



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”)

Chamber Ref: FTS/HPC/EV/22/0715

Re: Property at 37 Station Park, Lower Largo, Fife, KY8 6DW (“the Property”)

Parties:

Mr Craig Mackenzie, C/O Harper Macleod LLP, City Point, 65 Haymarket Terrace, Edinburgh, EH12 5HD (“the Applicant”)

Ms Kerry Hutchison, 37 Station Park, Lower Largo, Fife, KY8 6DW (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Janine Green (Ordinary Member) (“the tribunal”)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be issued against the Respondent.

Background

- 1. This is an application for recovery of possession of the Property which is dated 10th March 2022.**
- 2. The application states that possession of the Property is sought under Paragraph 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016, that the Applicant intends to live in the Property.**
- 3. The application states that the Property was the home of the Applicant and that he wants to return to live there. It states that the Applicant is currently living with his father in a two bedroom house and that this presents issues when his eight year old son stays with him.**

Documents before the tribunal

- 1. Tenancy Agreement dated 1st August 2018.**
- 2. Notice to Leave dated 26th November 2021.**
- 3. Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003.**
- 4. Sheriff officer's certificate of intimation of service of the Notice to Leave dated 29th November 2021.**
- 5. Print of Title Sheet for FFE100190 (the Property).**
- 6. Affidavit of the Applicant dated 8th April 2021**

The Case Management Discussion

- 4. A case management discussion was held by audio conference on 5th July 2022. There was no appearance by the Respondent. The tribunal had a certificate of intimation from sheriff officers stating that intimation of the case management discussion had been served on the Respondent on 16th May 2022. The Applicant was not present but was represented by Ms Clare McGeough, solicitor.**
- 5. Ms McGeough said that the Applicant believes that the Respondent has vacated the Property. She said that there had been email intimation by the Respondent at the end of April that she intended to move out on 22nd May 2022. She said that the Applicant had been unable to confirm this although neighbours had reported belongings being removed from the Property. Ms McGeough explained that the Applicant was a merchant seaman and is presently away and had been unable to confirm matters. She said that, as the Applicant had not had return of the keys, he still wanted the order to be granted to protect him against any possible claim of unlawful eviction.**
- 6. The tribunal noted the terms of the affidavit of the Applicant which had been lodged and which was dated 8th April 2021. This states that the Property had been owned by the Applicant since 2012, that he had lived there with his partner until 2018 when they parted and that, in that year, he entered into a tenancy agreement with the Respondent. It states that the Applicant has an eight year old son who he tries to see two weekends a month and that, when his son visits him, he and his son have to share a bedroom in the two bedroom house of his father with whom he lives. The affidavit states that the sleeping arrangements when his son visits are uncomfortable and cannot go on for much longer. It states that the Applicant wants to recover the Property so that he has a home where his son is comfortable visiting and that he wants a house to live in so that he can move forward with his life. The affidavit states that the Respondent has been served with a notice to leave but that she has not done so which he finds frustrating.**
- 7. Ms McGeough says that the circumstances detailed in the affidavit still exist but that one difference is that the Applicant now sleeps on a couch when his son visits because sharing a bedroom became untenable.**

8. Ms McGeough submitted that there was no reason for a Hearing to be scheduled and that the tribunal had sufficient information to determine the application.

9. Findings in Fact

9.1 The Applicant is the owner of the Property.

9.2 The Applicant and the Respondent entered into a Private Residential Tenancy for the Property on 1st August 2018.

9.3 The start date for the tenancy was 1st August 2018.

9.4 The Applicant gave the Respondent Notice to Leave on 29th November 2021.

9.5 The Applicant intends to live in the Property.

10. Findings in Fact and Law

10.1 The ground for eviction set out in paragraph 4 of Part 1 of Schedule 3 of the 2016 Act is met. The Applicant intends to reside in the Property.

10.2 The Notice to Leave which was dated and which was served on 29th November 2021 referred to Ground 4 which was being relied on by the Applicant as the reason for seeking recovery of the Property.

10.3 The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 1st March 2022 and the application is therefore not premature.

The Law

The following provisions of the Private Housing (Tenancies) (Scotland) (Act) 2016 include the amendments made by the Coronavirus Act 2020 and which measures have been extended

Section 51: First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Schedule 3, Part 1 Paragraph 4

Landlord intends to live in property

4 (1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

Reasons

11. The tribunal accepted that a private residential tenancy exists. The tenancy agreement purports to be a short assured tenancy agreement but, given that such a tenancy could not be brought into being after 1st December 2017, it must be treated as a private residential tenancy in terms of the 2016 Act.

12. The tribunal accepted that the Applicant is the owner of the Property and this is evidenced by the Title Sheet.

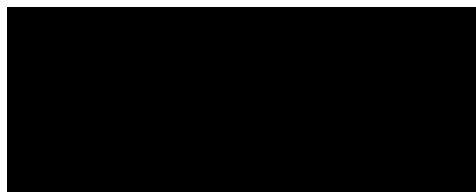
13. The tribunal was satisfied that the Notice to Leave was in proper form, that it gave notice to the Respondent of the ground being relied on for the order and that the application had not been made prior to the notice period.

- 14. The tribunal was satisfied that the Applicant had given the required notice to the local authority under the Homelessness etc. (Scotland) Act 2003.**
- 15. The tribunal found the terms of the affidavit of the Applicant to be compelling and that for him to have a family life in the Property was reasonable. The tribunal knew nothing about the Respondent's position with regard to the application because she had made no written representations and had not participated in the case management discussion.**
- 16. The tribunal considered that it had sufficient information to determine the application and saw no requirement to fix a Hearing.**
- 17. The tribunal determined to issue an eviction 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.

Legal Member:



Date: 05/07/2022