



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/23/3129

Order granted on 8 July 2024

Re: Property at 24 Dobson's Walk, Haddington, EH41 4RU ("the Property")

Parties:

Mr John Dodds, 117 North Seton Park, Port Seton, EH32 0BA
("the Applicant")

Joseph Loughlin-Black, residing at 24 Dobson's Walk, Haddington, EH41 4RU ("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 1A of schedule 3 to the 2016 Act.

Background

1. The Applicant sought recovery of possession of the Property in terms of Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (the "2016 Act"). The Applicant had lodged with the Tribunal Form E. The documents produced are a Tenancy Agreement dated 14/12/2019; a notice to leave served on 06/06/2023, a Notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 and a schedule of unpaid rental. A copy title sheet was lodged with the Tribunal which showed that the applicant is joint heritable proprietor of the Property.

2. By interlocutor dated 08/03/2024, the application was referred to this tribunal. On 03/06/2024 the First-tier Tribunal for Scotland (Housing and Property Chamber)

served notice of referral on both parties, directing the parties to make any further written representations. The applicant lodged written submissions on 18 and 25 June 2024.

3. A case management discussion took place by telephone conference at 10.00am on 8 July 2024. Both the applicant and the respondent were present, neither of them was represented.

Findings in Fact

4. The Tribunal made the following findings in fact:

(i) The Applicant and the Respondent entered into a Private Residential Tenancy Agreement for the Property on 14/12/2019.

(ii) The rent in terms of the Tenancy Agreement is £525 per month.

(iii) Title to the property rests in the joint names of the applicant and his mother, who is in her 70s. The property is burdened with a mortgage. The mortgage payments are more than the rental income. There are rent arrears of £3,150. The applicant and his mother are losing money every month. They can no longer afford to see their assets drain away.

(iv) On 06/06/2023 the applicant served a notice to leave on the respondent. A section 11 notice was served on both the respondent and the local authority by the applicant.

(v) The respondent remains in the property. He is single and has no dependents. He lives in the property alone. He will be able to find alternative accommodation. He recently returned to work after a period of illness and is now in full time employment.

(vi) A mortgage is secured over the property. The term of the mortgage is up and the must now be paid back to the heritable creditor. The applicant has no means to repay the mortgage and has to sell the property to prevent repossession of the property by the heritable creditor. The applicant cannot secure another mortgage over the property because of their age.

(vii) The respondent accepts that the applicant wants to sell the property to avoid financial hardship. The respondent agrees that it is not unreasonable for an order for repossession to be granted and does not resist the application for repossession.

(viii) On 06/06/2023 the applicant served a notice to leave on the respondent in terms of s.50 of the Private Housing (Tenancies) (Scotland) Act 2016. On 05/09/2023, the applicant submitted an application to the tribunal.

Reasons for the Decision

5. The Applicant seeks recovery of possession of the Property in terms of Ground 1A of schedule 3 to the 2016 Act. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the property.

6. 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 in terms of Grounds 1A of schedule 3 to the 2016 Act is established. The respondent offers no resistance 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 1A 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

8 July 2024