



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”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/2062

Re: Property at 8c Victoria Terrace, Haddington, EH41 3DN (“the Property”)

Parties:

James Wright Moncreiff, Shirley Henderson, 93 Abbots View, Haddington, EH41 3QL (“the Applicant”)

Ms Lynne Fairbairn, 8c Victoria Terrace, Haddington, EH41 3DN (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 7 May 2024, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 1 of Schedule 3 to the 2016 Act (landlord intends to sell). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same and evidence in support of the ground, including documentation from the Applicant’s solicitors confirming their instructions to sell the Property on behalf of the Applicant (the Executors of the late landlord).

2. Following initial procedure, on 2 July 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 11 November 2024 was served on the Respondent by way of Sheriff Officer on 4 October 2024. In terms of said notification, the Respondent was invited to lodge written representations. No representations were lodged prior to the CMD by the Respondent.

Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference call on 11 November 2024 at 2pm. The CMD was attended by Mr Jamie Miller, Solicitor, of Anderson Strathearn solicitors on behalf of the Applicant and by the Respondent, Ms Lynne Fairbairn.
5. Following introductions and introductory remarks by the Legal Member, Ms Fairbairn was asked to confirm her position regarding the eviction application. She confirmed that she is the tenant and that she was not opposed to the application but explained that she has nowhere to move to. She confirmed that she is in talks with the local authority at present about her housing position but has not yet been offered anything. She confirmed that she has told them about the Tribunal proceedings and that she was told that her housing application would progress when an eviction order was granted by the Tribunal. She is unaware of the likely timescale for her being offered alternative accommodation. Ms Fairbairn stated that she was 42 years old, lives alone, is unemployed and in receipt of benefits. She did not have anything else that she wished to add regarding her circumstances.
6. Mr Miller was then asked to address the application. He referred to the supporting documentation lodged with the Tribunal and confirmed that the Applicants are the Executors of the landlord, the late Mr Alexander Moncrieff. They are under a duty as Executors to wind up the estate of the late Mr Moncrieff and to pay out to the beneficiaries of the estate. This is the reason that the Property requires to be sold and the reason his firm were instructed to serve the Notice to Leave on the Respondent. Mr Miller confirmed that a Notice to Leave dated 19 January 2024 was properly served on the Respondent but, as she has remained in possession of the Property, this eviction application required to be lodged with the Tribunal after expiry of the notice period. It is the intention to sell the Property as soon as possible after possession is recovered and to market/sell within the 3 month period stipulated in the legislation. Mr Miller confirmed that they have not had contact from the Respondent since serving notice and were unaware until today of her position in relation to the application. Mr Miller understands the position the Respondent is in with regard to her housing situation and the local authority. His instructions are to seek an eviction order specifying the usual timescales, given the duties the Executors are under, although thinks that they may be amenable to being a little flexible with the eviction date if the Respondent were to approach them in this regard

once she has more information from the local authority. However, he stated that it was a matter for the Tribunal if they wished to extend the eviction date in terms of the Order.

7. The usual timescales for an eviction order becoming enforceable were explained to the Ms Fairbarin and the Legal Member reiterated what Mr Miller had stated about the possibility of some degree of flexibility perhaps being available, if the Respondent were to be in contact with Mr Miller's firm in due course, once she has been in further contact with the local authority. Ms Fairbairn understood the position and had nothing further that she wished to add.
8. The Tribunal Members adjourned briefly to discuss the application in private. On re-convening, the Legal Member advised that the Tribunal was satisfied that the application was in order and, in the absence of any opposition, should be granted today. It was explained that the Tribunal had, however, decided to slightly extend the timeframe for the eviction order being enforceable, given that the usual timeframe was likely to result in the eviction date falling during the festive holiday period. The date which would be specified in the order as the earliest date for eviction would be 8 January 2025. It was explained that this gave parties a definite date to work towards and would give the Respondent a slightly longer period to engage with the local authority regarding finding her alternative housing. Parties were thanked for their attendance and the CMD concluded.

Findings in Fact

1. The Applicant is the Executor of the late landlord who was the owner of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 15 June 2018.
3. The Respondent remains in occupation of the Property.
4. The Applicant is under a duty as Executor to realise the executry estate, which includes the Property, and to sell the Property and distribute the sale proceeds to the late landlord's beneficiaries.
5. The Applicant intends to sell the Property and to market it for sale as soon as possible and within 3 months of obtaining vacant possession.
6. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by recorded delivery/'signed for' post, posted on 19 January 2024 and delivered on 20 January 2024.
7. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was 15 April 2024.

8. The Tribunal Application was submitted on 7 May 2024.
9. The Respondent did not oppose the application.
10. The Respondent has made contact with the local authority to seek social housing but has not yet secured alternative accommodation to move into.

Reasons for Decision

1. The Tribunal gave consideration to all of the background papers including the application and supporting documentation and the oral information provided at the CMD by both the Applicant's representative and the Respondent.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the requisite period of notice (84 days) had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered that the ground of eviction, that the landlord intends to sell (Ground 1 of Schedule 3 to the 2016 Act, as amended) was satisfied in that all elements of Ground 1 were met and that it was reasonable, having regard to all of the circumstances, to grant the eviction order sought. The Tribunal had noted that there was supporting documentation with the application which established the background to the intention to sell and that the Applicant's solicitors were instructed to sell the Property as soon as possible after vacant possession is obtained. The Tribunal noted from the supporting documentation that the late landlord had died on 21 February 2023, that the Applicants were the Executors of the late landlord and that Confirmation in the estate of the late landlord, which included this Property, had been granted in favour of the Applicants on 19 February 2024. The Applicant's representative had explained that the Applicants were under a duty as Executors to realise the estate and then distribute the proceeds to the beneficiaries as soon as possible. This necessitated the sale of the Property. The Respondent took no issue with this and was not opposing the application. The Tribunal also considered the personal circumstances of the Respondent and that she had, as yet not been able to secure alternative housing to move into and that this was the reason she had not vacated the Property. It was noted that the Respondent had already made contact with the local authority and made them aware of her circumstances, and that she had been told that her housing application would progress further once an eviction order was granted. In the circumstances, the Tribunal considered it reasonable to grant the eviction order sought but also to exercise their discretion to slightly extend the earliest date for eviction until 8 January 2025 for the reasons explained above.

4. There were no facts or issues in dispute. Accordingly, the Tribunal determined that an order for recovery of possession of the Property under ground 1 could properly be granted at the CMD, subject to the extended date noted above.

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.

N.Weir

Legal Member/Chair

11 November 2024
Date