



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 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/21/1542

Re: Property at 35 Preston Road, Prestonpans, EH32 9HZ (“the Property”)

Parties:

Mr Thomas Irving, 48 Peacock Tail Close, Edinburgh, EH15 3QS (“the Applicant”)

Miss Rebecca Taylor, 35 Preston Road, Prestonpans, EH32 9HZ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 25 June 2021, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act. Recovery was sought on the basis of Ground 4 of Schedule 3 to the 2016 Act. Supporting documentation was submitted with the application in terms of the Regulations, including the Notice to Leave and a statement from the Applicant, signed before a Notary Public, in support of the ground of recovery.
2. The application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice

of Acceptance of Application in terms of Rule 9 of the Regulations dated 6 August 2021. Notification of the application was then made to the Respondent and the date, time and arrangements for a Case Management Discussion (“CMD”) were intimated to both parties, advising of the date by which any written representations should be lodged. No written representations were lodged by the Respondent. The Applicant lodged subsequent representations by way of email dated 15 August 2021 in support of his requirement to recover the Property.

Case Management Discussion

1. A Case Management Discussion (“CMD”) took place by telephone conference call on 20 September 2021 at 10am, attended by both parties. Both Tribunal Members were in attendance.
2. After introductions and introductory remarks by the Legal Member, the Legal Member ascertained that the Applicant wished to proceed with his application of eviction against the Respondent on Ground 4 (that he intends to reside in the Property himself). The Legal Member made reference to the fact that no written representations had been made by the Respondent and requested that she confirm her position with regard to the application. The Respondent confirmed that she consents to the eviction order and, indeed, requires same to be granted in order that she can secure alternative accommodation through the local authority.
3. The Legal Member advised parties that, in these circumstances, the Tribunal still requires to be satisfied that the application is in order, that there is a ground for recovery of the Property in terms of the legislation and that it is reasonable for such an order to be granted (in terms of the Coronavirus restrictions currently in place in respect of evictions). The parties understood the position and both indicated that they were happy to answer questions.
4. The Legal Member asked the Applicant some questions. He confirmed in his responses his own current position with accommodation, that is, that following a relationship breakdown, he had required to move out of the property where he had been residing with his former partner, as per the written statement he had submitted with his application, signed in front of a Notary Public. He is now living in shared accommodation, as per his email of 15 August 2021, where he essentially has a room and shared cooking facilities, which he is finding difficult. The address stated in the application is his parents’ address and he is still using that as his postal address. He does not own any other property and this Property is the only one he lets out. This is the only suitable accommodation available to him and, although the Respondent has been a good tenant, he has no other option but to recover the Property so that he can then live in it himself. He confirmed that it is his intention to live there for more than 3 months.
5. The Legal Member then asked the Respondent to comment on what the Applicant had said and, also, to put forward anything that she wished about her own personal circumstances, given that the Tribunal also requires to be satisfied about the reasonableness of granting such an order at the present

time. The Respondent reiterated that she is not contesting the application, is aware of the Applicant's own position and that she has nothing to make the Tribunal aware of, other than that her priority is now to get herself and her family somewhere settled to live and requires the order to be granted so that she can progress her housing application with the local authority.

6. The Ordinary Member had no further questions for either party and indicated that she was satisfied that everything had been covered as far as both parties' positions. The Legal Member requested that parties leave the telephone conference call, to allow the Tribunal to make a decision, and to call back in at 10.30am when a verbal decision was likely to be given. Following discussions between the Tribunal Members, both parties re-joined the telephone conference call. The Legal Member advised that the Tribunal was satisfied, in the circumstances, that no further Hearing was necessary and that an eviction order could be granted today. Parties were advised that the relevant paperwork would be issued shortly confirming the Decision.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy commencing on 15 April 2019.
3. Following a change in the Applicant's own personal circumstances, he requires to recover possession of the Property to live in himself and intends to do so for at least 3 months.
4. A Notice to Leave dated 11 March 2021, specifying Ground 4 of Schedule 3 to the 2016 Act as the ground for recovery, was served on the Respondent in person by way of Sheriff Officer on 15 March 2021.
5. The date specified in the Notice to Leave as the end of the notice period was 16 June 2021.
6. The Tribunal Application was lodged with the Tribunal on 25 June 2021.
7. The Respondent currently continues to reside in the Property but has no opposition to the application being granted.
8. Given all the circumstances of the case, it is reasonable for an eviction order to be granted.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the further written representations lodged by the Applicant and the oral evidence given at the CMD by both parties.

2. The Tribunal found that both parties gave information to the Tribunal in a very straightforward manner and also that there was no dispute between them on the facts. Both parties indeed wished the Tribunal to grant the order sought as soon as possible in order to assist them both in moving forward with their respective circumstances.
3. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice of 3 months to the Respondent in terms of the Coronavirus (Scotland) Act 2020 had been served on the Respondent and that the application was made timeously to the Tribunal.
4. The Tribunal found that the ground of eviction that the landlord intends to live in the let property had been met (Ground 4 of Schedule 3 to the 2016 Act, as amended by the 2020 Act), in that the Tribunal was satisfied that the Applicant intends to occupy the Property as his only or principal home for at least 3 months and that it is reasonable to issue an eviction order on account of those facts. In considering the reasonableness of granting an eviction order in this case, the Tribunal had regard to all the relevant facts and circumstances of the case, pertaining to both parties, of which they had been aware, as at the date of the CMD, all as detailed above.
5. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an evidential Hearing.

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.

Legal Member: Nicola Weir

Date: 20th September 2021

Nicola Weir