



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/22/2488

Property: 14 Ballater Place, Dundee DD4 8SF (“Property”)

Parties:

Annamma Abraham, 1/1, 7 Morven Avenue Paisley PA2 8DS (“Applicant”)

Pavilion Properties, 86 Bell Street, Dundee DD1 1HN (“Applicant’s Representative”)

Gordon Duffy, 14 Ballater Place, Dundee DD4 8SF (“ Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Linda Reid (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E along with a Tenancy Agreement which commenced on 1 July 2020; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 20 April 2022 ("NTL") which stated that an application for eviction would not be submitted before 17 July 2022; copy email attaching the NTL dated 19 April 2022; copy email dated 20 April 2022 stating that the NTL had been issued by post; Royal Mail proof of delivery on 21 April 2022; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 18 July 2022; copy letter from Mov8 Estate Agents and Solicitors dated 20 October 2022 in which they stated they were instructed in relation to the conveyancing for the Property and mortgage statement as at 31 May 2023.

The Tribunal had sight of the title for the Property which is held by the Applicant and Abraham George. A case management discussion (“CMD”) took place before the Tribunal on 19 April 2023 by teleconference. Reference is made to the note of the

CMD. The Tribunal issued a direction. The Applicant provided the information set out in the direction on 9 May and 20 June 2023.

Continued CMD

A continued CMD took place by conference call on 12 July 2023. Calum Walker of the Applicant's Representative was in attendance as was the Respondent.

Mr Walker told the Tribunal that the mortgage payments for the Property had increased substantially. He said that the Applicant needed to sell the Property. He said the applicant was considering applying for bankruptcy.

The Respondent told the Tribunal that he does not oppose the grant of an order for eviction. He said that he had been in touch with the local authority about alternative accommodation but they would not do anything until an eviction order was granted. He said that he lives in the Property with his partner and children aged 16, 14 and 4. He said that the Property does not suit his family as it has only 2 bedrooms. He said that his daughter sleeps on a mattress in his bedroom. He said that he had been on a waiting list for local authority accommodation for 10 years. He said that he could not afford to rent a 3 bedroom flat in the private rented sector.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement dated 1 July 2020 ("Tenancy Agreement").
2. A Notice to Leave was served on the Respondent by recorded delivery post on 21 April 2022. It stated that an application for an eviction order would not be submitted to the Tribunal before 17 July 2022.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 18 July 2022.
4. The Applicant holds title to the Property and is entitled to sell the Property.
5. The Applicant intends to sell the Property or at least put it up for sale within 3 months of the Respondent ceasing to occupy it.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 1 which is that the landlord intends to sell. The evidence lodged with the application of intention to sell was a letter from a solicitor stating they were instructed to carry out the conveyancing. The Applicant had also lodged a mortgage statement which showed that the mortgage repayments had increased substantially.

The Tribunal considered the evidence lodged and the oral submissions made and determined that the ground for eviction had been established. Having considered all of the circumstances, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal determined to grant an order for 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.

Joan Devine

**Joan Devine
Legal Member**

Date: 12 July 2023