



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/23/4536

Re: Property at 21 Carn Gorm Terrace, Inverness, IV3 8NY (“the Property”)

Parties:

Executors of the late James Docherty, 19 Burnwood Drive, Newmachar, AB21 0NW; 3 Whiteford Place, Pitcaple, AB51 5QJ (“the Applicant”)

Mr Michael Howes, 21 Carn Gorm Terrace, Inverness, IV3 8NY (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 21 Carn Gorm Terrace, Inverness, IV3 8NY under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees, and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicants or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The Applicants base the

application on Ground 1 (Landlord intends to sell the Property) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

2. The application was accompanied by a confirmation in favour of the Applicants as Executors of the late James Docherty dated 16 October 2023 from Aberdeen Sheriff Court, a Private Residential Tenancy Agreement between the late James Docherty and the Respondent dated 1 July 2020, a letter dated 22 August 2023 with a Notice to Leave addressed to the Respondent, a recorded delivery proof of delivery dated 23 August 2023, a letter dated 28 November 2023 from MacKenzie and Cormack solicitors in Tain and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Highland Council dated 14 December 2023.
3. On 20 May 2024 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 25 June 2024. The Respondent required to lodge written submissions by 10 June 2024. This paperwork was served on the Respondent by Robert White, Sheriff Officer, Inverness on 20 May 2024 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

4. The Tribunal proceeded with the CMD on 25 June 2024 by way of teleconference. Ms Di Carlo, from Harper Macleod, solicitors appeared for the Applicants. Ms Docherty one of the Applicants was also in attendance as was Mr McSween the husband of the other Executor. Mr Howes appeared on his own behalf.
5. The Tribunal had before it the confirmation in favour of the Applicants as Executors of the late James Docherty dated 16 October 2023 from Aberdeen Sheriff Court, the Private Residential Tenancy Agreement between the late James Docherty and the Respondent dated 1 July 2020, the letter dated 22 August 2023 with a Notice to Leave addressed to the Respondent, a recorded delivery proof of delivery dated 23 August 2023, the letter dated 28 November 2023 from MacKenzie and Cormack solicitors and the Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Highland Council dated 14 December 2023. The Tribunal noted the terms of these documents.
6. Ms Di Carlo moved the Tribunal to grant an Order for repossession and referred the Tribunal to the paper apart in the application. She submitted that the Landlord Mr Docherty had passed away on 28 July 2023 and her clients as Executors wished vacant possession so they could sell the Property and release the equity in it. She referred to the letter from MacKenzie and Cormack which confirmed they would deal with the sale of the Property on behalf of the Executors. She understood the Respondent lived alone and had no dependents.

7. Mr Howes submitted that he lived at the Property with his 4 children who were aged 22,20,18 and 12. The children had all lived in the Property with his ex partner. He moved into the Property in 2020 when his ex partner moved out and he has lived with the children in the Property since then. His 12 year old daughter attended the local school. He explained he had sought help from the Citizens Advice Bureau and from Highland Council but that there was nothing the Council could do until the Tribunal granted an Order. His oldest children would need to find their own alternative accommodation and he would stay with his daughter. He had looked at the private sector but could not afford to pay the private sector at the level of rent being demanded. He had not been told about availability of alternative accommodation.
8. The Tribunal queried whether the Applicants had any view on the timescale if the Tribunal were to grant an Order. Ms Docherty explained they had been wanting to sell for some time and wanted the matter concluded sooner rather than later.

Findings in Fact

9. James Docherty entered into a Private Residential Tenancy Agreement with the Respondent dated 1 July 2020 in relation to the Property. The Respondent lives in the Property with his four children ages 12, 18, 20 and 22.
10. James Docherty died on 28 July 2023.
11. In terms of a confirmation dated 16 October 2023, the Applicants became the Executors Nominated of the late James Docherty's estate which included the Property.
12. The Applicants intend to sell the Property to release the equity in the Property.
13. The Applicants served a Notice to Leave with a letter on the Respondent by recorded delivery post on 22 August 2023. The Notice to Leave required the Respondent to leave the Property by 21 November 2023. The Notice to Leave relied on Ground 1(Landlord intends to sell) of Schedule 3 to the 2016 Act.
14. The Respondent is seeking help and assistance from Highland Council in seeking rehousing for himself and his 12 year old daughter.
15. The Applicants served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Highland Council on 14 December 2023.

Reasons for Decision

16. The Tribunal considered the issues set out in the application together with the documents lodged in support.

17. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1, namely the Landlord intends to sell the Property. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the grounds, the Tribunal has to be satisfied that it is reasonable to evict.
18. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
19. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicants' intention to sell the Property at Part 2 of the Notice in terms of Ground 1 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 21 November 2023. The Notice to Leave was served on the Respondent by recorded delivery letter dated 22 August 2023. In terms of Section 54 the notice period of the Notice to Leave is 84 days. The Notice to Leave stated the earliest date the Applicants could apply to the Tribunal was 21 November 2023. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice. Accordingly, the Notice to Leave complies with Section 62.
20. The Tribunal considered the submissions made by Ms Di Carlo and Mr Howes. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Di Carlo, that the factual basis of the application had been established in relation to Ground 1 and was satisfied the Applicants intended to sell the Property as soon as they regained possession.
21. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicants' intention was to sell the Property when they obtained possession of it. The Tribunal considered that although the Respondent had a dependent daughter, the Respondent had sensibly sought advice on his housing options and was seeking help from Highland Council. The balance of reasonableness in this case weighted towards the Applicants. The Tribunal find it would be reasonable to grant the order.
22. In the circumstances the Tribunal considered that in terms of Ground 1 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

23. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Shirley Evans

25 June 2024

Legal Chair

Date