



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/22/0004

Re: Property at Kameston Cottage, 9 Kames Street, Millport, Isle of Cumbrae, KA28 0BN (“the Property”)

Parties:

Kelburn Housing Ltd, C/O 48 Glasgow Street, Millport, Isle Of Cumbrae, KA28 0DN (“the Applicant”)

Ms Sharon Devine, Kameston Cottage, 9 Kames Street, Millport, Isle of Cumbrae, KA28 0BN (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Mike Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property under Ground 1 of Schedule 3 of the Private housing (Tenancies) (Scotland) Act 2016.

Background

1. By application dated 22 December 2021 the Applicant applied to the Tribunal for an order for possession of the property under Section 18 of the Housing (Scotland) Act 1988. Following correspondence between the Applicant and the Tribunal administration between and 9 February 2022 the Applicant amended the application to proceed under Rule 109 as it was averred that the tenancy that commenced on 24 May 2021 was a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016. The Applicant submitted a copy of a Notice to Leave and tenancy agreement in support of the application together with a Section 11 Notice.

2. Following further correspondence between the Tribunal administration and the Applicant, by notice of Acceptance dated 13 April 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was sent to the Applicant on 14 May 2022 and was served on the Respondent by Sheriff Officers on 17 May 2022

The Case Management Discussion

4. A CMD was held by teleconference on 17 May 2022. The Applicant was represented by its Company Secretary Mrs Elizabeth Barbour. The Respondent attended in person.
5. The Respondent explained that she had resided in the property for almost eight years. She paid her rent but did not know what type of tenancy she had. She explained that following service of the Notice to Leave and the raising of these proceedings she had gone to seek advice from North Ayrshire Council. She said they had told her that she should go to the Tribunal and once it made an order for her eviction the council would look to find her and her partner a council house.
6. The Respondent explained that she lived in the property with her partner Mr Girvan who was 76 years old and who suffered from a heart condition and from a back injury. The Respondent also explained that she was recovering from breast cancer and was about to undergo a further biopsy.
7. For the Applicant Mrs Barbour explained that the company was wholly owned by a lady who had recently retired and who now wished to off-load some of the properties in the portfolio to provide an income in her retirement. She explained that a buyer had been found for the property and that this would allow the owner to pay off the mortgages on the remaining properties which would then provide a regular income as the owner no longer had any income from employment. She explained that the Applicant owned six flats on the island and it was the owner’s intention to try to sell another but retain the rest to provide an income.
8. There followed some discussion as to the circumstances which had led to a private buyer being found for the property and the price that was agreed being less than the price the property had been offered for sale to the Respondent.
9. The Respondent explained she would rather remain in the property. She accepted the Applicant had offered her an alternative property on the island but at a higher rent and with stairs that would not have been suitable for her partner given his heart condition. She did not think the Council would have a suitable property for her on Cumbrae and if she took another private let, she would lose the additional housing points she had been given.
10. Mrs Barbour confirmed she had taken legal advice with regards to the amendment of her application and was satisfied that this corrected any issue

with regards to the Notice to Leave. The Respondent did not dispute the validity of the Notice to Leave.

Findings in Fact

11. The parties entered into a Short Assured Tenancy in about 2014. This continued until a new Tenancy was entered into that commenced on 24 May 2021. Although purporting to be a Short Assured Tenancy it was intended to be a Private Residential Tenancy Agreement.
12. The owner of the Applicant has retired and wishes to realise capital from the property to pay off the standard securities on the remaining properties owned by the company and to derive an income for herself in her retirement.
13. A Notice to Leave was served on the Respondent personally by the Applicant's representative, Mrs Elizabeth Barbour on 21 June 2021.
14. The property has been sold subject to the tenancy coming to an end.
15. A Section 11 notice was sent to North Ayrshire Council on 23 February 2022.
16. The Respondent is recovering from breast cancer and may require further treatment.
17. The Respondent's partner has a heart condition and suffers from a back injury.
18. The Applicant offered the Respondent alternative accommodation but it was declined as not suitable.
19. The Respondent has been told she will be rehoused by the local authority if an order for eviction is granted.

Reasons for Decision

20. Although there appeared to be some confusion with regards to the type of tenancy in operation it was accepted by both parties that there was in fact a Private Residential tenancy and that therefore the Notice to Leave served on the Respondent was valid. Proper intimation to the local authority had been given by way of a Section 11 notice and therefore were it not for the operation of the Coronavirus (Scotland) Act 2020 ("the 2020 Act") the fact that the Applicant was selling the property would have been a mandatory ground for granting the order sought. However, in terms of the 2020 Act the Tribunal was required to consider whether it would be reasonable in all the circumstances to grant the order.
21. In considering reasonableness the Tribunal took account of the impact the granting of the order or the refusal to grant the order would have on the parties. It considered the health of the Respondent and her partner and the fact that it

may not be possible for them to find suitable accommodation on Cumbrae where they have lived for the past eight years.

22. Against that the Tribunal acknowledged that the owner of the Applicant had set up the company with a view to using it as her pension fund and to provide her with capital and income on her retirement. The Applicant would be seriously disadvantaged if it could not realise the capital from the sale of the property to pay off the standard securities on the other properties in order to produce an income for the company and in turn for its owner who had retired.
23. After carefully weighing up the arguments for both sides the Tribunal considered on balance that it was reasonable to grant the order as it appeared that the Respondent would be given priority for housing by North Ayrshire Council and it was reasonable that the Applicant should be able to realise capital to fund the owner's retirement.
24. However, the Tribunal acknowledged that this was a difficult time for the Respondent given the ongoing concerns regarding her health and therefore was of the view that some additional time should be given to the Respondent to allow her to find alternative accommodation and therefore the order should not come into effect until 25 August 2022.

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.

G Harding

**Graham Harding
Legal Member/Chair**

**23 June 2022
Date**