



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations

Chamber Ref: FTS/HPC/EV/24/1063

Re: Property at 34 Esk Road, Inverness, IV2 4HL (“the Property”)

Parties:

Miss Lindsey Fuerst, 46 Leachkin Avenue, Inverness, IV3 8LH (“the Applicant”)

Miss Saxon-rose Law, Mr James Paul Pearce, 34 Esk Road, Inverness, IV2 4HL (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 5 March 2024, the Applicant applied to the Tribunal for an order for recovery of possession of the Property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 1 of Schedule 3 to the 2016 Act (landlord intends to sell). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the notification to the local authority in terms of Section 11 of the Homelessness (Scotland) Act 2003/proof of service of same and evidence in support of the ground, namely a letter from the Applicant’s financial adviser and written confirmation from an estate agent that they were instructed to market the Property for sale in due course.

2. Following initial procedure, on 29 April 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 30 August 2024 was served on the Respondent by way of Sheriff Officer on 30 July 2024. In terms of said notification, the Respondent was given until 19 August 2024 to lodge written representations. No written representations were lodged by or on behalf of the Respondent prior to the CMD.

Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference call on 30 August 2024 at 2pm, attended only by the Applicant, Ms Fuerst. The commencement of the CMD was delayed for 5 minutes to give the Respondent an opportunity to join late, but they did not do so.
5. Following introductions and introductory remarks by the Legal Member, the purpose of the CMD was explained. There followed discussion regarding the eviction application and Ms Fuerst also answered a number of questions from the Tribunal Members and confirmed that she was still seeking an eviction order on the basis that she intends to sell the Property. The Legal Member explained that, although the application does not appear to be opposed, the Tribunal still requires to be satisfied that the application was technically in order, that the ground for eviction had been established and that it is reasonable in all the circumstances for the Tribunal to grant the eviction order.
6. Reference was made to the application and supporting documentation lodged. Ms Fuerst confirmed that she is 36 years old and that it was not feasible for her to continue renting out this Property. The monthly mortgage payments have almost doubled from around £280 originally to £470 now. The monthly rental is around £669. She lives with her partner and currently pays her share of the monthly household costs. She does not own or let out any other properties. In addition, the Respondent has stopped paying their rent and there are now arrears amounting to over £3,000 which impacts her financial position too. Ms Fuerst confirmed that she has a separate application lodged with the Tribunal now in respect of the rent arrears. She has not had any contact from the Respondent since around a year ago. She has continued to issue them with monthly emails regarding the rent arrears but they have not responded. They have offered no explanation for the arrears and she is not aware of any changes in their circumstances.
7. When they took on the tenancy, Mr Pearce was employed as a mechanical engineer and Ms Law was a student nurse. They have one school-aged child. As far as Ms Fuerst is aware, they remain resident in the Property. They have been aware of her intention to sell the Property since at least March 2023 when she first served a Notice to Leave on this same ground. The Respondent had received advice from CAB and the local authority but she has had no updates

since June 2023 as they have not communicated with her since. They informed her at the time that there may be difficulties in them obtaining alternative accommodation from the local authority.

8. The Tribunal adjourned briefly to consider the application and, on re-convening, confirmed that the Tribunal would grant the eviction order sought and the process which would now follow. Ms Fuerst was thanked for her attendance.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 14 December 2020.
3. The Applicant intends to sell the Property and to market it for sale as soon as possible and within 3 months of obtaining vacant possession.
4. A Notice to Leave in proper form and giving the requisite period of notice (84 days) was sent by recorded delivery post to the Respondent on 14 October 2023 and the 'track and trace' delivery receipt from Royal Mail indicates that it was delivered to the Respondent on 16 October 2023.
5. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was 11 January 2024.
6. The Tribunal Application was submitted on 5 March 2024.
7. The Respondent is believed to remain in possession.
8. The Respondent stopped paying rent several months ago and there are now substantial rent arrears of over £3,000.
9. The Applicant's financial circumstances have been negatively impacted by both rising mortgage costs and the rent arrears.
10. The Respondent did not lodge any written representations nor attend the CMD.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral information provided at the CMD by the Applicant.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the requisite period of notice (84 days) had been served on the Respondent and that the application was made timeously to the Tribunal,

all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.

3. The Tribunal considered that the ground of eviction, that the landlord intends to sell (Ground 1 of Schedule 3 to the 2016 Act, as amended) was satisfied in that all elements of Ground 1 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal had noted that there was supporting documentation with the application from both a financial adviser and an estate agent and that the Applicant's intention to sell is due to her financial circumstances. The Tribunal was satisfied from the information provided by the Applicant that she has a genuine intention to sell as soon as possible, for the reasons stated and that she had already instructed estate agents. The Tribunal noted that the Respondent has not been engaging with the Applicant for quite some time and had also stopped paying their rent some months ago, which the Tribunal considered also had a bearing on reasonableness. The Applicant had addressed the Tribunal as to the background and current circumstances of the Respondent, as far as known to her, but this was limited due to the fact that there has been no recent communication from them and she has not been made aware of any changes in their circumstances. The Respondent was aware of the Tribunal proceedings and had chosen not to make written representations nor attend the CMD. In all the circumstances, the Tribunal considered it reasonable to grant the eviction order sought.
4. The Tribunal did not have any material before it to contradict the Applicant's position, nor indicate that the Respondent was opposed to the eviction. The Tribunal accordingly determined that an order for eviction could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

Nicola Weir

Legal Member/Chair

30 August 2024
Date