contesting that the ground is met.
26. The tribunal required to consider whether or not the granting of an order of eviction was reasonable. It is a matter of judicial discretion and, in considering reasonableness, a balancing exercise requires to be undertaken.
27. The tribunal had regard to what had been stated by the Respondent. She accepted that she would be moving from the Property. She did not express any concerns that her family life would be significantly disrupted were she to be evicted from the Property.
28. The tribunal accepted that the Applicant had good reasons to recover the Property to live in and balanced this against the fact that the Property had been the family home for the Respondent for six years.

29. In the particular circumstances of this application the tribunal determined that it is reasonable for the Applicant to recover the Property.

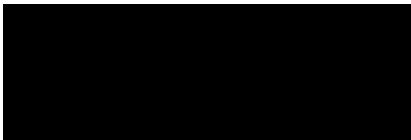
30. The tribunal noted that local authorities require to provide accommodation to people who present as homeless. It noted that a property offered by the Respondent's local authority had deemed to be unsuitable and considered it reasonable for the implementation of the eviction to be deferred until 14 June 2024. This would give the local authority more time to make housing provision for the Respondent and is a reasonable exercise of the tribunal's discretion.

Decision

31. The tribunal determined that the application be granted and that an eviction order be made.

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.



**Martin J. McAllister
Solicitor
17 April 2024**