



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”)

Chamber Ref: FTS/HPC/EV/24/1226

Re: Property at 4 Mylnefield Road, Invergowrie, Dundee, DD2 5AT (“the Property”)

Parties:

Mr Alan Davidson, 73 High Street Lochee, Dundee, DD2 3AT (“the Applicant”)

Ms Coni Taylor, 4 Mylnefield Road, Invergowrie, Dundee, DD2 5AT (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the Applicant against the Respondent.

1. An application was received from the Applicant’s representative, Martin and Co Letting Agents, on 12 March 2024 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Ground 1 as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form in respect of the application were:
 - (i) Copy private residential tenancy agreement between the parties, signed by both parties and dated 7 January 2021, which commenced on 8 January 2021.
 - (ii) Copy Notice to Leave dated 30 November 2023 citing ground 1, and stating the date before which proceedings could not be raised to be 24 February 2023.

- (iii) Evidence of service of the Notice to Leave on the Respondent by email dated 30 November 2023.
3. Further information was requested from the Applicant by the tribunal administration on 14 March, 9 April and 7 May 2024. In response to these requests, further information was submitted by Martin and Co on behalf of the Applicant, on 9 and 11 April and 7, 20 and 29 May 2024. This information included:
 - (i) copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Perth and Kinross Council
 - (ii) copy letter from Martin and Co dated 30 November 2023 to the Applicant regarding their agreement to sell the property on his behalf.
 - (iii) Copy certificate of confirmation in favour of the Applicant and Mr Kenneth Soper of Campbell Boath solicitors in relation to the estate of the Applicant's late brother, Mr Harold Davidson, dated 12 August 2015.
 - (iv) Copy letter from Campbell Boath solicitors dated 29 May 2024, confirming that the property had been bequeathed to the Applicant as part of Harold Davidson's estate
 4. The application was accepted on 19 June 2024.
 5. Notice of the case management discussion (CMD) scheduled for 8 October 2024, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the tribunal on 30 August 2024. The Respondent was invited to submit written representations by 18 September 2024.
 6. No written representations were received from the Respondent prior to the CMD.

The case management discussion

7. A CMD was held by teleconference call on 8 October 2024. The Applicant was represented by Mr Alec Campbell of Campbell Boath solicitors. The Respondent was present on the teleconference call and represented herself.

Preliminary issue

8. The tribunal noted that the Notice to Leave, which had been sent to the Respondent on 30 November 2023, stated that the date before which proceedings could not be raised was 24 February 2023, which was more than 9 months earlier.

9. Mr Campbell told the tribunal that this had been a typographical error and that the date stated should have been 24 February 2024. The Respondent told the tribunal that she had not actually noticed the error in the date when she received the notice.
10. The tribunal was satisfied that the date error was a minor error in the Notice to Leave, which did not materially affect the effect of the Notice, in terms of section 73 of the 2016 Act. The date given was clearly incorrect as it preceded the date of the Notice by over 9 months. Had the date been correctly stated as 24 February 2024, this would have given the Respondent the required 84 days' notice, and the application was not submitted to the tribunal until 12 March 2024. The Respondent herself said that she had not noticed the error, and she had not therefore been misled by it.

The Applicant's submissions

11. Mr Campbell asked the tribunal to grant an eviction order under ground 1. He confirmed that it was the Applicant's intention to sell the property as soon as possible. The Applicant planned to retire, which was why he intended to sell the property. Mr Campbell did not think that the Applicant owned any other rental properties, but was not certain about this. He was unable to provide any further details about the Applicant's circumstances.

The Respondent's submissions

12. The Respondent said that she did not wish to oppose the application. She had contacted Perth and Kinross Council when she received the Notice to Leave, and had remained in the property on the Council's advice. She had been advised that she would need an eviction order from the tribunal before the Council would be able to find her alternative accommodation. She said that she believed she and her son would manage living in temporary accommodation until they found somewhere more permanent.
13. The Respondent lives in the property with her 11 year old son, who attends high school in Perth. She works full time in Dundee and neither she nor her son have any health issues. She had been looking at other private rented properties, but had been unsuccessful in finding another tenancy. She wished to remain in the local area. Her family live in the Perthshire and Dundee areas.

Findings in fact

14. The tribunal made the following findings in fact:
 - The Applicant owns the property.
 - The Applicant is the registered landlord for the property.

- There is a private residential tenancy in place between the parties, which commenced on 8 January 2021.
- The Notice to Leave was validly served on the Respondent by email on behalf of the Applicant on 30 November 2023.
- The Applicant intends to sell the property or put it up for sale within 3 months of the Respondent ceasing to occupy it.
- The Respondent lives in the property with her 11 year old son.

Reasons for decision

15. The tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.
16. The tribunal firstly considered whether the legal requirements of ground 1, as set out in Schedule 3 of the 2016 Act (as amended), had been met. Ground 1 states:

Landlord intends to sell

1(1) It is an eviction ground that the landlord intends to sell the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—

(a) is entitled to sell the let property, and

(b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

17. The tribunal determined that as the owner of the property, the Applicant was entitled to sell it. Having had regard to the oral evidence submitted on behalf of

the Applicant, and the letter from Martin and Co to the Applicant dated 30 November 2024, the tribunal was satisfied that the Applicant intends to sell the property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it.

18. The tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.
19. The tribunal noted that the Applicant wishes to retire and therefore intends to sell the property. The Applicant inherited the property and does not appear to own any other rental properties.
20. The tribunal noted that the Respondent did not wish to oppose the application, and that obtaining an eviction order would assist her with her application to the local authority for permanent accommodation. She also appeared to be confident that she would be able to cope with living in temporary accommodation until she and her son found somewhere more permanent.
21. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the tribunal considered that on balance it was reasonable to grant an eviction order. It gave particular weight to the fact that the Respondent did not wish to oppose the application, and that obtaining an eviction order would assist her with her application to the local authority for permanent accommodation.
22. The tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant.

Decision

The tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the property.

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.

Sarah O'Neill

Legal Member/Chair

Date 8 October 2024