

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/EV/19/3138

Re: Property at 8 Cochrane Place, Newmilns, KA16 9EY ("the Property")

Parties:

Mr Gary Rundle, 58 Richardson Avenue, Hurlford, Kilmarnock, KA1 5DX ("the Applicant")

Miss Wendy McMillan, 8 Cochrane Place, Newmilns, KA16 9EY ("the Respondent")

Tribunal Members:

John McHugh (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for possession of the Property in favour of the Applicant should be made.

Background

The Applicant was the landlord and the Respondent the tenant under a private residential tenancy relating to the Property dated 28 March 2019.

A Case Management Discussion took place on 6 January 2020.

The Respondent resisted the Application on the basis that she considered that the Applicant had no intention to sell. The Respondent further contended that the notice to leave was ineffective.

The Tribunal issued a direction on the same day. It required the Applicant to produce to the Tribunal evidence that the property was being sold for market value. The Respondent was ordered to produce to the Tribunal a note of the alleged

defects in the notice to leave and the reasons why she believes the Applicant is not entitled to sell the Property.

The Hearing

A Hearing took place at the North West Kilmarnock Area Centre on 27 February 2020. The Applicant was present. The Respondent was present and accompanied by Samuel Thomas from Shelter.

The Applicant's representative had produced a detailed note concerning the alleged invalidity of the notice to leave. This was produced on 21 February 2020 after the deadline for submissions specified in the Tribunal's Direction.

The Applicant confirmed that he had seen the Respondent's representative's note and was in a position to deal with it at the hearing. The Tribunal therefore indicated that it would be prepared to consider the note.

The note raised an issue where there is currently some uncertainty and a lack of definitive authority.

The parties indicated that they would like to have discussions among themselves to attempt to resolve their dispute.

The parties were allowed time to do so. The Applicant took the opportunity to obtain legal advice.

The hearing reconvened and the parties indicated that they were in agreement that an order for possession should be made but that it would not take effect until 30 April 2020. The Respondent reported that she had alternative accommodation which would be available then. Both parties indicated their understanding that the order would become effective on that date and would not be subject to change to accommodate any change in circumstances such as a delay in the Respondent's alternative accommodation becoming available.

Findings in Fact

The Applicant was the landlord and the Respondent the tenant under a private residential tenancy relating to the Property dated 28 March 2019.

The Applicant served a notice to leave dated 25 June 2019 upon the Respondent.

The notice indicated that the Applicant intended to sell the Property.

Reasons for Decision

The parties have agreed that an order for possession should be made in favour of the Applicant with an effective date of 30 April 2020. The Tribunal identifies no reason why it may not grant such an order.

Decision

An order for possession of the Property will be made in favour of the Applicant.

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.

John McHugh, Legal Member/Chair

Date 27 February 2020