



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/CV/20/1492

Re: Property at 26 Ash Place, Greenhills, East Kilbride, G75 9ET (“the Property”)

Parties:

Mr Gary Thornton, Thornton Lodge, Priestland, KA17 0LP (“the Applicant”)

Miss Kirsten McLean, 26 Ash Place, Greenhills, East Kilbride, G75 9ET, Mr Alister Ferguson, 26 Ash Place, Greenhills, East Kilbride, G75 9ET (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

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

Background

This is an application for an eviction order dated 29th July 2019 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought an eviction order in relation to the Property against the First Respondent, and provided with his application copies of the notice to leave, section 11 notice, affidavit, and relevant executions of service.

The First Respondent, Miss Kirsten McLean, had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 14th September 2020, and the Tribunal was provided with the execution of service.

The Tribunal noted in advance of the Case Management Discussion that the Applicant had not provided a copy of the lease agreement, and e-mailed him to request that he provide a copy.

Case Management Discussion

A Case Management Discussion was held at 11.30 on 13th October 2020 by Tele-Conference. The Applicant participated, and was not represented. The First Respondent participated, and was not represented. The Second Respondent also participated, and was not represented.

The Tribunal noted that it did not have a copy of the lease agreement. It also noted that the notice to leave stated that the tenant in terms of the lease was the First and Second Respondents and was addressed to them both.

The Respondents and the Applicant agreed that the tenancy agreement was between the Applicant and the First and Second Respondents. The Applicant explained that he was unable to provide a copy of the lease agreement at the moment, because it was located at his mother-in-law's house, and she was self-isolating with COVID-19.

The Respondents both confirmed that they did not oppose the granting of the order sought, and all parties were keen for the matter to be dealt with today. The Respondents confirmed that they had a copy of the lease agreement, which they could e-mail to the Tribunal.

The Tribunal adjourned to allow the Respondents to e-mail the lease agreement, which they duly did, and then resumed.

The Tribunal noted that the lease agreement bore to be a short assured tenancy agreement commencing on 14th February 2018, and that the landlord was the Applicant and the tenant was the First and Second Respondent. However, its terms were sufficient for it to be deemed a private residential tenancy agreement as defined in the *Private Housing (Tenancies) (Scotland) Act 2016*.

The Tribunal explained to the parties that any eviction order it granted would require to be made against both Respondents. The Applicant invited the Tribunal to make an order adding Mr Ferguson as Second Respondent to this application in terms of Rule 32 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. Both Respondents confirmed that they did not oppose the making of such an order, and the Tribunal duly made the order.

The Tribunal then explained that it was a mandatory requirement that the Applicant intimate a section 11 notice to the local authority in relation to the tenant. Although the Applicant had intimated a section 11 notice in respect of the First Respondent, he had not done so in respect of the Second Respondent.

The Applicant confirmed that he could prepare and intimate a further section 11 notice if the Tribunal adjourned for a further short period. The Respondents were in agreement with that proposal, and the Tribunal again adjourned.

Upon resuming, the Tribunal noted the terms of a further section 11 notice noting both Respondents as tenants, which the Applicant had prepared and intimated to the local authority. He had e-mailed copies of the notice and intimation e-mail to the Tribunal.

The Applicant then invited the Tribunal with reference to the application and papers to grant the order sought on ground 4 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. The Respondents both confirmed that they did not oppose the granting of the order.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* (“the Act”), the 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.

Para 4 of Schedule 3 to the Act provides that it is an eviction ground that the landlord intends to live in the property. The Tribunal must find that this ground applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months.

The Tribunal is satisfied that ground 4 has been established. The Applicant provided an affidavit confirming that he intends to occupy the let property as his only home for the foreseeable future, and for at least 3 months. He and his family have had to sell the current house in which they reside due to a change in personal circumstances caused by redundancy, and require to occupy the Property as their only home.

Decision

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application.

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.

N. Kinnear

13.10.2020

Legal Member/Chair

Date