



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/20/2472

Re: Property at 22 Belfield Avenue, East Calder, Livingston, EH53 0QZ (“the Property”)

Parties:

Ms Dawn Telfer, 50 Overton Crescent, East Calder, Livingston, EH53 0RY (“the Applicant”)

Mr Stuart John Archibald, 22 Belfield Avenue, East Calder, Livingston, EH53 0QZ (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

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

- Background

By application dated 26 November 2020 (the Application), the Applicant sought an eviction order against the Respondent under ground 4 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. The Application called by way of Case Management Discussion (CMD) which heard by way of conference call on 23 March 2021. At that CMD the Applicant was represented by a Mr Ahmed, her letting agent. The Respondent appeared and represented himself. At that CMD the Tribunal raised a preliminary issue with the parties at the outset of the CMD. Whilst it was noted that the Application proceeded in the name of the Applicant only, the title for the Property were recorded in the name of the Applicant and a John Telfer. A copy death certificate for Mr Telfer was produced, but the titles for the Property reveal no survivorship destination and nothing has been produced as part of the Application to evidence the transfer of Mr Telfer’s share in the Property to the Applicant. The CMD was continued to allow production of such evidence of the transfer and by email of 29 March 2021,

the Applicant's representative emailed a copy of an extract Certificate of Confirmation and Doquet registered in the Books of Council and Session on 27 April 2018 confirming the transfer of John Telfer's share in the Property to her.

A further CMD was held on 13 April 2021 to consider the Application further. This was again held by way of conference call. Mr Ahmed again represented the Applicant, but on this occasion the Respondent did not appear nor was he represented. Notwithstanding, the Tribunal was content to proceed in his absence on the basis they were satisfied that he was aware of the CMD and had made his position very clear at the last CMD in that he wanted the Tribunal to grant an Eviction Order against him.

- The Case Management Discussion

Mr Ahmed confirmed on behalf of the Applicant that the Respondent was still residing in the Property and sought an Eviction Order. The Tribunal considered the terms of the Notice To Leave and were content that the requirements regarding same had been complied with. Mr Ahmed then referred to the terms of the letter (undated) by the Applicant lodged in support the Application on 3 February 2021, which sets out the reasons why the Applicant wishes to return to the Property and reside in same as her only or principal home. In addition, Mr Ahmed confirmed that the Applicant wished to return to the UK from Spain to reside in the Property. That he was not aware of her having an alternative property to live in. He also referred to the Respondent's stated position at the last CMD which was that the Respondent wanted to leave the Property but could not do so without an Eviction Order being granted. He also confirmed that, which the Respondent may have a child who stayed with him from time to time, there were no children who lived within the Property on a full time basis.

- Findings in Fact and Law

- 1) That the Applicant is the heritable proprietor of the Property.
- 2) That the Applicant and Respondent entered into a tenancy for the Property which commenced on 7 January 2018.
- 3) By Notice to Leave dated 29 July 2020 and sent recorded delivery the Applicant gave notice to the Respondent of her intention to recover possession of the Property in terms of Ground 4 of the Private Housing (Tenancies)(Scotland) Act 2016 and confirmed that proceedings would not be raised before 1 November 2020.
- 4) The Notice to Leave was in the prescribed format.
- 5) That the Applicant intends to occupy the Property as her only or principal home for a period of not less than 3 months following the Respondent vacating same.
- 6) That the Applicant has complied with all notice requirements in terms of the Private Housing (Tenancies)(Scotland) Act 2016 and that Ground 4 of Schedule 3 has been made out.
- 7) That, in the circumstances, it is reasonable to grant an Eviction Order against the Respondent.

- Reasons for Decision

The Tribunal was satisfied based on the information presented with the Application that Ground 4 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 had been made out by the Applicant. Whilst the Respondent did not appear at the CMD on 13 April 2021, he had previously appeared on 23 March 2021 and clearly indicated that he did not intend to resist the Application and wanted an Eviction Order to be granted.

The Tribunal was satisfied that the Applicant held the landlord's interest in the tenancy and was the heritable proprietor of the Property. It was also satisfied that the Applicant wished to return and live in the Property as her only or principal home for a period of not less than 3 months following the Respondent vacating same.

The tribunal consider the information before it and the submissions made by Mr Ahmed and felt that, in the circumstances, it was reasonable to grant the order. That decision was unanimous.

- Decision

The Tribunal decided to grant an Eviction Order against the Respondent relative to 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.

Rory Cowan



Legal Member/Chair

13 April 2021
Date