



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 Act”)

Chamber Ref: FTS/HPC/EV/22/0059

Re: Property at 14 Vorlich Crescent, Callander, FK17 8JE (“the Property”)

Parties:

Mr Andrew Bowie, c/o 2 Lendrick Avenue, Callander, FK17 8LZ (“the Applicant”)

Ms Myra Kyle, The Store, Carrutherstown, Dumfries, DG1 4LD (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. By application dated 7 January 2022 and amended on 14 April 2022, the applicant sought an order under section 51 of (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. On 5 May 2022 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion (CMD) was set to take place on 15 July 2022 and appropriate intimation of that hearing was given to both parties

The Case Management Discussion

3. The Case Management Discussion (CMD) took place on 15 July 2022 via telephone case conference. The applicant did not take part personally in the telephone case conference but was represented by his solicitor, Ms Elaine Elder from Aberdein Considine, solicitors, Aberdeen. The Respondent did not take part.
4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
5. The tribunal asked various questions of the applicant's solicitor with regard to the application and the grounds for eviction contained within it.
6. The solicitor confirmed that she wished the order for eviction to be granted based both on grounds 1 and 12 as set out within schedule 3 of the Act.

Findings in Fact

7. The Applicant is the registered owner of the property along with Kristina Bowie.
8. The Applicant and the Respondent as respectively the landlord and tenant entered into a tenancy of the property which commenced on 28 September 2018.
9. The tenancy was a private residential tenancy in terms of the Act.
10. The agreed monthly rental was £550.
11. On 2 June 2021 the applicant served upon the tenant a notice to leave as required by the act. Service was effected by recorded delivery post and received by the respondent on 3 June 2021. The Notice became effective on 5 December 2021.
12. The notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.
13. The notice was correctly drafted and gave appropriate periods of notice as required by law.
14. The notice set out various grounds contained within schedule 3 of the Act, including grounds 1 (that the landlord intended to sell the property) and ground 12 (that the tenant had been in arrears of rent for three or more consecutive months).

15. Arrears had started to accrue in June 2020 and at the date of service of the Notice to Leave amounted to £6,200.00.
16. At the date of the lodging of the application arrears amounted to £10,050.00
17. The tenant had been continuously in arrears from June 2020 until the date of the CMD.
18. The amount of arrears at the date of the CMD was £13,350 and thus exceeded one month's rent.
19. The basis for the order for possession on ground 12 was thus established.
20. The applicant and the co-owner provided a written statement dated 14 March 2022 to the tribunal confirming they intend to sell the property once the respondent had left
21. The basis for the order for possession on ground 1 was thus established

Reasons for Decision

22. The order for possession sought by the landlord was based on two grounds specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon those grounds.
23. The tribunal accepted the evidence presented on behalf of the landlord with regard to the rent arrears. A rent statement was produced which set out the history of the arrears. Since June 2020 the respondent has failed to pay the rent as it fell due and significant arrears have accrued.
24. The tribunal was satisfied that the tenant had been in arrears for a period far in excess of three consecutive months and the arrears owed were significantly in excess of one month's rent. The ground for eviction based on rent arrears was accordingly established.
25. The tribunal accepted the unchallenged evidence of the applicant and his co-owner that they intend to sell the property. The ground for eviction based on the owner's intention to sell was accordingly established.
26. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on this ground can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

27. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.

28. In this case the tribunal finds that it is reasonable to grant the order.

29. The level of arrears is extremely high and it is unlikely that the arrears will ever be repaid. There is no suggestion that the tenant is making any attempt to meet the rent. It was suggested by the landlord's representative that the tenant has already left the house and is now living elsewhere in Dumfries. The tribunal accepted that the owners intend to sell the property and in all the circumstances the tribunal decided that it was reasonable to grant the order sought.

30. The tribunal decided to exercise the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD

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.

Jim Bauld

Legal Member/Chair

Date: 15.07.2022