



Decision 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/24/0208

Re: Property at 2 Newmore Farm Cottages, Invergordon, IV18 0LQ (“the Property”)

Parties:

Mr James Jack, Newmore Castle, Newmore, Invergordon, IV18 0LQ (“the Applicant”)

Mr David Nicholson, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

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 2 Newmore Farm Cottages, Invergordon, IV18 0LQ under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant 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 Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an action for recovery of possession of the Property raised in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a Private Residential Tenancy Agreement, a letter dated 31 October 2023 addressed to the Respondent's parents, a Notice to Leave and email to the Respondent both dated 5 December 2023, a letter from Walker Love Sheriff Officers dated 12 January 2024, photographs and an email dated 12 January 2024 addressed to Highland Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. The Applicant requested that the application be served on the Respondent by advertisement in terms of Rule 6A as his whereabouts were unknown.
4. On 10 June 2024 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 1 July 2024. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 16 July 2024. This paperwork was served on the Respondent by way of advertisement on the Tribunal's website. A copy of the Execution of Service was received by the Tribunal.

Case Management Discussion

5. The Tribunal proceeded with a CMD on 16 July 2024 by way of teleconference. Ms Cochrane from Tughan and Cochrane Ltd, letting agents appeared for the Applicant. There was no appearance by or on behalf of the Respondent despite the CMD starting 10 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
6. The Tribunal had before it the Private Residential Tenancy Agreement, a letter dated 31 October 2023 addressed to the Respondent's parents, a Notice to Leave and email to the Respondent both dated 5 December 2023, a letter from Walker Love Sheriff Officers dated 12 January 2024, photographs and an email dated 12 January 2024 addressed to Highland Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003. The Tribunal considered these documents.
7. Ms Cochrane explained that she was looking for an Order to evict. Her client had bought the Property which was on a farm in 2023. The Property was one of four cottages on the farm. No-one had seen the Respondent since her client took ownership of the Property. The farmer has never seen him. They

have tried to trace his whereabouts but have been unable to do so. They have contacted the Respondent's parents but have had no response to their letter. The Respondent is not living in the Property and has not been for some time.

Reasons for Decision

8. The Tribunal considered the issues set out in the application together with the documents lodged in support. 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 10 (Tenant not occupying the Property).
9. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Highland Council had been served. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Cochrane, that the factual basis of the application had been established and that the Respondent no longer lived at the Property. A case under Ground 10 of Schedule 3 of the 2016 Act was accordingly met. The balance of reasonableness in this case weighted towards the Applicant.
10. In the circumstances the Tribunal considered that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

11. 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

16 July 2024

Legal Chair

Date

