



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/21/2590

Re: Property at 50 Lochinvar Road, Cumbernauld, G67 4AR (“the Property”)

Parties:

Mr Edward Wilson, 6 Bryer Place, Windsor, SL4 4YL (“the Applicant”)

Mr Brian Conlin, Miss Carly Pattemore, 50 Lochinvar Road, Cumbernauld, G67 4AR; 50 Lochinvar Road, Cumbernauld, G67 4AR (“the Respondents”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Eileen Shand (Ordinary Member)

Decision

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

Background

1. An application was received by the Housing and Property Chamber dated 20th October 2021. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not adhering to ground 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The application included:-
 - a. Copy Scottish Government Model Private Residential Tenancy Agreement with commencement of tenancy being 20th September 2019;
 - b. Notice to Leave signed 8th March 2021 stating vacant possession was required by 11th September 2021;
 - c. Section 11 notice noting proceedings would not be raised before 20th October 2021;

3. A CMD was held on 4th April 2022 at 10am by teleconferencing. The Applicant was represented by Mr Ian Lobban, Homelink Estate & Letting Agents. Ms Evelyn Hunter from Homelink was also present but took no part in the hearing. The Applicant was not present. The Respondents were not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Tribunal clerk had informed the Tribunal that Miss Pattermore had dialled into the call, prior to the Tribunal joining, to advise that she did not have her representative and did not feel safe to continue with the CMD. Mr Conlin then emailed to state that their appointed representative, Mr Jim Melvin of Coatbridge CAB, had given short notice that a family emergency had occurred and he would not be able to attend. Mr Melvin had asked the Respondents to convey a postponement request to the Tribunal to allow him or a colleague to attend at a further date. The Tribunal raised to Mr Logan that further proof of steps taken to market the Property required to be lodged. The Tribunal issued a direction for assistance. The Tribunal noted that it would be helpful to have a submission on reasonableness.
4. The case was conjoined with case FTS/HPC/CV/22/1012

The Case Management Discussion

5. A CMD was held 11th May 2022 at 10am by teleconferencing. The Applicant was represented by Mr Ian Lobban, Homelink Estate & Letting Agents. Ms Evelyn Hunter from Homelink. The Respondents were both present.
6. The Tribunal noted that neither party had fulfilled the direction issued to them. Mr Lobban noted that the Applicant has 9 properties but his firm only manages this one. Mr Lobban was not clear as to when the Applicant decided to sell the Property. Evidence on this point has not been submitted as per the direction. A member of the Homelink had called the Applicant who then joined the CMD. The Applicant informed the Tribunal that repairs were required to the Property which were prohibitive for him and that he had issues with the shared factoring costs not being dealt with promptly. He now wished to sell the Property. This is the only property he is selling. It has no adaptations. He has had the Property valued recently for the purpose of the sale. He has spoken to two different estate agents one of which is Homelink his letting agent. He has taken no further action until he has vacant possession. The Respondents do not oppose the application. They are to be rehoused by their local authority once deemed homeless.

Findings and reason for decision

7. A Private Rented Tenancy Agreement commenced 20th September 2019.
8. The Applicant has taken steps to sell the Property. The Applicant considers the repairs required to the Property to be prohibitive. He has had issues with those who share common factoring duties with him. He has had a valuation on the Property and enquired with two different estate agents.

9. The Respondents do not oppose the application.

10. There are no issues of reasonableness.

Decision

11. The Tribunal found that ground 1 has been established and granted an order in favour of the Applicant.

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.

Gabrielle Miller

11th May 2022

Legal Member/Chair

Date