



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”)

Chamber Ref: FTS/HPC/EV/24/3532

Re: Property at 107 Eagle Road, Buckhaven, Leven, KY8 1HB (“the Property”)

Parties:

Andrew Neilson, 3 Frost Mount Place, Markinch, Glenrothes, KY7 6JH (“the Applicant”)

Scott Tullis, Prisoner 157239, HMP Low Moss, 190 Crosshill Road, Glasgow, G64 2QB (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the Applicant against the Respondent.

Background

1. An application form was received from the Applicant’s solicitor on behalf of the Applicant on 1 August 2024 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’). The application stated that the Applicant sought recovery of the property under Ground 10 as set out in Schedule 3 of the 2016 Act, as amended.
2. Attached to the application form were:
 - i) copy private residential tenancy agreement between the parties in relation to the property, which commenced on 11 May 2023.

- ii) Notice to Leave dated 9 April 2024 citing Ground 10 (not occupying let property), and stating the date before which proceedings could not be raised to be 10 May 2024, together with proof of sending by email on 9 April 2024.
 - iii) copy High Court judgment dated 29 April 2024 confirming that the Respondent had been given a 13 year custodial sentence in respect of several serious offences.
 - iv) Police Scotland news report from May 2024 regarding the Respondent's conviction.
 - v) copy notice under section 11 of the Homelessness etc. (Scotland) Act 2003 to Fife Council, together with covering email dated 1 August 2024.
3. The application was accepted on 26 August 2024.
4. Notice of the case management discussion (CMD) scheduled for 18 March 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officers on behalf of the Tribunal on 13 February 2025. The Respondent was invited to submit written representations by 4 March 2025.
5. The Tribunal issued a direction to the Applicant on 25 February 2025 seeking further information. A response was received from the Applicant's solicitor on 27 February 2025.
6. No written representations were received from the Respondent in advance of the CMD.

The case management discussion

7. The CMD was held by teleconference call on 18 March 2025. The Applicant was represented by Miss Alexandra Wooley of Bannatyne Kirkwood France and Co solicitors. The Respondent was present on the teleconference call and represented himself.

Submissions on behalf of the Applicant

8. Miss Wooley asked the Tribunal to grant an eviction order against the Respondent. She noted that the Respondent is currently serving a lengthy custodial sentence and would not therefore be returning to the property in the near future. Ground 10 was therefore met as the Respondent was not occupying the let property as the only or principal home.
9. She submitted that in the circumstances it would be reasonable to grant an eviction order. The Applicant was concerned about the security of the empty property and no rent was being paid by the Respondent.

The Respondent's submissions

10. The Respondent told the Tribunal that he did not wish to oppose the application. He said that he had been remanded in custody on 13 March 2024, and that his father and sister had emptied the property by 15 March 2024. They had advised Your Move, the Applicant's letting agent, on 15 March 2024 that the property was vacant and handed back the keys to the property. He said that Your Move had contacted his sister several times since then, and she had explained that the Respondent had moved out. Neither he nor his family members had heard anything further from the Applicant or Your Move since July 2024 until the papers for the CMD were served on him. He said that he did not understand why the application had been made.

Further submissions on behalf of the Applicant

11. Having heard the Respondent's submissions, Miss Wooley said that Your Move had been alerted to the Respondent's situation by a family member. They had been hesitant to accept what they had been told, as they were concerned that the family member may not have clear authority from the Respondent. They had sought to confirm the position with the Respondent himself but it had been difficult to contact him. It was her understanding that the keys had not been returned to Your Move.

12. Miss Wooley said that the Applicant was keen to ensure that the correct process had been followed and had therefore brought the application to recover the property. She asked the Tribunal to grant an eviction order and submitted that there would be no prejudice to the Respondent in doing so, given his lack of opposition to the application.

Findings in fact

13. The Tribunal made the following findings in fact:

- The Applicant is the owner and registered landlord of the property.
- There was a private residential tenancy in place between the parties, which commenced on 11 May 2023.
- On 9 April 2024, the Applicant validly served a Notice to Leave citing Ground 10 on the Respondent by email as provided for in the tenancy agreement.
- The Respondent is currently serving a 9 year custodial sentence in Low Moss prison, with a further 4 years on licence in the community.
- The Respondent has not occupied the property as his only or principal home since on or around 13 March 2024.

Reasons for decision

14. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as

were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties. It therefore proceeded to make a decision at the CMD without a hearing in terms of rules 17(4) and 18 (1) (a) of the 2017 rules.

15. The Tribunal first considered whether the legal requirements of Ground 10, as set out in Schedule 3 of the 2016 Act (as amended) had been met. Ground 10 states:

Not occupying let property

10(1) It is an eviction ground that the tenant is not occupying the let property as the tenant's home.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the let property is not being occupied as the only or principal home of—

(i) the tenant, or

(ii) a person to whom a sub-tenancy of the let property has been lawfully granted,

(b) the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(3) In sub-paragraph (2), the reference to a sub-tenancy being lawfully granted is to be construed in accordance with section 46(3).

16. The Tribunal determined on the basis of the evidence before it that the Respondent had not occupied the property as his only or principal home since on or around 13 March 2024. There did not appear to be any arrangements for a sub-tenancy in place, and the Respondent had not vacated due to issues of disrepair within the property. The Tribunal therefore determined that Ground 10 had been established by the Applicant.

17. The Tribunal then considered whether it was reasonable to issue an eviction order in all the circumstances of the case. Having carefully considered the evidence and all of the circumstances, the Tribunal determined that on balance it was reasonable to grant an eviction order. It was clear that the Respondent would not be returning to occupy the property given his circumstances, and the Applicant wished to recover possession of his property. The Respondent had

made it clear that he did not wish to oppose the application. The Tribunal therefore determined that it was reasonable to issue an eviction order in all the circumstances of the case.

Decision

The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the property.

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.

S.O'Neill

18 March 2025

Legal Member/Chair

Date