



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/21/0313

Re: Property at The Creggans, Blackwaterfoot, Isle of Arran, KA27 8ER (“the Property”)

Parties:

Mr James Murchie, Ard Bheinn, Torbeg, Shiskine, Isle of Arran, KA27 8HE (“the Applicant”)

Mr Duan Bruce, Mrs Geraldine Bruce, The Creggans, Blackwaterfoot, Isle of Arran, KA27 8ER (“the Respondents”)

Tribunal Members:

Alison Kelly (Legal Member) and Ann Moore (Ordinary Member)

Decision

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

The Applicant lodged an application on the 11th February 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. The Tenancy Agreement showing a start date of 1st August 2019.
2. Notice to Leave
3. Section 11 Notice
4. Estate Agent’s Schedule
5. Copy of offer received
6. Bullet point brief

In the bullet point brief the Applicant explained that the property had been on the market since 2008. The value had dropped considerably in that time. Offers had been few and the financial implications for him had been heavy. He felt that the current offer was a unique opportunity for him to move on. He also pointed out that due to the Second Respondent's medical condition the property was unsuitable for her. The papers were served on the Respondents by Sheriff Officer on the 24th March 2021.

On 25th March 2021 the Applicant contacted the Tribunal to advise that the offer to purchase the property had been withdrawn due to uncertainty over the date of entry.

On 10th April 2021 the Respondents lodged written representations, including a letter from the North Ayrshire Health and Social Care Partnership. The basis of their representations were that they wanted to leave the property, and would have done so at the expiry of the Notice period, but they were advised by North Ayrshire Council that doing so would have rendered them intentionally homeless and they would have lost half of their points on the housing list. They said that due to the Second Respondent's medical condition they had been assessed as needing a particular type of housing, a type which did not yet exist on Arran. They did not agree with the assessment but the Council would not reverse it. The letter from NAHSCP confirmed that the property was unsuitable for the Second Respondent.

On 15th April 2021 the Applicant lodged further written representations. He pointed out that the property had been on the market since 2008. He had received another offer and felt that the local authority were taking advantage, had effectively commandeered his property for social housing, and were preventing the sale from going ahead.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference. The Applicant and both Respondents attended.

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

The Applicant confirmed that he was seeking an eviction order for the reasons put forward in his written submissions.

The First Respondent said that they had been instructed by North Ayrshire Council to defend the action. He said that they had been intending to leave but they were told by the Council that they could not leave until an eviction order had been granted. He felt that the Council should have provided a representative for them for today's hearing. He said that the couple have wanted out of the property for years as it does not fit the needs of the Second Respondent. He accepted that the ground of eviction had been established.

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 1st August 2019;
3. A Notice to Leave was served in correct form and timeously on the Respondents;
4. The property has been on the market since 2008;
5. The Applicant had received several offers for the property recently;
6. One offer had fallen through due to uncertainty over the date of entry;
7. The Respondents wished to leave the property;
8. The Respondents had been advised by North Ayrshire Council that they would lose half their housing points if they vacated before an eviction order had been granted.

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 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 Applicant had had the property on the market since 2008 without achieving a successful sale, and now had interest which had generated several offers and that the Respondents wanted to leave and that the house was not suitable for the Second Respondent’s needs, 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.K.

26th April 2021

Legal Member/Chair

Date