



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

Chamber Ref: FTS/HPC/EV/21/0075

Re: Property at 14 Society Court, Society Lane, Aberdeen, AB24 4DE (“the Property”)

Parties:

S, A & S Properties Ltd, 16 Society Court, Aberdeen, AB24 4DE (“the Applicant”)

Ms Katarina Maleszyk, 14 Society Court, Society Lane, Aberdeen, AB24 4DE (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

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

The Applicant lodged an application on the 11th 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 1 of Schedule 3 of Private Housing (Tenancies)(Scotland) Act 2016.

Lodged with the application were:-

1. Copy Tenancy Agreement dated 13th March 2020 showing a monthly rent of £500
2. Notice to Leave
3. Section 11 Notice
4. Rent Statement
5. Quotes from three estate agents in connection with the sale of the property

The Applicant explained in the application that the tenant had originally been the Respondent's son, the tenancy having begun on 6th September 2019, but that a new agreement had been granted in favour of the Respondent.

The application was served on the Respondent by Sheriff Officer on 9th April 2021.

On 28th April 2021 the respondent sent an email to the Tribunal saying that she had left the property on 6th April 2021, and had been rehoused by the local authority.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Alison Girvan, who was supported by her husband, Sean Girvan. There was no appearance by the Respondent nor by any representative on her behalf.

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

The Applicant confirmed that she was seeking an eviction order. She said that she owned 8 flats in the block. Her mortgage deals had come to an end and her lender had given her a time scale to sell. She intended to sell the properties one by one. She confirmed that the Respondent had told her that she had been rehoused by the local authority and had given her a forwarding address. The Applicant had thereafter gone to check the property, but the Respondent's son appeared to still be living there. Rent arrears owed by the Respondent ran to £2197.29 and her son owed £859 from his period as the tenant. The Respondent's son appeared to have disposed of a quantity of furniture belonging to the Applicant and caused damage to the fabric of the property.

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 13th March 2020;
3. A Notice to Leave was served on the Respondent;
4. The Applicant intended to sell the property and had consulted various estate agents regarding the sale;
5. The Respondent was no longer living in the property and had been rehoused by the local authority;
6. There were rent arrears owed by the Respondent of £2197.29.

Reasons for Decision

It is usually mandatory to grant an application under Ground 1 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 Applicant had established that she had a ground of eviction in terms of Ground 1 of Schedule 3 of the 2016 Act. 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 Respondent was, confirmed by her own email to the Tribunal, no longer living in the property and had been rehoused by the local authority was in arrears to the extent of £2197.20, 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.

A Kelly

13th May 2021

Legal Member/Chair

Date