



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Ref: FTS/HPC/EV/24/3182

Re: 3 East Mains Cottages, Elgin, IV30 5PT (“the Property”)

Parties:

James Brash, Ritsons CA, 103 High Street, Forres, IV36 1AA and Brodies & Co. (Trustees) Limited, formerly of 15 Atholl Crescent, Edinburgh, EH3 8HA and presently at Capital Square, 58 Morrison Street, Edinburgh, EH3 8BP, as executors of the late Robin Alexander Love Falconer, lately of Shempston House, Shempston, Duffus, IV30 5RJ (“the Applicant”)

Brodie LLP, Clava House, Cradlehall Business Park, Inverness, IV2 5GH (“the Applicant’s Representative”)

Mr Glenn Campbell, 3 East Mains Cottages, Elgin, IV30 5PT (“the Respondent”)

Tribunal Members:

**Ms Susanne L. M. Tanner K.C. (Legal Member)
Ms Helen Barclay (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”):

(1) was satisfied that Ground 1 in Schedule 3, Part 1 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits: the Applicant intends to sell the let Property for market value, or at least put it up for sale within three months of the Respondent ceasing to occupy it; and that it was reasonable to make an eviction order in the circumstances; and made an order for eviction in terms of Section 51 of the 2016 Act.

(2) The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. The Applicant's Representative made an application to the tribunal on 11 July 2024 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules"). The Applicant seeks the Respondent's eviction from the Property under Ground 1 of Schedule 3.
2. The Applicant's Representative provided the following documents in support of the Application:
 - 2.1. Copy Private Residential Tenancy agreement dated 21 December 2020;
 - 2.2. Copy Notice to Leave and proof of delivery by email dated 22 February 2024;
 - 2.3. Confirmation issued on 20 September 2023;
 - 2.4. Copy letter of engagement by Brodies LLP dated 22 January 2024;
 - 2.5. Copy email updating email address under clause 4 of the PRT dated 22 February 2024; with copy read receipt on 22 February 2024 and
 - 2.6. Copy section 11 Notice to the Local Authority with proof of delivery by email on 11 July 2024.
3. The tribunal's administration obtained a copy a sasine search sheet for the Property which show a disposition in favour of the late Robin Alexander Lovie Falconer dated 27 January 1988.
4. On 2 August 2024, the application was accepted for determination and the tribunal sent letters of notification to all parties with the date, time and arrangements for joining the Case Management Discussion ("CMD") in relation to the Application on 31 October 2024 by teleconference at 1000h. The Application paperwork was personally served on the Respondent by Sheriff Officers. The Respondent was told that if he wished to submit written representations these should be sent to the tribunal by 15 October 2024.
5. The Respondent did not submit any defence or any written representations to the tribunal.

CMD: 31 October 2024, 1000h, Teleconference

6. Mr Calum McPherson from the Applicant's Representative attended.

7. The Respondent did not attend. The tribunal was satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the party present and all the material before it.

Submissions by the Applicant's Representative

8. Mr McPherson is seeking an order for eviction.
9. Mr McPherson said that he spoke to the the Respondent last night (30 October 2024). The Respondent informed Mr McPherson that has moved out to a council property at 73 Kingsmills, Elgin. Mr McPherson said that the Respondent lived in the Property with his partner and a child that is three years old. They now live with him in the new council property. The letting agent, Lees Property Management has been chasing for the return of the keys. The Respondent said that he was still tidying up and to remove some items. Mr McPherson said that the Respondent told him that he had not been aware of the proceedings because he had not been opening or looking at his mail. Mr McPherson asked him to go and look at the letters. The Respondent is still in possession of the Property and said that he could go back to the Property to look at them. Mr McPherson recommended that he joined the CMD at 1000h today (31 October 2024) and the Respondent said that he was going to do that. The Respondent did not indicate when the keys would be returned.
10. In terms of service of further documents on the Respondent, the Applicant's Representative said that the Respondent still has keys and access to the Property. Although the Applicant's Representative also provided an email address for the Respondent on the Application form, the tribunal clerk said that the tribunal does not have his consent to use that.
11. The Respondent has arrears of £3000.00 as at 31 October 2024. The Applicant's Representative has made a separate Application for a payment order.

12. The tribunal makes the following findings-in-fact:

- 12.1. The Applicant is the executors of the late Robin Alexander Lovie Falconer, lately of Shempston House, Shempston, Duffus, IV30 5RJ.
- 12.2. The interest of the landlord under the tenancy became vested in executors following the death of the late Robin Alexander Lovie Falconer and pursuant to the confirmation dated 20 September 2023.

- 12.3. There is a private residential tenancy agreement between the Applicant and the Respondent for the Property which started 21 December 2020.
- 12.4. On 22 February 2024, a Notice to Leave containing ground 1 of Schedule 3 to the 2016 Act was served on the Respondent.
- 12.5. The Applicant has given the Respondent at least 84 days' notice that it requires possession.
- 12.6. The Application to the tribunal was made on 11 July 2024.
- 12.7. The Applicant to sell the Property on the open market or at least market it for sale within three months of vacant possession to realise the net free proceeds for distribution to the beneficiaries of the late Robin Alexander Lovie Falconer.
- 12.8. The Applicant has instructed Brodies LLP in relation to the sale.
- 12.9. The Respondent and his family have moved out of the Property into local authority accommodation in Elgin.
- 12.10. The Respondent has retained the keys for the Property.
- 12.11. As at 31 October 2024, there are rent arrears of £3000.00.

13. Findings in fact and law

- 13.1. The tribunal is satisfied that the facts required in paragraph 1 of Schedule 3 to the 2016 Act have been established.
- 13.2. The tribunal is satisfied that it is reasonable to make an order for eviction.

Discussion

14. The order for eviction is sought in terms of Section 51 and paragraph 1 of Schedule 3 to the 2016 Act. The tribunal was satisfied that the requirements of those provisions have been met.

15. In relation to reasonableness, reference is made to the tribunal's findings in fact. The tribunal was satisfied that it was reasonable to evict the Respondents in the circumstances of the case.

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.

SLM Tanner

31 October 2024

**Ms. Susanne L. M. Tanner K.C.
Legal Member/Chair**