



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, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/2638

Re: Property at 39 Delta Road, Musselburgh, East Lothian, EH21 8EZ (“the Property”)

Parties:

Mrs Kerry Rathband, 37 Oliphant Gardens, Wallyford, East Lothian, EH21 8QP (“the Applicant”)

Kasia Nowicka, Mr Michael Broadley, 39 Delta Road, Musselburgh, East Lothian, EH21 8EZ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Ahsan Khan (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 10 June 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, the Notice to Leave/proof of service of same, the notification to the local authority in terms of Section 11 of the Homelessness (Scotland) Act 2003/proof of service of same and evidence in

support of the eviction ground, including correspondence and quotations from the Applicant's solicitors/estate agents in respect of a proposed sale of the Property.

2. Following initial procedure and submission of further documentation by the Applicant, 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 on 6 August 2024.
3. Notification of the application and details of the Case Management Discussion ("CMD") fixed for 17 December 2024 was served on the Respondent by way of Sheriff Officer on 8 November 2024. In terms of said notification, the Respondent was invited to lodge written representations. No written representations were lodged by or on behalf of the Respondent prior to the CMD.

Case Management Discussion

4. A Case Management Discussion ("CMD") took place by telephone conference call on 17 December 2024 at 2pm, attended by the Applicant, Mrs Kerry Rathband and by both Respondents, Ms Kasia Nowicka and Mr Michael Broadley.
5. Following introductions and introductory remarks by the Legal Member, the Respondents were asked to confirm their position in respect of the application. Ms Nowicka spoke for both Respondents and confirmed that they did not oppose the application. They have applied to the local authority for alternative accommodation, following being served with notice. They had considered an alternative private let but decided that this was unaffordable, given the upfront rent and deposit required. The local authority have said that they should inform them of the outcome of these Tribunal proceedings, when their application for housing will be progressed. Ms Nowicka confirmed that they have two children, aged 4 and 16. Their 4 year old attends nursery and their 16 year old is presently home-schooled due to some mental health difficulties. They have not restricted themselves geographically in terms of the area sought and are aware this could be anywhere in East Lothian which they are fine with. Ms Nowicka confirmed that they have not really had much direct contact with the Applicant regarding the tenancy but had been in touch with the Applicant's letting agent to advise them of their position in this eviction.
6. It was explained to the parties that, in any eviction application, the Tribunal requires to be satisfied that it is reasonable, in all the circumstances, for an eviction order to be granted, even where there is no opposition from the tenant.
7. The Applicant, Mrs Rathband, then addressed the Tribunal. She explained that the reason for her wishing to sell the Property is that times are tough and the costs of everything are rising. She can no longer afford to pay two mortgages and her savings have dwindled. She confirmed that this is the only property that she lets out. Her other mortgage is in relation to her own property where she lives with her husband. She confirmed that the Property was originally

supposed to be her pension but this has not worked out and she now requires to sell. Mrs Rathband confirmed that her letting agents have managed the Property for her and dealt with the Respondents but that there have been no issues with the Respondents as tenants or anything like that.

8. The Ordinary Member asked the Respondents if they were looking for the Tribunal to apply any extension to the earliest eviction date, given the forthcoming festive period but Ms Nowicka stated that they were not seeking any extension and would prefer an order to be issued as soon as possible. Mrs Rathband confirmed this was her preference too.
9. The Tribunal Members briefly conferred and thereafter confirmed that the Tribunal would grant the eviction order sought on the basis that it was satisfied that the ground for eviction is met and that it is reasonable for the order to be granted in the circumstances. There was brief discussion regarding the issuing of the written decision and the process which would now follow and the Respondent was advised to provide a copy of the documentation issued to the local authority as soon as possible in order that their housing application could be progressed. Parties were thanked for their attendance and the CMD brought to a close.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 29 April 2019.
3. 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.
4. A Notice to Leave in proper form and giving the requisite period of notice was served by Sheriff Officer on the Respondent on 8 March 2024.
5. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was 4 June 2024.
6. The Tribunal Application was submitted on 10 June 2024.
7. The Respondent remains in possession.
8. It has become financially uneconomic for the Applicant to continue renting out the Property and this is why she wishes to sell.
9. The Respondents both attended the CMD and did not contest the application.
10. The Respondent has already made application for social housing.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation lodged with the application and subsequently, and the oral information provided at the CMD by the Applicant and 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 the circumstances, to grant the eviction order sought. The Tribunal had noted that there was supporting documentation with the application in respect of the marketing and proposed sale of the Property. The Applicant had provided information at the CMD which satisfied the Tribunal that there was a true intention to sell as soon as possible, due to financial pressures which made it financially unviable for the Applicant to continue letting out the Property. The Respondent did not wish to oppose the application and had already applied for local authority housing, which application would only progress once an eviction order is granted. In all of the circumstances, the Tribunal considered it reasonable to grant the eviction order sought.
4. The Tribunal did not have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for eviction could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing in the circumstances.

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.



17 December 2024
Date