



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/24/2183

Property : 39 Victoria Road, Falkirk FK2 7AU (“Property”)

Parties:

Frances Lyon, 81 Main Street, Redding, Falkirk FK2 9YF (“Applicant”)

Ritehome Ltd, 350 Glasgow Harbour Terraces, Glasgow G11 6EG (“Applicant’s Representative”)

Aigerim Aitimova, 39 Victoria Road, Falkirk FK2 7AU (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property.

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 23 September 2020; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 13 February 2024 (“Notice to Leave”); copy email to the Respondent dated 13 February 2024 attaching the Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 10 May 2024; copy email from the Applicant dated 10 May 2024 in which she stated her intention to sell the Property; and sheriff officer's execution of service certifying service of the Application on 13 August 2024. On 31 August 2024 the Respondent lodged a written representation which included correspondence with various housing providers.

Case Management Discussion

A case management discussion (“CMD”) took place before the Tribunal on 13 September 2024 by teleconference. Robert Nixon of the Applicant’s Representative was in attendance as was the Respondent. Stuart Love, Homeless Protection Officer attended as a supporter for the Respondent.

Mr Nixon told the Tribunal that the Applicant is separated from her husband. She borrowed money from family and friends in order to buy a property to live in. He said she wishes to sell the Property in order to repay those loans. He said that she does not own any other rental properties. He said that she is in work and does not have any dependents that he is aware of. He said that the rent has always been paid on time and there are no arrears.

The Tribunal noted that correspondence lodged by the Respondent which showed her attempts to find alternative accommodation and asked the Respondent what was the current position. She said the position is the same. She said that she has registered with all of the housing associations and has been in touch with those providing mid-market rental properties. She said that there is a lot of competition with long list of people wishing to view properties. She said that she is self employed in cyber security and lives in the Property alone.

The Tribunal noted that the papers referred to the Respondent receiving medical treatment. She said that she had completed treatment at the community hospital and was continuing to receive treatment at Forth Valley Royal Hospital. She did not wish to disclose the reason for her receiving treatment. She said that if she left the Falkirk area her treatment could not be completed and she would have to ask her GP to refer her once more to a specialist and start the process again. She said that her treatment is due to finish next week but it make take another month.

The Respondent asked if Mr Love could address the Tribunal. Mr Nixon said he did not object to that. Mr Love told the Tribunal that the system in the Falkirk area for housing was not points based but based on banding. He said the Respondent is in band 2 which is the second highest. He said she has bid on around 70 properties since March. He said that housing was allocated based on banding and when the banding was awarded. He said that at the start of the process the Respondent was around 200 on the list but she is now between 7th and 11th place. He said that a homeless person application had now been made on behalf of the Respondent and it was being considered. He said that once it is accepted the Respondent will move to band 1. He said that the average time for someone like the Respondent to have to wait for housing is around 12 months. He said that if she had to move from the Property she would be placed in temporary accommodation which may be outwith the Falkirk area.

Both Mr Nixon and the Respondent said that there were no factual issue in dispute and they were content for the Tribunal to make a decision on the basis of the information provided.

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 23 September 2020.
2. A Notice to Leave was served on the Respondent by email on 13 February 2024. It stated that an application for an eviction order would not be submitted to the Tribunal before 10 May 2024.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 10 May 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 Property. The evidence lodged with the application of intention to sell was a copy email from the Applicant dated 10 May 2024. The Tribunal considered the evidence provided and determined that the ground for eviction had been established.

The Tribunal considered the question of reasonableness and the oral submissions from Mr Nixon, the Respondent and Mr Love. The Tribunal determined that, in all the circumstances, it was reasonable to grant an order for eviction but to delay enforcement for a period of one month. The Applicant requires to sell the Property in order to repay debt that she has accrued in order to purchase a property after separating from her husband. She does not own other properties that could be sold. The delay in enforcement would allow the Respondent to finish the treatment she is receiving at Forth Valley Royal Hospital. The delay would also allow the local authority to progress the Respondent's housing application.

Decision

The Tribunal determined to grant an order for possession of the Property but to delay enforcement for a period of one month.

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.

J Devine

**Joan Devine
Legal Member**

Date : 13 September 2024