



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/24/0750

Re: Property at 46 India Street, Montrose, DD10 8PW (“the Property”)

Parties:

Mr Kim Palmer, Pitpointie, Auchterhouse, DD3 0QR (“the Applicant”)

Mr Daryl Burness, Mrs Emma Murray, 46 India Street, Montrose, DD10 8PW (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the respondents

Introduction

This is an application under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application seeks an eviction order.

The CMD took place by teleconference on 18 September 2024 at 10.00 am. All parties represented their own interests. The Respondents were not opposed to the application.

Findings and Reasons

The property is 46 India Street, Montrose DD10 8PW. The applicant is Mr Kim Palmer who is the heritable proprietor of the property and the registered landlord. The respondents are Mr Daryl Burness and Mrs Emma Murray who are the tenants.

The parties entered into a private residential tenancy in respect of the property which commenced on 1 September 2019. The applicant relies upon ground 1 contained within part 1, schedule 3 to the 2016 Act. This specifies that it is an eviction ground where the landlord intends to sell the let property.

The relevant notice period under ground 1 at the that the notice to leave was served was one of 84 days. The notice to leave relied upon in this case is dated 11 November 2023 and stipulates that the earliest an application be submitted to the tribunal would be 7 February 2024. There is evidence that the notice to leave was served upon the respondents by email on 11 November 2023. The required statutory notice period was given and the notice to leave is valid.

In support of the ground of eviction the applicant has produced copy estate agency agreement entered into regarding the sale of the property. His motivation to sell arises due to his current home being too small for his own family and the increased costs associated with maintaining the let property due to the increase in mortgage rates. The applicant wishes to move home himself and purchase a new property. In the absence of selling the let property he would incur additional LBTT.

The tribunal was satisfied on the basis of the unchallenged credible and reliable evidence that it is the applicant's genuine intention to sell the let property.

The tribunal proceeded to consider the issue of reasonableness on the making of an eviction order. The tribunal weighed up the respective circumstances and needs of the parties.

The respondents are unopposed to the application. They are happy to vacate the property. They have two children. The first respondent is in full time employment. The family have no vulnerabilities. They have sought advice from the council who advised that they had to await the tribunal process concluding otherwise they would be deemed to have made themselves intentionally homeless.

A relevant Section 11 notice has been issued and the respondents will be provided with alternate accommodation in the event of an eviction order being made against them.

Weighing up the respective circumstances of the parties, the tribunal concluded that it was reasonable to grant the eviction order.

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.

Richard Mill

18 September 2024

Legal Member/Chair

Date