



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/24/0126

Re: Property at Annexe, Stennisgorn, Pitmachie, Inch, AB52 6RX (“the Property”)

Parties:

Mr Euain Penny, Ann Mitchell Sutherland, Lynnside, Lyde Road, Harray, Orkney, KW17 2LA; Beaufield House, Inverurie, AB51 5BT (“the Applicant”)

Ms Tracey McKay, Annexe, Stennisgorn, Pitmachie, Inch, AB52 6RX (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. On 9th January 2024 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 1st April 2023 and a rent of £500 per month;
 - ii. Copy Notice to Leave dated 8th September 2023;
 - iii. Copy email dated 20th December from the Respondent to the Applicant’s solicitor acknowledging receipt of the Notice to Leave;
 - iv. Section 11 Notice and proof of service;

- v. Copy missive in relation to the sale of the property;
 - vi. Copy Certificate of Confirmation in the estate of the late Edna Pennie;
 - vii. Paper apart explaining that the property formed part of a larger property, of which the property in question was an annex. The whole property had been on the market since 2021, and the owners had received an offer on 9th August 2023, which they had accepted. It was a condition of sale that the Respondent vacated the property. The purchasers were currently occupying the vacant areas of the property under a Licence to Occupy and settlement of the transaction could not take place until the tant had vacated the subjects of let.
3. The Application was served on the Respondent by Sheriff Officers on 12th April 2024.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Miss Main of Macleod & MacCallum, Solicitors. There was no attendance by the Respondent or any representative on her behalf.
5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
6. Miss Main sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. She explained about the concluded contract and the licence to occupy. She said that the Respondent was apparently looking for other accommodation.
7. The Tribunal were satisfied that the first part of the ground, the intention to sell, had been established, and asked Miss Main to address the Tribunal on reasonableness.
8. Miss Main said that the property had been on the market for sale since 2021 and the contract was now concluded and binding, and the Applicants would be in breach if they did not get their order. She submitted that in those circumstances it was reasonable to grant the order as the Applicants would be prejudiced otherwise.
9. The Tribunal noted that there was a concluded contract and a Licence to Occupy and therefore there did not seem to be any prejudice to the Applicants unless there was a suspensive condition that if the transaction did not settle by a certain date the contract would come to an end. Miss Main was not aware if there was any such condition.

10. The Tribunal noted that the landlord on the lease was only the First Named Applicant. Miss Main had not been given any information as to why that was the case.
11. The Tribunal asked if the Respondent had been advised when she entered in to the tenancy agreement that the property was on the market for sale. Miss Main had not been given that information.
12. The Tribunal asked who occupied the property. Miss Main said that as far as she was aware the Respondent lived there with her two sons, and was in receipt of Housing Benefit. She had not been advised as to the ages of the children.
13. Miss Main had not been given information about any contact between the parties after the Notice to Leave had been served but she could say that the Applicants had received an email from Aberdeenshire Council confirming that the Respondent had applied for housing.
14. Miss Main submitted that the Respondent had not lodged any documents or submissions with the Tribunal. She had not indicated that she was opposed to the order, and she had approached the local authority for housing.
15. The Tribunal did not feel that it had sufficient information to allow it to decide if granting the order for eviction would be reasonable. The Tribunal must balance the positions of the parties. The Tribunal needed more information regarding the children of the Respondent and the Respondent's health before being able to make a decision.
16. The case was continued to a Hearing.

Procedure Subsequent to CMD

17. On 19th August 2024 the Applicant's solicitor lodged a detailed Written Submission. The Submission adequately addressed why the First Named Applicant was named as the landlord in the Tenancy Agreement. The Submission addressed and confirmed that the Respondent was aware that the property was on the market when she took on the tenancy and that she had confirmed that she would move out in the event of a sale.
18. The Written Submission confirmed that to the best of the Applicant's knowledge and belief the Respondent has a son, aged 15, and a son in his early twenties, and that the Respondent and her children are in good health.
19. Lodged with the Written Submission were text messages between the First Named Applicant and the Respondent which showed that the Respondent was not opposed to the Order being granted.

Hearing

20. The Hearing (“CMD”) took place by teleconference. The Applicant was represented by Miss Bruce of Macleod & MacCallum, Solicitors. The Respondent joined the call and represented herself.
21. The Chairperson explained that the case was calling for a hearing because the tribunal had not had sufficient information at the CMD to make a decision regarding reasonableness.
22. The Respondent said that she was in complete agreement with the Applicant and was not opposing the order being granted. She had joined the call to state that to the Tribunal. She said that she had approached the local authority and housing associations to be re-housed but needed the eviction order to allow them to complete their processes. She confirmed that she had had sight of the written Submission and had no disagreement with it.
23. Miss Bruce sought the order for eviction.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 1st April 2023;
- c. A Notice To Leave, dated 8th September 2023, was served timeously and correctly;
- d. A section 11 notice was served on the local authority;
- e. The Application was served on the Respondent by Sheriff Officer on 12th April 2024;
- f. The Applicant intends to sell or market for sale the property within three months of the Respondent vacating;
- g. The Applicant has concluded missives for the sale of the property and the new owners have taken occupation under a License to Occupy;
- h. The Respondent is not opposed to the order being granted;

Reasons for Decision

24. It is usually mandatory to grant an application under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2) In section 51(2) (First-tier Tribunal's power to issue an eviction order), the words "or must" are repealed.

(3) In schedule 3 (eviction grounds)—

(a) in paragraph 1(2) (landlord intends to sell)—

(i) in the opening words, for "must" substitute "may",

(ii) after paragraph (a), the word "and" is repealed,

(iii) after paragraph (b) insert " and

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

(b) in paragraph 2(2) (property to be sold by lender)—

(i) in the opening words, for "must" substitute "may",

(ii) after paragraph (b), the word "and" is repealed,

(iii) after paragraph (c) insert " and

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

(c) in paragraph 3(2) (landlord intends to refurbish)—

(i) in the opening words, for "must" substitute "may",

(ii) after paragraph (b), the word "and" is repealed,

(iii) after paragraph (c) insert " and

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

(d) in paragraph 4(2) (landlord intends to live in property)—

(i) for "must" substitute "may",

(ii) the words from "the landlord" to "3 months" become paragraph (a),

(iii) after paragraph (a) insert " and

"(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact."

(e) in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i) for "must" substitute "may",

(ii) the words from "the landlord" to "home" become paragraph (a),

(iii) after paragraph (a) insert " and

"(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact."

(f) in paragraph 7(2) (property required for religious purpose)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (b), the word “and” is repealed,

(iii) after paragraph (c) insert “, and

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

(g) in paragraph 8 (not an employee)—

(i) in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii) for sub-paragraph (2)(c) substitute—

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

(iii) sub-paragraph (3) is repealed,

(iv) in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h) in paragraph 10(2) (not occupying let property)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

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

(i) in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j) in paragraph 13(2) (criminal behaviour)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

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

(k) in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

25. The Tribunal now has to decide if it is reasonable to grant the eviction order.

26. The Tribunal decided at the CMD that the Applicant had established Ground 1. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Respondent had sent text

messages to the Applicant which indicated that she was not opposed to the Order being granted. She was aware when she signed the Tenancy Agreement that the property was up for sale. The Applicants have already concluded a missive for sale of the property and the purchasers have moved in under a Licence to Occupy. The Respondent confirmed that she was not opposed to the order being granted. The Tribunal, having considered all the circumstances, decided that it was reasonable to grant the 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.

A Kelly

18.10.2024

Legal Member/Chair _____

Date