



Decision 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/22/4122

Re: Property at 171 Prestwick Road, Ayr, Ayrshire, KA8 8NW ("the Property")

Parties:

Ms Laraine Conkie and Alex Kerr, 21 Bellesleyhill Avenue, Ayr, Scotland, KA8 9BE ("the Applicants")

Mr David Millington, 171 Prestwick Road, Ayr, Ayrshire, KA8 8NW ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Angus Lamont (Ordinary Member)

Decision

At the Case Management Discussion ("CMD"), which took place by telephone conference on 12 June 2023, the Applicants and the Respondent were in attendance.

Prior to the CMD the Tribunal had received from the Applicants an email dated 24 March 2023 with attachments and an email from the Applicants' Letting Agent, Jennifer Ainsworth of Clyde Property, dated 3 April 2023 with attachments.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

A CMD had previously taken place on 21 March 2023. That CMD was adjourned to allow for production of evidence of service of the Notice to Leave.

The email from the Applicants' Letting Agent dated 3 April 2023 states with reference to the Letting Agent's email to the Respondent dated 8 July 2022 timed at 11:37:-

"Please find below the email sent to the tenant.

This email had the Notice to Leave attached, however when I try to forward it to you, it attaches to this email instead.

I trust this is now sufficient as this is the only information we can provide to show the Notice to Leave was sent to the tenant. We cannot provide anything further than the Notice to Leave and the courtesy email to the tenant with the Notice to Leave attached."

The CMD

At the CMD the Respondent made the following representations:-

- i. As soon as he got word that the Applicants were selling the Property he started to look for somewhere else to live.
- ii. He has been unable to find anything suitable thus far.
- iii. There are many people looking for accommodation. For example, he applied for one property and was 21st on the list despite the property having only gone on the market the day before.
- iv. He has put his name on the housing list with South Ayrshire Council. He will report to the Council following the CMD.
- v. He is looking for a two-bedroom, ground floor property near Prestwick. He can no longer climb stairs.
- vi. He and his partner look after their grandson who lives a mile away to allow his parents to work. Their grandson sometimes stays overnight.
- vii. He is all packed up.
- viii. The Property is on the ground floor with only 3 small stairs to the front door. The Property is situated within a block of floor flats. He is looking for something similar.
- ix. He is 74 years of age.

At the CMD the Second Applicant made the following representations for the Applicants:-

- i. The Applicants seek an eviction order.
- ii. The Second Applicant's health is not good. He has problems with his knees and a long list of other health conditions.
- iii. He is 70 years of age.
- iv. He needs to upgrade the bathroom in his own home and the heating too.
- v. The Property needs upgraded too but he has no finances to do the works required to the Property or his own home. He therefore needs to sell the Property.
- vi. He has no other rented properties in Scotland. He has a flat in Spain but he is unable to travel there now. His partner, the First Applicant, is 5 years younger and retired. She has no pension for another year.
- vii. There are no loans over the Property of his own home.

In that these proceedings are caught by the temporary measures introduced by Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022, the Second Applicant stated he was aware any eviction order could not be immediately enforced. He accepted that.

Findings in Fact

- i. The Applicants leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 24 January 2019.
- ii. The rent payable in terms of the PRT was stated to be £395 per calendar month payable in advance.
- iii. A deposit of £395 was also to be paid by the Respondent.
- iv. The Applicants' Letting Agent, Clyde Property, served a Notice to Leave on the Respondent by email on 8 July 2022 timed at 11:37 on the basis of Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act")
- v. The Notice to Leave sought the removal of the Respondent by 3 October 2022.

- vi. The Respondent has sought to find alternative accommodation but has been unable to do so.
- vii. The Applicant seeks to sell the Property to fund renovations required to his own home.
- viii. The Property requires some renovations too.
- ix. The application for an eviction order is dated 11 November 2022.
- x. It is reasonable to grant an eviction order.

Reasons for Decision

The parties are not in dispute with each other. There are no issues to resolve. The Respondent is in the course of trying to remove from the Property and his search for alternative accommodation is ongoing. He said he is packed up. He has not yet been able to find something suitable.

In that these proceedings are caught by the temporary measures introduced by Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022, the Second Applicant stated he was aware of and accepted that any eviction order could not be immediately enforced.

The granting of an eviction order was not opposed by the Respondent. The granting of the order may assist him in being allocated suitable accommodation by the local authority.

In all of the circumstances it is reasonable to grant an eviction order.

Decision

The tribunal grants the eviction 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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date of issue of the Statement of Reasons is sent to them.

J Taylor

G Buchanan

Legal Member/Chair

12 June 2023

Date