



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/24/0512

Re: Property at 9 Cicely Place, Forres, IV36 1PS (“the Property”)

Parties:

Mrs Lucille Ann Fenton, 10 Cicely Place, Forres, IV36 1PS (“the Applicant”)

Mr Michael Steele, Mrs Rhona Clare Steele, 9 Cicely Place, Forres, IV36 1PS (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member) and Robert Buchan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondents from the property

Background

1. By application dated 1 February 2024 the Applicant applied to the Tribunal for an order for the eviction of the Respondents from the property under ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of the tenancy agreement, Notice to Leave, Section 11 Notice, contract for the marketing and sale of the property with Cockburns Solicitors and copies of the Applicant’s medical records in support of the application.
2. By Notice of Acceptance dated 1 March 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 22 April 2024.

4. By email dated 13 May 2024 the Respondents submitted written representations to the Tribunal.

The Case Management Discussion

5. A CMD was held by teleconference on 4 June 2024. The Applicant and the Respondents attended in person.
6. The parties were in agreement that a Private Residential Tenancy commenced on 1 December 2018 at a rent of £625.00 per calendar month and had increased in October 2023 to just over £643.00 per calendar month. The parties also agreed that the Respondents had been served with a valid Notice to Leave on 4 November 2023 under Ground 1 of Schedule 3 of the 2016 Act providing that an application would not be made to the Tribunal before 30 January 2024. The parties further agreed that a Section 11 Notice had been sent to Moray Council by email on 1 February 2024 advising them that proceedings had been raised.
7. For the Respondents, Mr Steele confirmed that he had been told by Moray Council that he and his family had been given priority for being rehoused and that he had to advise the local authority of the outcome of the CMD. Mr Steele went on to say that given the Applicant's health issues he understood why she wished to sell the property and it was his intention to move once alternative accommodation was found.
8. Mr Steele went on to explain that he and his wife had three children living at home with them aged 13, 16 and 18. He said that the two younger boys were at school locally and the older boy was going into further education. He confirmed that the family required a four-bedroom property and that they had been given no indication by the local authority as to when a property of that size would become available.
9. The Applicant confirmed she was waiting to undergo surgery and had recently had her pre-operative consultation and because of her health was due a further consultation with her anaesthetist prior to the operation. The Applicant explained that although it had previously been her intention to move to London following the sale of the property she had now decided to remain where she was but because of her poor health was unable to continue as a landlord as it badly affected both her physical and mental health. She confirmed it was her intention to sell the property once she obtained vacant possession.
10. The Applicant confirmed that she would have no objection to the Respondents being given some additional time to find another property as long as there was a definite date for them moving out.

Findings in Fact

11. The parties entered into a Private Residential Tenancy that commenced on 1 December 2018.
12. The Respondents were served with a Notice to Leave dated 4 November 2023 under Ground 1 of Schedule 3 of the 2016 Act.
13. Moray Council were given notice of these proceedings by way of a Section 11 Notice sent by email on 1 February 2024.
14. The applicant has entered into a contract with Cockburns, solicitors, to market and sell the property once vacant possession has been obtained.
15. The Applicant is in poor health and feels unable to continue to act as a landlord as she finds it affects her physical and mental health. She is shortly due to undergo surgery.
16. The Respondents have three sons living at home with them aged 13, 16 and 18.
17. The sons attend school and college locally.
18. The Respondents have been advised by the local authority they will receive priority for being rehoused but have not been given any offer of housing or a timescale as to when they will be rehoused.

Reasons for Decision

19. The Tribunal was satisfied from the written representations and the documents produced together with the oral submissions that the parties entered into a Private Residential Tenancy that commenced on 1 December 2018. The Tribunal was also satisfied that it was the Applicant's intention to sell the property once she obtained vacant possession. It was agreed that the Respondents had been properly served with Notices to Leave and that intimation of the proceedings had been given to Moray Council by way of a Section 11 Notice. The Tribunal was therefore satisfied that procedurally the requirements for the granting of an order for eviction had been met subject to it being reasonable in the circumstances to grant such an order.
20. In reaching its decision the Tribunal took particular account of the Applicant's significant health issues and the effect of being a landlord had on both her physical and mental health. It also took account of the fact that the Respondents had been advised by the local authority that they would receive priority for being rehoused given their needs particularly with having three children living at home with them. Taking everything into account the Tribunal was satisfied that it was reasonable to grant an order for the eviction of the Respondents from the property but given that the Respondents needed a four-bedroom property and that it was likely that such properties may be in short supply it was reasonable

to postpone the order coming into effect for a period of two months to give the Respondents and the local authority some additional time to find suitable accommodation.

Decision

21. The Tribunal being satisfied it has sufficient information before it to allow it to make a decision without the need for a hearing finds the Applicant entitled to an order for the eviction of the Respondents from 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.

**Graham Harding
Legal Member/Chair**

**4 June 2024
Date**