



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/22/1847

Re: Property at 6 Stuart Crescent, Kemnay, Aberdeenshire, AB51 5RZ (“the Property”)

Parties:

Mr Leo Garreth Scott, 152D Queen's Road, Aberdeen, AB15 6WF (“the Applicant”)

Mr Allan Taylor Aitkenhead, 6 Stuart Crescent, Kemnay, Aberdeenshire, AB51 5RZ (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that order in favour of the Applicant against the Respondents for recovery of possession of the private residential tenancy under ground 4 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application was received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.

2. The application contained:-

- a copy of the tenancy agreement,
- a copy of the notice to leave with evidence of service
- a copy section 11 Notice with evidence of service
- a copy of a statement from the landlord with supporting attachments

3. The Applicants' representative, Mrs Elder from Aberdein Considine & Co, appeared on behalf of the Applicant. The Respondent appeared by himself.

4. Notice of the Hearing and the application had been served on the Respondent by sheriff officers.

Discussion

5. Mrs Elder confirmed that she was seeking an order for eviction today under ground 4 that the applicant intends to reside in the property. She advised that the applicant wished to return to the property. She referred to the paperwork that had been submitted with the application explaining why the landlord needed the property back and that he was going to live in it with his wife and child.

6. The respondent advised that he was not opposing the application. He advised that he had sought advice from the citizens advice bureau and also, the local authority housing department, he advised that he was arranging to get accommodation for himself and his family from the local authority. They had advised him that they would not be able to assist him until such time as an order for eviction was granted. He advised that his family consisted of his wife, granddaughter (22 years) and niece (14 years).

7. The applicant's agent advised that the facts were still the same in relation to why the applicant needed the property back, other than the mortgage payments for the property which had gone up from £1370 per month and were now £1493. The applicant lived with his wife and young daughter. He needed the accommodation for them too.

Findings in Fact

8. The Tribunal found the following facts established:-

9. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 26 August 2019.
10. The tenancy was for the property 6 Stuart Crescent, Kemnay, Aberdeenshire
11. The tenant is Mr Allan Taylor Aitkenhead.
12. The landlord is Mr Leo Garreth Scott.
13. There was a notice to leave addressed to the Respondent. It contained information for the Respondent as to why an eviction order was sought. It was dated 10 March 2022. It confirmed that proceedings would not be brought until 13 June 2022. It had been emailed to the respondent on 10 March 2022.
14. The ground in the notice to leave was ground 4 “your landlord intends to live in the property”.
15. The landlord was residing in rented accommodation with his wife and child.
16. The landlord had previously worked in Russia. He had had to return to the UK for health reasons. Since the applicant’s return to the UK his employer was no longer intending to return the applicant to Russia due to the war with Ukraine. His employer was arranging for the applicant to work in Aberdeen.
17. The applicant’s wife and child were living with him in Scotland. He was in rented accommodation with his family, he required his property back to live in it with his family.
18. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

19. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in schedule 3 of the Act applies.

20. The ground which the Applicant seeks eviction under is ground 4 that the landlord intend to live in the property. The terms of that ground state that the tribunal must find it established if it finds that that the landlord intends to occupy the let property as his only or principal home for at least 3 months.
21. The landlord provided a detail statement of why he needed the property back. He provided relevant paperwork as evidence to support his position, which included bank statements, flight tickets from Russia, a letter from his doctor regarding his medical condition, a letter from employer confirming that it was withdrawing staff from Russia. We note what the applicant states about his employer transferring the applicant's place of work to Aberdeen. We note what the applicant says about having to rent property for him and his family. That he has to pay rent for his rental and a mortgage for the property. We note that he states that he requires to reside in the property with his family. The tribunal finds this ground established.
22. We must now consider whether it would be reasonable to grant the order. The respondent does not oppose the order which is sought, and he is working with the local authority to secure other property. In our opinion that fact in itself is sufficient for us to find it reasonable to grant the order.
23. Had the respondent been opposed to the order sought we would have considered while he had dependents in the house living with him, as the property is owned by the landlord, and as he needs it to live in with his family, and as he had provided supporting documents showing this, then we would have considered it reasonable to grant the order.
24. Accordingly, having regard to the papers before us and the oral submission of the Applicant's agent, and the position of the respondent we consider that the terms of ground 4 met, and that it would be reasonable to grant an order for possession under Schedule 3 Ground 4 - landlord intends to live in the property.

Decision

- 25.** The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 4 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

M. Barbour

13/09/22

Legal Member/Chair

Date