



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/24/1438

Property: 25 Livingston Court, Kilmarnock KA3 7QS (“Property”)

Parties:

Mohammed Ashraf, 2 Priestland Close, Kilmarnock KA3 6FY (“Applicant”)

Claire Martin and Sean Martin, 25 Livingston Court, Kilmarnock KA3 7QS (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property but to delay enforcement until 14 October 2024.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Tenancy Agreement which commenced on 19 May 2022; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 9 August 2023 (“Notice to Leave”); copy post office certificate of posting dated 9 August 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with copy post office certificate of posting dated 18 March 2024; copy letter from Greig Residential confirming their instruction to market the Property; and sheriff officer's execution of service certifying service of the Application on 23 July 2024.

Case Management Discussion

A case management discussion (“CMD”) took place before the Tribunal on 14 August 2024 by teleconference. The Applicant and the Respondent were in attendance.

Mr Martin told the Tribunal that he understood why the Applicant wished to sell the Property. He said that he had done all he could to obtain alternative accommodation

through the local authority. Mr Martin said that he is disabled. He said that he is a retired postman and that he has had two knee replacements. He said he cannot walk very far. He said that he is a full time carer for his wife who suffers from anxiety and PTSD. He said that his wife does not leave home. He said that he is 54 years old and his wife is 44. He said that they have a daughter and grandchild who also live in Kilmarnock as well as two sons aged 19 and 26 who live in the Property with the Respondent. Mr Martin said that the local authority had told him he may be housed anywhere, perhaps an hour away from Kilmarnock. He said that renting in the private sector was not an option for the Respondent.

Mr Ashraf told the Tribunal that he is 71 years old and has had a heart bypass. He said he had also had covid and did not feel the same anymore. He said he has 3 properties in his name, 3 properties in his wife's name and some in his daughter's name. He said he had always managed the properties himself and carried out his own repairs but he no longer felt able to do that. Mr Ashraf said that he was selling all of his rental properties and planned to move to England where the rest of his family now live. He said he has no other business interests. He said he had tried selling the Property with the Respondent as tenant without success.

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 which commenced on 19 May 2022.
2. A Notice to Leave was served on the Respondent by recorded delivery post on 9 August 2023. It stated that an application for an eviction order would not be submitted to the Tribunal before 4 November 2023.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 18 March 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 they 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 Greig Residential confirming their instruction to market the Property. The Tribunal considered the evidence provided along with the oral submission from the Applicant and determined that the ground for eviction had been established. The Tribunal considered the question of reasonableness and the oral submissions from both Parties. The Tribunal determined that, in all the circumstances, it was reasonable to grant an order for eviction but to delay execution of the order until 14 October 2024 to give the local authority additional time to identify alternative accommodation for the Respondent.

Decision

The Tribunal determined to grant an order for possession of the Property but to delay execution of the Order until 14 October 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.



**Joan Devine
Legal Member**

Date: 14 August 2024