



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/24/0579

Property : 87 Adamson Crescent, Dunfermline KY12 OAT (“Property”)

Parties:

Maria Del Pilar Mazzocchi, 8 Elvington Crescent, Leconfield Beverley, Yorkshire HU17 7LD (“Applicant”)

Morgans, 33 East Port, Dunfermline KY12 7JE (“Applicant’s Representative”)

Ana Paila Machado Goncalves and Gabriel Filipo Simoes, 87 Adamson Crescent, Dunfermline KY12 OAT (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Gerard Darroch (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 dated 31 January 2020; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 3 November 2023 (“Notice to Leave”); copy emails to each Respondent dated 3 November 2023 attaching the Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 6 February 2024; copy letter from Morgans dated 7 November 2023 stating they are instructed to sell the Property and sheriff officer's execution of service certifying service of the Application on 24 May 2024.

Case Management Discussion

A case management discussion (“CMD”) took place before the Tribunal on 28 June 2024 by teleconference. The Applicant was represented by Linda Kettles of the

Applicant's Representative. The First Respondent was in attendance. There was no appearance by the Second Respondent.

Ms Goncalves told the Tribunal that she did not object to the eviction order being granted. She said that she had been in touch with the local authority about alternative accommodation and they had told her they could help once an order for eviction was granted. She said that she lives in the Property with her three year old daughter. She said that Mr Simoes had moved out a year ago. She said that she is employed as a care assistant. Ms Goncalves said that she has a disability which is a cardiac condition which causes her heart rate to increase. She said she also suffers from anxiety.

Ms Kettles told the Tribunal that the Applicant had been living with her daughter in England but her daughter had now moved for her partner's job. The Applicant is now living with a friend. She said the Applicant wishes to sell the Property in order to buy a property for herself to live in. She said the Applicant does not own other properties. She said the Applicant is aged 70 and is in employment but wishes to retire as soon as possible.

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 dated 31 January 2020.
2. A Notice to Leave was served on the Respondent by email on 3 November 2023. It stated that an application for an eviction order would not be submitted to the Tribunal before 29 January 2024.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 6 February 2024.
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.

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 she 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 Morgans dated 7 November 2023 stating they are instructed to sell the Property. The Tribunal considered the evidence provided and determined that the ground for eviction had been established.

The Tribunal considered the oral representations of the Parties regarding the question of reasonableness and determined that it was reasonable to grant an order for eviction but to delay execution of the order to allow the local authority additional time to find alternative accommodation for the Respondent who suffers from a disability and who lives with a young child. In normal course the order could not be enforced until 29 July 2024. The Tribunal considered it would be reasonable to delay the date for enforcement to 15 August 2024.

Decision

The Tribunal determined to grant an order for possession of the Property but to delay enforcement of the order until 15 August 2024.

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.

Legal Member: Joan Devine

Date : 28 June 2024

Joan Devine