



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/24/3239

Re: Property at 1 East Mains Farm Cottages, Elgin, IV30 5PT (“the Property”)

Parties:

Ritsons Chartered Accountants, Brodies & Co. (Trustees) Limited, 103 High Street, Forres, IV36 1AA; Capital Square, 58 Morrison Street, Edinburgh, EH3 8BP (“the Applicant”)

Mr Alexander Mackenzie, Miss Natasha Thompson, 1 East Mains Farm Cottages, Elgin, IV30 5PT (“the Respondent”)

Tribunal Members:

**Graham Harding (Legal Member)
Ahsan Khan (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondents from the property.

Background

1. By application dated 16 July 20 24 the Applicant’s representatives, Brodies LLP, Solicitors, Inverness, applied to the Tribunal for an order for the eviction of the Respondents from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of a tenancy agreement, Notice to Leave with proof of delivery, Certificate of Confirmation, Terms of Agreement with Sales Agents, Section 11 notice with proof of service and other documents in support of the application.
2. The application was accepted and a Case Management Discussion (“CMD”) assigned.

3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 11 October 2024.
4. By email dated 13 November 2024 the Applicant's representatives submitted further written representations to the Tribunal.

The Case Management Discussion

5. A CMD was held by teleconference on 14 November. The Applicant was represented by Mr Calum MacPherson from the Applicant's representatives. The Respondents attended in person.
6. After explaining the purpose of a CMD to the parties, the Tribunal queried with the Respondents if they intended to oppose the application. Ms Thompson advised the Tribunal that shortly before the commencement of the CMD she had received an offer of a house from Moray Council and subject to Mr Mackenzie being in agreement it was their intention to accept the offer and would not be opposing the application being granted.
7. The Tribunal then noted that the Respondents' Private Residential tenancy had commenced on 1 September 2020 at a rent of £500.00 per calendar month and that following the death of the landlord Mr Robin Falconer the Respondents had been served with a notice to Leave by email dated 22 February 2024. The Tribunal also noted that the Applicant's representatives had submitted a certificate of Confirmation in respect of the property and a sales agreement in respect of the marketing of the property together with a Section 11 Notice to Moray Council.
8. The Tribunal queried with the Respondents if they had been provided with a date of entry for their new property and was advised that they would not be given this until they accepted the offer.
9. The Tribunal queried with Mr MacPherson if there was a pressing need for the Applicant to obtain vacant possession of the property. Mr MacPherson said that there had been a substantial delay due to the time taken for the proceedings to call before the Tribunal and suggested that it would be reasonable to grant an order for the eviction of the Respondents but with enforcement of the order being suspended until just after Christmas so that allowing for the 14-day period of the charge for removal the Respondents would have until mid-January to remove themselves from the property.
10. The Tribunal queried with the Respondents if they knew if the property they had been offered was ready to move into or if work required to be done on it. Ms Thompson said that she did not know.
11. Mr Macpherson confirmed that if the Respondents moved out of the property before the end date of the tenancy the Respondents would not require to pay any rent beyond the date on which they moved out.

12. The respondents confirmed they had no children living with them in the property and that they had no health issues.

Findings in Fact

13. The Respondents commenced a Private Residential tenancy of the property on 1 September 2020.
14. The Landlord, Robin Falconer is deceased and his executors, the Applicant, wish to sell the property for the benefit of the late Mr Falconer's beneficiaries.
15. The Applicant has obtained Confirmation and is in a position to sell the property once vacant possession has been obtained.
16. The Respondents were served with a Notice to Leave by email dated 22 February 2024 under Ground 1 of Schedule 3 of the 2016 Act.
17. Moray Council were given notice of these proceedings by way of a Section 11 Notice by email dated 16 July 2024.
18. The Respondents have been offered local authority housing by Moray Council and intend to accept the offer.
19. The Respondents have not been given a date when their new property will be available.
20. The Respondents are not opposing the order sought.
21. The Applicant's representatives have agreed that the Respondents will not require to pay rent for the property from that date they leave the property.

Reasons for Decision

22. The Tribunal was satisfied from the written representations and documents produced together with the oral submissions that procedurally the Applicant had met the requirements to obtain an order for the eviction of the Respondents from the property subject to it being reasonable for an order to be granted. In reaching its decision the Tribunal took account of the fact that the Applicant was acting as executors and required to sell the property in order to realise capital to pay the beneficiaries of the late Mr Falconer. The Tribunal also took account of the fact that the Respondents had been offered accommodation by Moray Council that they intended to accept and were not opposing the order being granted. The principal concern the Tribunal had was that the Respondents had not been given a confirmed date of entry to their new accommodation. In the circumstances in order to avoid the Respondents being rendered homeless the Tribunal considered it would be reasonable to grant the order for the eviction of the Respondents from the property but to suspend enforcement of the order until 17 January 2025 on the understanding given the undertaking from Mr

MacPherson that if the Respondents vacated the property before that date their obligation to pay rent would end from the date they vacated the property.

Decision

23. The Tribunal finds the Applicant entitled to an order for the eviction of the Respondents from the property but that enforcement of the order be suspended until 17 January 2025.

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.

Graham Harding

Legal Member/Chair

14 November 2024

Date