



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/22/4192

Property : 38 Station Road, Armadale EH48 3GP (“Property”)

Parties:

Nathaniel Muir Dyet, 155 Birkenshaw Way, Armadale EH48 3QZ (“Applicant”)

Martin & Co, 49a Hopetoun Street, Bathgate EH48 4PB (“Applicant’s Representative”)

David Orr, 38 Station Road, Armadale EH48 3GP (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Sandra Brydon (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. The documents produced were: Tenancy Agreement dated 1 August 2022; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 19 August 2022 ("Notice to Leave"); email from the Applicant’s representative to the Respondent dated 19 August 2022 attaching the Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 15 November 2022; email from the Applicant to the Applicant’s Representative dated 17 August 2022 regarding the sale of the Property; and sheriff officer's execution of service certifying service of the Application on 21 February 2023. The Tribunal had sight of a search showing that the Applicant holds title to the Property.

In advance of the case management discussion the Applicant’s Representative lodged a copy engagement letter from MacDonald Accountancy Services Ltd to the Applicant dated 28 December 2022 regarding review of income and outgoings information;

statement of finances of the Applicant for 3 months to 28 December 2022; a letter from Universal Credit to the Applicant's Representative dated 17 February 2023 stating they could not pay the rent arrears; copy letters from the Applicant's Representative to the Respondent dated 5 December 2022 and 4 January 2023 regarding rent arrears; a statement of account dated 20 February 2023; an undated note signed by Mrs C Mill and a copy undated text from William Dyet.

Case Management Discussion

A CMD took place before the Tribunal on 28 March 2023 by teleconference. The Applicant and Antoinette Orr of the Applicant's Representative were in attendance. There was no appearance by the Respondent.

The Tribunal noted that the Tenancy agreement commenced in August 2022 but that both the Notice to Leave and the section 11 notice referred to the tenancy commencing in August 2021. Ms Orr explained that the Applicant's Representative had taken over management of the Property in August 2022 and have put a new tenancy agreement in place at that time.

The Tribunal asked about the ground for eviction. The Applicant told the Tribunal that he had been working for an agency as a lorry driver. The agency was closing down within the next 2 months. He would need to find alternative employment. He did not know how that would work out financially. Ms Orr referred to the financial statements provided which she said showed that the Applicant was struggling financially.

The Applicant said that he said that he had lived in the Property for 6/7 years after he bought it but then he decided to let the Property as he was working away and was having trouble with a neighbour. The Applicant said that he was no longer working away and he wanted to sell the Property to buy an alternative property. He said that he was currently "sofa surfing" staying with family and friends. He said he had been doing that for 4/5 months.

Ms Orr said that the Respondent stopped paying the rent after service of the Notice to Leave. She said that the arrears are now £2,647.12. She said that payments were now being received from Universal Credit of £600 / month. She said that she understood that the Respondent lived in the Property with his daughter but that another adult and three children may also have moved in. Ms Orr said that she had been trying to arrange an inspection of the Property but the Respondent kept putting her off. She said the Applicant was concerned about the condition of the Property.

The Tribunal asked the Applicant about his financial position. He said that he was still paying the mortgage on the Property but was worried about his employer closing down. He said that he was trying to "keep his head above water".

The tribunal noted that the Cost of Living (Tenant Protection)(Scotland) Act 2022 would apply as the application was made after 28 October 2022. Ms Orr said that the Applicant understood that would mean a delay of 6 months on enforcement of any order granted.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement which commenced on 1 August 2022 ("Tenancy Agreement").
2. A Notice to Leave was served on the Respondent by email on 19 August 2022. It stated that an application for an eviction order would not be submitted to the Tribunal before 14 November 2022.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 15 November 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 he 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 copy of an email from the Applicant to the Applicant's Representative dated 17 August 2022 in which he stated his intention to sell. At the CMD the Applicant had explained that his circumstances had changed and he required to sell the Property. In those circumstances the ground for eviction had been established.

In all the circumstances, and in the absence of a submission from the Respondent, the Tribunal determined that it was reasonable to grant an order for eviction.

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
Legal Member**

Date : 28 March 2023