



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/23/4639

Property : 48 Baptie Place, Bo'ness EH51 ONN ("Property")

Parties:

Jennifer Sherdley and Mike Sherdley, 43 Benjamin Drive, Bo'ness EH51 OQS ("Applicant")

Paul Rolfe Letting, 4 The Vennel, Linlithgow EH49 7EX ("Applicant's Representative")

Mhairi McAlpine and Kenny McAlpine, 48 Baptie Place, Bo'ness EH51 ONN ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined to make an order for possession of the Property.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Tenancy Agreement which commenced on 1 May 2022; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 19 September 2023 ("Notice to Leave"); copy email to each Respondent attaching the Notice to Leave dated 19 September 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 20 December 2023; copy letter from Liddle & Anderson solicitors dated 11 September 2023 confirming they are instructed to sell the Property and sheriff officer's execution of service certifying service of the Application on 21 March 2024. The Applicant lodged a second application Form E dated 28 February 2024 in which they sought an order for eviction based on ground 12. The application was accompanied by a Notice to Leave dated 20 December 2023; emails to the Respondent dated 20 December 2023 serving the

Notice to Leave and statement of rent arrears. On 19 March 2024 the Applicant lodged an updated statement of rent arrears showing arrears of £5200 for the period August 2023 to April 2024. The Applicant subsequently withdrew the application and indicated they would seek permission to include ground 12 in the existing application.

Case Management Discussion

A case management discussion (“CMD”) took place before the Tribunal on 29 April 2024 by teleconference. The Applicant was represented by Lesley McLaughlin of the Applicant’s Representative. There was no appearance by the Respondent.

Ms McLaughlin told the Tribunal that the Applicant wished the Tribunal to include ground 12 in the application. She said that the rent increased from £650 per month to £700 per month in March 2023. The Tribunal noted that the statement of rent arrears showed two charges of £700 in September 2023. Ms McLaughlin said that the Applicant prepared the arrears statement themselves. She said there was a charge in June 2023 and then in August 2023. She agreed that the rent due was not shown on the same date each month. She did not know why the Respondent stopped paying the rent other than Mr McAlpine’s employment coming to an end. She understood Mrs McAlpine is still employed.

Ms McLaughlin told the Tribunal that she had no recent contact with the Respondent. She said that the Applicant was moving to Spain. She said they are currently marketing their property at Benjamin Drive and also need to sell the Property to facilitate their move. She said they do not own any other properties in Scotland. Ms McLaughlin told the Tribunal that the relationship between the Applicant and the Respondent had been good but subsequently broke down. She said that she understood both Respondents had been employed but Mr McAlpine’s job had ceased in August 2023. She did not know whether he was currently employed. She said that the Respondents live in the Property with two children who attend primary school. She said she was unaware of any health issues. She said she understood that the Respondent required the issuing of an eviction order to assist with their application for a council house.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement for the Property which commenced on 1 May 2022.
2. A Notice to Leave was served on the Respondent by email on 19 September 2023. It stated that an application for an eviction order would not be submitted to the Tribunal before 15 December 2023.

3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 20 December 2023.
4. The Applicant holds title to the Property and is entitled to sell the Property.
5. The Applicant intends to sell the Property or at least put it up for sale within 3 months of the Respondent ceasing to occupy it.
6. The Respondent has been in rent arrears for three or more consecutive months.

Reasons for the Decision

In terms of section 51 of the Act, the 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. In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 1 which is that the landlord intends to sell. The evidence lodged with the application of intention to sell was a copy letter from Liddle & Anderson solicitors dated 11 September 2023 confirming they are instructed to sell the Property. The Tribunal considered the evidence provided and determined that the ground for eviction had been established. The Respondent asked the Tribunal to include ground 12, which is that the Respondent has been in rent arrears for three or more consecutive months, in the application in terms of section 52(5)(b) of the Act. The Tribunal determined to allow ground 12 to be included. The statement of rent arrears lodged showed a payment of £400 towards the monthly rent on 4 August 2023 and nothing paid thereafter leaving a balance outstanding of £5200 as at April 2024. The Tribunal considered the oral representations of the Applicant's Representative regarding the question of reasonableness and, in the absence of a submission from the Respondent, determined that it was reasonable to grant an order for eviction.

Decision

The Tribunal determined to grant an order for possession of the Property.

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.


Joan Devine
Legal Member

Date: 29 April 2024