

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/24/1890

Property : 158 North High Street, Musselburgh EH21 6AR (“Property”)

Parties:

David Ritchie, 12B Links View, Musselburgh EH21 6JT (“Applicant”)

McEwan Fraser Legal, Claremont House, 130 East Claremont Street, Edinburgh EH7 4LB (“Applicant’s Representative”)

Brian Ciavarella, 158 North High Street, Musselburgh EH21 6AR (“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 refuse the Application.

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 10 October 2021; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 26 January 2024 ("Notice to Leave"); sheriff officer certificate of service evidencing service of the Notice to Leave on 31 January 2024; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 24 April 2024; copy estate agency agreement between the Applicant and the Applicant's Representative regarding the sale of the Property; affidavit from the Applicant dated 24 April 2024 and sheriff officer's execution of service certifying service of the Application on 19 August 2024.

By email dated 18 September 2024 the Applicant's Representative told the Tribunal that the Respondent had vacated the Property on 14 September 2024. Screenshots of messages between the Parties were provided.

Case Management Discussion

A case management discussion ("CMD") took place before the Tribunal on 19 September 2024 by teleconference. Rosaleen Doyle of the Applicant's Representative was in attendance. There was no appearance by the Respondent.

Ms Doyle told the Tribunal that the Respondent had vacated the Property on 14 September and had returned the keys for the Property to the Applicant. She said that the Respondent had moved to alternative accommodation in the vicinity of the Property. She said that the Applicant intended to sell the Property and had therefore invited the Respondent to take any furnishings from the Property that he wished. The Tribunal noted that was reflected in the screenshots of messages sent to the Tribunal on 18 September 2024. The Tribunal noted that the messages indicated that the relations between the Parties were amicable.

Ms Doyle sought an order for possession in order to protect her client's position should there be an application for a wrongful termination order. The Tribunal noted the terms of section 50 of the Act and expressed the view that as the tenancy was at an end, the Tribunal did not have jurisdiction to grant an order for possession. The Tribunal also noted that the Respondent could apply for a wrongful termination order whether or not an order for possession was granted.

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 10 October 2021.
2. A Notice to Leave was served on the Respondent by sheriff officer on 31 January 2024. It stated that an application for an eviction order would not be submitted to the Tribunal before 25 April 2024.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 24 April 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.

6. The Respondent ceased to occupy the Property on 14 September 2024.

Findings in Fact and Law

1. The tenancy between the Applicant and the Respondent came to an end on 14 September 2024 in terms of section 50(2)(b) of the Private Housing (Tenancies)(Scotland) Act 2016.

Reasons for the Decision

In terms of section 50 of the Act a tenancy comes to an end if the tenant has received a notice to leave from the landlord and the tenant has ceased to occupy the let property. In this case the Respondent received the notice to leave by service by sheriff officer on 31 January 2024. The Respondent ceased to occupy the Property on 14 September 2024. The tenancy therefore came to an end on 14 September 2024 in terms of section 50(2)(b) of the Act. An order for possession of the Property was not required.

Decision

The Tribunal determined to refuse the Application.

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 : 19 September 2024