



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016

Reference number: FTS/HPC/EV/24/0978

Order granted on 19 June 2024.

Re: Property at 22 Kirkside Court, Leven, Fife, KY8 4UE (“the Property”)

Parties:

David Meek and Lesley Harrison trading as Your Home Partners, 21 Globe Park, Broxburn, West Lothian, EH52 6EF (“the Applicants”)

Brendan Paul Duffy, residing at 22 Kirkside Court, Leven, Fife, KY8 4UE (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)
Ahsan Khan (Ordinary member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) makes an order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 1 of schedule 3 to the 2016 Act.

Background

The Applicants ask for recovery of possession of the Property in terms of Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (the “2016 Act”). On 28 February 2024 the Applicants lodged Form E with the Tribunal. The documents produced were a Tenancy Agreement (which commenced on 05/01/2018); a Notice to Leave served on 30/11/2023, and a Notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003. A copy title sheet was lodged with the Tribunal which showed that the applicants are the heritable proprietors of the Property.

Case Management Discussion

A case management discussion took place by telephone conference at 10.00am on 19 June 2024. The second Applicant was present and unrepresented. The respondent was present and not represented.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicants and the Respondent entered into a Private Residential Tenancy Agreement for the Property on 05/01/2018.
2. The lease commenced on 05/01/2018. The rent in terms of the Tenancy Agreement was £495 per month.
3. On 30/11/2023 the Applicants served a Notice to Leave on the Respondent. The Applicants want to sell the Property.
4. The property is burdened by a mortgage. The monthly mortgage payment costs are higher than the rental income from the property. The heritable creditor has served a calling up notice.
5. The Applicants have instructed estate agents, to market the Property for sale and have received an offer for the property. The applicants are not able to arrange alternative finance. They have to sell the property to pay the heritable creditor and redeem the mortgage.
6. On 28 February 2024, the Applicants submitted their application to the tribunal.
7. The Respondent does not oppose the application. He has already made an application to the local authority for alternative housing. The local authority will not prioritise his application for housing until an order for eviction is granted. The local authority will give the respondent's application for housing priority when an eviction order is made.
8. The respondent occupies the property alone. He is in good health. The respondent is able to accept an offer of standard accommodation from the local authority. The respondent consents to an order for repossession.

Reasons for the Decision

9. We balance the interests of the parties. The applicants are losing money by renting the property. The applicants want to sell the property because it is a drain on their resources. The Respondent consents to the application.

10. The Applicants seek recovery of possession of the Property in terms of Ground 1 of part 1 of schedule 3 to the 2016 Act. On the facts as we find them to be, the Applicant

(a) is entitled to sell the let property,

(b) intends to sell the Property for market value within 3 months of the tenant ceasing to occupy it, and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

11. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the Property.

12. The Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The basis for possession set out in Ground 1 of part 1 of schedule 3 to the 2016 Act is established. The Respondent offers no defence to the application. For these reasons, the Tribunal determined to grant an Order for possession.

Decision

For the foregoing reasons, the Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 1 of part 1 of schedule 3 to the 2016 Act.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Paul Doyle
Legal Member

19 June 2024