



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/24/0979

Re: Property at 86 Masserene Road, Kirkcaldy, KY2 5RT (“the Property”)

Parties:

Mrs Catherine Naisby, Westbank Cottage, Meadowfield, KY2 5XE (“the Applicant”)

Miss Lynne Warnes, 86 Massereene Road, Kirkcaldy, KY2 5RT (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

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 86 Masserene Road, Kirkcaldy, KY2 5RT 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 furth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

Background

- 1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The application is based on Ground 1 (Landlord intends to sell the Property) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.**

2. The application was accompanied by a Private Residential Tenancy Agreement dated 3 June 2020, a Notice to Leave dated 30 November 2023, proof of postage dated 30 November 2023, emails between the Applicant's husband Stephen Naisby and Fife Council, and an email with a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 to Fife Council dated 28 February 2024.
3. On 23 April 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 24 July 2024 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 26 August 2024. The Respondent required to lodge written submissions by 14 August 2024. This paperwork was served on the Respondent by William Wywalec, Sheriff Officer, Kirkcaldy on 25 July 2024 and the Execution of Service was received by the Tribunal administration.
5. On 25 July 2024 the Respondent lodged written submissions that she did not oppose the application.

Case Management Discussion

6. The Tribunal proceeded with the CMD on 26 August 2024 at 2pm by way of teleconference. Mrs Barr from Streets Ahead Scotland Limited, appeared on behalf of the Applicant. The Respondent Miss Warnes appeared on her own behalf.
7. The Tribunal had before it the Private Residential Tenancy Agreement dated 3 June 2020, the Notice to Leave dated 30 November 2023 with proof of postage, emails between the Applicant's husband Stephen Naisby and Fife Council, the email with the Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 to Fife Council dated 28 February 2024 and the Respondent's written submission of 25 July 2024. The Tribunal noted the terms of these documents.
8. Mrs Barr moved the Tribunal to grant the order for eviction. She explained her client was looking to sell the Property. The Applicant was 66 years of age, had been diagnosed with cancer two years ago and now feels she needs to give up work. The Property had been bought as a fallback for her retirement and the Applicant now needed to realise the capital on the

Property to fund her retirement. The Tribunal noted the emails from the Applicant's husband who was a joint owner of the Property enquiring whether the Council would be interested in purchasing the Property. On being questioned by the Tribunal Mrs Barr explained her client had one other property which was rented to a member of the Applicant's family which the Applicant did not intend to sell. Mrs Barr explained that her client was very stressed about the application process.

9. In response Miss Warnes confirmed she did not oppose the application. She was working with Frontline Fife and Fife Council to get alternative accommodation but would have to go down the homelessness route to get accommodation which in the first instance was likely to be temporary accommodation. She explained she was 49 years of age, had had a stroke recently and was quite ill. In terms of recovery, she had a blood clot in her chest and a weakness with her left-hand side. She found stairs difficult to manage. The Property was on the upper floor of a four in the block. She used to work with the Applicant and did not want to cause her any more stress. She had a 14-year-old son who was on the autistic spectrum. She explained he did not like change. She would have to help him cope with that change. She also explained she had been awarded medical points for her and her son. The granting of an order would mean that her application for housing would be given greater priority as a homeless applicant. She was hopeful that they would get permanent accommodation in time which would be better for her and her son.

Reasons for Decision

10. The Tribunal considered the issues set out in the application together with the documents lodged in support and the submissions of the parties.
11. 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 1, namely the Landlord intends to sell the Property. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the grounds, the Tribunal has to be satisfied that it is reasonable to evict
12. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

13. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to sell the Property at Part 2 of the Notice in terms of Ground 1 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 25 February 2024. The Notice to Leave was served on the Respondent by Recorded Delivery post on 30 November 2023. In terms of Section 54 the notice period of the Notice to Leave is 84 days. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 25 February 2024. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice. Accordingly, the Notice to Leave complies with Section 62.
14. The Tribunal considered the submissions made by both parties. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by parties, that the factual basis of the application had been established in relation to Ground 1 and was satisfied the Applicant intended to sell the Property as soon as she regained possession. The Tribunal also has to be satisfied that it is reasonable to evict.
15. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to sell the Property when she obtained possession of it. Mrs Barr had clearly explained the Applicant's reasons for doing so, namely ill health which the Tribunal gave a lot of weight to. The Respondent had not disputed the application. She had indicated that she was seeking help from Frontline Fife and Fife Council which the Tribunal gave weight to. The Tribunal however gave equal weight to the fact that the Respondent was suffering from ill health herself and had a teenage son with his own health difficulties. The Respondent struck the Tribunal as being very admirable in seeking help and focusing on the future wellbeing of her son. Although she had no offer of alternative accommodation the Tribunal accepted that the Respondent was likely to secure permanent accommodation in time. However, it was clear the Respondent had very specific needs and would not be able to be accommodated even on a temporary basis in accommodation with stairs and accordingly gave weight to that in making its decision. Despite the balance of reasonableness in this case weighted being towards the Applicant and the Tribunal finding it would be reasonable to grant the order, the order is suspended by two months to enable Fife Council further time to help the Respondent find suitable alternative accommodation.

16. In the circumstances the Tribunal considered that in terms of Ground 1 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act, suspended by two months.

Decision

17. 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.

S Evans

26 August 2024

Legal Chair

Date