



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV /24/2904

Re: Property at 46 Woodburn Bank, Dalkeith EH22 2EY (“the Property”)

Parties:

Mr Paul Homan, Mrs Karen Homan, 3 Archibald Hood Crescent, Rosewell, EH24 9FA (“the Applicants”)

Mr Tevita Tuitubou, Mrs Vika Tuitubou, 46 Woodburn Bank, Dalkeith, EH22 2EY (“the Respondents”)

Tribunal Members:

Valerie Bremner (Legal Member) and David Godfrey (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Applicants are entitled to sell the let property, and intend to sell it or at least put it up for sale for market value within 3 months of the Respondents ceasing to occupy it and it is reasonable on account of those facts to grant an eviction order.

Background

1. This application for an eviction order in terms of Rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 26th June 2024 and accepted by the Tribunal on 20th July 2024. A case management discussion was fixed for 8th November 2024 at 2pm.

The Case Management Discussion

2. The Applicant Paul Homan attended the case management discussion and was represented by Mr Rashid of APM Lettings. The Respondents did not attend and were

not represented at the case management discussion. The Tribunal had sight of an execution of service of the application, supporting papers and date of the case management discussion on the Respondents by Sheriff Officers putting these through the letterbox at the property on 3rd October 2024. The Tribunal was satisfied that the Respondents had received fair notice of the application and case management discussion and that it was appropriate to proceed in their absence.

3. The Tribunal had sight of the application, a tenancy agreement, a letter from solicitors regarding sale of the property, a Notice to Leave, an email sending the Notice to Leave, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and an email sending this to the local authority together with a mandate authorising APM Lettings to act for the landlords.

4. The parties had entered into a tenancy agreement at the property which is owned by the Applicants with effect from 16th April 2018. The monthly rent payable in terms of the tenancy agreement is £750 per month. The rent has never been increased during the tenancy and sizeable rent arrears have accrued in terms of the agreement which were said to amount to around £21,000. This was the equivalent of rent not being paid for a number of years of the tenancy. Mr Homan advised the Tribunal that efforts had been made to speak to the Respondents about this but they were “non responsive” and the curtains at the property were often drawn and the door was not answered. He had spoken to them earlier in the tenancy and could say that both Respondents spoke good English. Mr Tuitubou had engaged earlier in the tenancy with the landlord when he had been furloughed due to the Covid 19 pandemic. Mr Homan had offered to reduce the rent and the Respondent Mr Tuitubou had indicated at some stage that he was self-employed and was seeking money from other sources to pay the rent by taking on a second job. This had been the last communication between the parties and Mr Homan understood that the second job would have allowed payments to be made towards the rent but this had not occurred. It was understood that the Respondents still live at the property.

5. An eviction order was being requested on the basis that the Applicants want to sell the property as soon as it was vacant. Mr Homan explained that the motivation for this was not the rent arrears themselves but the fact that he wished to retire, as he is aged 65 and is gradually selling off his property portfolio. He had already placed one property in Watson Crescent in Edinburgh on the market. He had engaged solicitors to sell the portfolio one by one and had initially had a portfolio of 7 rented properties. Another property was to have the Home Report prepared the week after the case management discussion. An email letter from the firm of solicitors mentioned was produced to the Tribunal confirming that they were engaged to sell the property.

6. Mr Homan explained that the Respondents were believed to have family staying at the property but it was believed that the Respondents' family consisted of a 20 year old adult. It was suggested that none of the family were known to have any health conditions. Nothing else was known of the Respondents' circumstances.

7. The Tribunal had sight of a Notice to Leave dated 18th March 2024 setting out that the landlord intended to sell the property and this notice indicated in part 4 that an application to the Tribunal for an eviction order would not be made until 13th June

2024. The Tribunal had sight of an email sending this Notice to Leave to the Respondents on 18th March 2024.

8. The Tribunal had sight of a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 which had been sent by email to the local authority on 25th June 2024.

9. The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

10. The parties entered into a tenancy agreement at the property with effect from 16th April 2018.

11. The monthly rent payable in respect of this agreement is £750 per month and rent arrears have accrued in the sum of around £21,000 during the tenancy.

12. The Applicant landlord Mr Homan is 65 and wishes to retire and the Applicants are gradually selling off their property portfolio of 7 properties.

13. One of the Applicants' properties has already been sold, another is to have a home report prepared and a third is on the market for sale.

14. The Applicants have engaged solicitors to sell all of their rental properties over time and by way of an e mail letter of 12th March 2024 these solicitors confirmed that they have been engaged to sell the let property in this application.

15. A Notice to Leave in proper form setting out the eviction ground was emailed to the Respondents on 18th March 2024 and this notice indicated that no application would be made to the Tribunal for an eviction order until 13th June 2024.

16. A Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to the local authority on 25th June 2024 in relation to this application.

17. The Respondents are understood still to live at the property with an adult family member.

18. The Respondents' circumstances are not known and they have not often responded to attempts to engage with them by the landlord regarding any issues concerning the tenancy.

19. The Applicants are entitled to sell the let property and intend to sell it or at least put it up for sale for market value within 3 months of the Respondents ceasing to occupy the property.

Reasons for Decision

The Tribunal was satisfied that a Notice to Leave in proper form had been emailed to the Respondents giving them appropriate notice of the eviction ground and that an application would be made to the Tribunal. A notice in terms of Section 11 of the homelessness etc (Scotland) Act 2003 had also been sent to the local authority regarding this application. The Tribunal was satisfied that the Applicants intend to sell the let property or at least put it up for sale for market value as soon as they can. Evidence of this objective intention was produced in the form of an email letter of engagement from a firm of solicitors instructed in the sale of this and all other properties in the Applicants' portfolio. One of the Applicants also advised the Tribunal of his subjective intention to sell in that he wishes to retire and is selling all the properties for that reason. Rent arrears accrued at the property have reached around £21,000 and there have been little or no attempts by the Respondents to engage regarding these arrears. The Respondents did not engage with the Tribunal at all and little is known of their circumstances. Having considered all of the information before it the Tribunal considered that it was reasonable to grant the eviction order.

Decision

The Tribunal determined that an eviction order be granted in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Applicants are entitled to sell the let property, and intend to sell it or at least put it up for sale for market value within 3 months of the Respondents ceasing to occupy it and it is reasonable on account of those facts to grant an 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.

V. Bremner

Legal Member/Chair

8/11/24
Date