



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

Chamber Ref: FTS/HPC/EV/24/1033

Re: Property at 16 Robertson Drive, Elgin, Moray, IV30 6EU (“the Property”)

Parties:

Marion George, South Cottage Crofts of Dipple Fochabers, Fochabers, IV32 7LL (“the Applicant”)

Adam Bortowski, 16 Robertson Drive, Elgin, Moray, IV30 6EU (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in favour of the Applicant and against the Respondent in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Applicant is entitled to sell the let property, intends to sell it for market value, or at least put it up for sale within three months of the tenant ceasing to occupy it and the tribunal was satisfied on account of those facts that it is reasonable to grant an order.

Background

1.This application for an eviction order in terms of Rule 109 of the Tribunal rules of procedure was first lodged with the tribunal on 29th February 2024 and accepted by the tribunal on 25th March 2024.A case management discussion was fixed for 31st July 2024 at 2pm.

Case Management Discussion

2.A Citizens Advice Bureau had contacted the Tribunal on behalf of the Respondent asking that a Polish interpreter be arranged for the Respondent. The Tribunal arranged for a Polish Interpreter to attend the case management discussion. Mrs Fasulla attended and agreed to accurately interpret the whole of the conference call for the Respondent.

3.The Applicant did not attend the case management discussion but was represented by Ms Wooley of Bannatyne Kirkwood France and Co solicitors. The Respondent attended and represented himself.

4.The Tribunal had sight of the Application, a paper apart, a tenancy agreement, a minute of agreement, a letter from Harper Macleod solicitors confirming their instructions to market and sell the property, a Notice to Leave and email sending this to the Respondent and a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and an email sending this to Moray council.

5.The Respondent Mr Bortowski confirmed via the interpreter Mrs Fasulla that he had received the application and papers and understood what the Tribunal was being requested to do.

6.The parties had entered into a tenancy agreement at the property with another person named as co tenant with effect from 28th February 2020. On 2nd May 2023 a minute of agreement was signed by the Applicant, Respondent and the co tenant agreeing that with effect from 3rd May 2023 the co tenant was released as a tenant from the tenancy agreement and the Respondent would be solely responsible for all obligations under the tenancy until the tenancy was terminated.

7.Ms Wooley advised the Tribunal that her client owned the property and wished to sell the let property as she wants to leave the rental market altogether. She and her husband are in their late sixties and no longer want to deal with the stress of being landlords. They have already sold their other properties and intend to sell this one at market value when it is vacant. Once this property was sold, they would have no other rental properties. There were no other reasons behind the decision to sell the let property, they simply wished to retire and leave the rental market. The Applicant Mrs George had consulted solicitors to deal with the marketing and sale of the property in February 2024 and the Tribunal had seen a letter to that effect dated 28th February 2024 from Harper Macleod LLP.

8.A Notice to Leave was sent to the Respondent by email on 28th September 2023 setting out the eviction ground and indicating that no application would be made to the Tribunal for an eviction order before 24th December 2023.

9.A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Moray council by email on 29th February 2024 in relation to this application.

10.The Respondent said via the interpreter that he was not objecting to an order being granted. He had looked at available flats and contacted the local council. He had not secured other accommodation yet. He said that he had received excellent information from the council. He lived alone at the let property and had children who visited him

there often. He did not wish to suggest that it would not be reasonable to grant the order and had nothing else that he wished to add.

11. Ms Wooley advised the Tribunal that in addition to the circumstances outlined by her as to why her client wished to sell the let property that as far as reasonableness is concerned if an order were granted the local council would be obliged to assist the Respondent to secure new accommodation.

12. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

13. The parties entered into a tenancy agreement along with a co tenant in relation to the let property with effect from 28th February 2020.

14. On 2nd May 2023 the parties including the former co tenant signed a minute of agreement in which they agreed that with effect from 3rd May 2023 the co tenant was released as a tenant in terms of the tenancy agreement and from that date the Respondent was solely responsible for all obligations in terms of the tenancy agreement until it was terminated.

15. A Notice to Leave in proper form setting out the eviction ground and dated 28th September 2023 was sent by email to the Respondent on that date and it indicated that no application would be made to the Tribunal for an eviction order before 24th December 2023.

16. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Moray council in relation to this application on 29th February 2024.

17. The Applicant is the owner of the let property and is entitled to sell it.

18. The Applicant intends to sell the let property and consulted solicitors who confirm by letter of 28th February 2024 that they are instructed to market and sell the let property.

19. The Applicant intends to sell the let property for market value or at least put it up for sale within three months of the Respondent ceasing to occupy it.

20. The Applicant wishes to retire from the stress of being a landlord and leave the rental market.

21. When the let property is sold the Applicant and her husband will have no other rented properties.

22. The Respondent does not object to an order being granted and has been seeking other accommodation.

Reasons for Decision

The Tribunal was satisfied that the appropriate procedures had been carried out in terms of the Notice to Leave and section 11 Notice sent in this application. The Applicant's objective intention was evidenced in that she has instructed solicitors to market and sell the property. Her subjective intention was set out in that she wishes to leave the rental market and retire from being a landlord. The Respondent does not object to the order and does not suggest that it would not be reasonable to grant it. Having considered the overall circumstances the Tribunal considered that it was reasonable to grant the order, the decisive factor her being the Applicant's circumstances when weighed against those of the Respondent.

Decision

The Tribunal granted an eviction order in favour of the Applicant and against the Respondent in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Applicant is entitled to sell the let property, intends to sell it for market value, or at least put it up for sale within three months of the tenant ceasing to occupy it and the tribunal was satisfied on account of those facts that it is reasonable to grant an order.

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/Chair

31.7.24
Date