



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 Act”)

Chamber Ref: FTS/HPC/EV/19/2429

Re: Property at 9 Bridge Street, Strichen, AB43 6SS (“the Property”)

Parties:

Ms Jacqueline Hendry, 23c Maiden Street, Peterhead, AB42 1EE (“the Applicant”)

Miss Briony Garden, Unknown, Unknown (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant should be granted an order for possession of the Property against the Respondent under Ground 1 of Schedule 3 to the Act (the Applicant wishes to sell the Property)

Background

The Applicant is the owner of the Property. The Applicant had let the Property to the Respondent in early March 2019. Subsequently the Applicant served a Notice to Leave on the Respondent seeking possession of the Property on the basis the Applicant wished to sell it. The Respondent had not responded to the Notice to Leave and so the Applicant had applied to the Tribunal for an eviction order.

The Tribunal had before it the following information:-

- The Applicant's application to the Tribunal dated 1 August 2019;
- The Lease between the parties dated 5 April 2019;
- Notice to Leave dated 28 June 2019;
- S11 Homelessness Notice;

- Email correspondence between the Applicant and her solicitor instructing her to sell the Property along with copy Terms of Engagement from the solicitor;
- Certificate of Service by Advertisement dated 13 November 2019.

Case Management Discussion (“CMD”)

The Tribunal held a CMD at Peterhead Sheriff Court, Peterhead on 13 November 2019 at 2pm. The Applicant was not present but was represented by Ms Donna Yeats of MacRae Stephen & Co, Solicitors, Peterhead

The Respondent was neither present nor represented. The Tribunal had attempted to have the Tribunal papers served on the Respondent by Sheriff Officers but they had reported that she may have left the Property. Accordingly, Service by Advertisement was carried out by the Tribunal on its website. The Tribunal had a Certificate of Service of Advertisement dated 13 November 2019 before it confirm that the CMD had been advertised on the Tribunal website.

The Tribunal papers had confirmed the date and place of the Tribunal. The Tribunal papers had made it clear that a decision could be made in the absence of the Respondent. The Tribunal saw no reason not to proceed and make a decision on the day.

Findings in Fact

The Tribunal found the following facts to be established:-

- That the Applicant was the owner of the Property;
- That the Applicant had leased the Property to the Respondent with an entry date of early March;
- That the Applicant had served a valid Notice to Leave on the Respondent;
- That the Respondent had failed to remove or confirm her departure from the Property;
- That the Applicant had a genuine desire to sell the Property and had instructed her solicitors to do so.

Reasons for the Decision

The Tribunal had noted that the lease had started in March 2019 but by June the Applicant wished to sell. This was a short time period and was relatively unusual. Ms Yeats for the Applicant explained that the Respondent had stopped paying rental very soon in to the tenancy. The Applicant had since moved to Spain and wished to sell her properties. Ms Yeats confirmed that they had already sold another property for the Applicant and had instructions to sell this one as soon as possession could be obtained and a Home Report drawn up. The Tribunal had sight of written instruction from the Applicant to her lawyers instructing them to sell and also sight of the Applicant’s acceptance of the solicitors terms of business.

In terms of Ground 1 of Schedule 3 to the Act, the Tribunal must grant an eviction order if the owner wishes to sell. Proof of genuine intention to sell must be provided. The Tribunal accepted it was not practical to instruct a Home Report until possession

was obtained. The Tribunal had no reason to doubt the evidence put forward by Ms Yeats from the Applicant. The Applicant had moved to Spain. She had sold other property. She had instructed her solicitor to sell and had obtained and approved their quote and terms of business. In the circumstances the Tribunal was satisfied the Applicant intended to sell and accordingly they were obliged to grant the order.

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.

Ewan Miller

Legal Member/Chair

13/11/19

Date