



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/0097

Re: Property at 14 longdykes road, Prestonpans, EH32 9RE (“the Property”)

Parties:

Claire Morgan, Mr John Morgan, 43 Cameron Way, Prestonpans, EH32 9FH (“the Applicant”)

Mr Christopher Matthews, 14 longdykes road, Prestonpans, EH32 9RE (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

Background

The Applicant lodged an application on the 12th January 2021 under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), seeking eviction under Ground 4 and 5 of Schedule 3 of Private Housing (Tenancies)(Scotland) Act 2016.

Lodged with the application were:-

1. The Tenancy Agreement showing a start date of 1^{9th} December 2018;
2. Notice to Leave dated 30th September 2020 indicating that the landlord intended to live in the property;
3. Email from Respondent dated 27th January 2021 confirming receipt of Notice to Leave.

The Applicants were written to by the Tribunal, requesting production of a section 11 Notice, on 25th January, 8th February and 8th March 2021. No such notice was produced by them.

On 22nd March 2021 the Tribunal wrote to the Applicants confirming that their application had been accepted and would proceed to a Tribunal for determination.

On the same date the Tribunal wrote to the Applicants enclosing a Direction in terms of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 Schedule 1 Section 16. Said Direction required the Applicants to submit, at least 14 days before the Case Management Discussion, a copy of the Section 11 notice and evidence of service of that notice.

The Case Management Discussion took place by teleconference. The Applicants represented themselves. There was no attendance by the Respondent, or any representative on his behalf.

The Applicants had not produced a section 11 Notice, nor any evidence of service.

The Case Management Discussion ("CMD") was adjourned and a fresh one fixed for 7th June 2021 for the Applicants to produce a section 11 Notice.

On 11th May 2021 the Applicants sent an email to the Tribunal administration attaching a section 11 Notice and a copy of an email from the local authority acknowledging receipt.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference. The Applicants attended. There was no attendance by the Respondent or any representative.

The Tribunal explained the purposes of a CMD in terms of Rule 17 of the Rules.

The Applicants confirmed that they were seeking an eviction order on grounds 4 and 5, namely that they, the landlords, and their family members wished to reside in the property. Mrs Morgan said that she was being made redundant in the next 8 weeks which left the couple in the financial position that they would need to sell the property they currently lived in and move back in to the rental property with their family.

Findings in Fact

1. The parties entered into a Tenancy Agreement in respect of the property;
2. The Tenancy Agreement had a commencement date of 19th December 2018;
3. A Notice to Leave was served in correct form and timeously on the Respondent and the Respondent had acknowledged receipt;

4. The Applicants required to live in the let property due to their financial position following redundancy.

Reasons for Decision

It is usually mandatory to grant an application under Grounds 4 and 5 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.. However, Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 amended the legislation as follows:

1(1)The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.

(2)Section 51(2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words “or must” were repealed.

(3)Schedule 3 (eviction grounds) has effect as if—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (a), the word “and” were repealed,

(iii)after paragraph (b) there were inserted “ , and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (b), the word “and” were repealed,

(iii)after paragraph (c) there were inserted “ , and

(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (b), the word “and” were repealed,

(iii)after paragraph (c) there were inserted “ , and

(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

- (i)for the word “must” there were substituted “ may ”,
- (ii)the words from “the landlord” to “3 months” were paragraph (a),
- (iii)after paragraph (a) there were inserted “ , and
- (b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,
- (e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—
- (i)for the word “must” there were substituted “ may ”,
- (ii)the words from “the landlord” to “home” were paragraph (a),
- (iii)after paragraph (a) there were inserted “ , and
- (b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,
- (f)in paragraph 7(2) (property required for religious purpose)—
- (i)in the opening words, for the word “must” there were substituted “ may ”,
- (ii)after paragraph (b) the word “and” were repealed,
- (iii)after paragraph (c) there were inserted “ , and
- (d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,
- (g)in paragraph 8 (not an employee)—
- (i)in the opening words of sub-paragraph (2), for the word “must” there were substituted “ may ”,
- (ii)for paragraph (c) there were substituted—
- “(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,
- (iii)sub-paragraph (3) were repealed,
- (iv)in sub-paragraph (4), for the words “sub-paragraphs (2) and (3)” there were substituted “ sub-paragraph (2) ”,
- (h)in paragraph 10(2) (not occupying let property)—
- (i)in the opening words, for the word “must” there were substituted “ may ”,
- (ii)after paragraph (a), the word “and” were repealed,
- (iii)after paragraph (b) there were inserted “ , and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i)in paragraph 12 (rent arrears), sub-paragraph (2) were repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(i)in the opening words, for the word “must” there were substituted “ may ”,

(ii)after paragraph (a), the word “and” were repealed,

(iii)after paragraph (b) there were inserted “ , and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”.

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case that the Applicants had established a prima facie case for eviction and that the Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. Having considered that the financial position of the Applicants had changed due to redundancy, and they would need to sell the property they currently lived in and move back to the rental property, and also considering that the Respondent had not sent any representations or attended either CMD, it was reasonable to grant the 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.

07/06/2021

Legal Member/Chair

Date

