



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 (“The Act”)

Chamber Ref: FTS/HPC/EV/22/0758

Re: Property at 29 Cammo Grove, Edinburgh, EH4 8EX (“the Property”)

Parties:

Dr Ann Haley, Mrs Jean Young, 34 Queen Margaret Close, Edinburgh, EH10 7EE; West Byre, Cauld barns Farm, Stirling, FK7 8HH (“the Applicant”)

Miss Nicola Fox, 29 Cammo Grove, Edinburgh, EH4 8EX (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted the Application and made an Eviction Order in favour of the Applicants against the Respondent.

Background

The Applicant seeks an Eviction Order under Ground 1 of Schedule 3 of the Act in that it is said that the Applicants wish to sell the Property.

The Case Management Discussion

The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 5 May 2022. The case called alongside a related Application in respect of a Payment Order for rent arrears.

The Applicants were both present together with their representative Mr Malcolm Brown. The Respondent had emailed the Tribunal on the morning of the CMD to advise:

Dear Savanagh lowrie,

I am due to attend at party case call at 10am this morning. Unfortunately I have had an accident slipping down the stairs and have hurt my right ankle. I am now waiting on an ambulance to take me to the hospital to see if it is broken. Which means I cannot take part in this call this morning I am afraid.

Kind regards

Nicola Fox

The Tribunal considered whether it would be appropriate to proceed with the CMD in light of this email. The Tribunal noted that in the related Application in respect of the Payment Order, the Respondent appeared to have failed to comply with the Direction made regarding her previously stated intention of entering into a payment plan.

The Tribunal also noted that the email contained no request for a postponement or even outlined what the Respondent's position might be. The Tribunal unanimously considered that in the whole circumstances of the case, this email provided an insufficient basis for delaying proceedings. The Tribunal decided to proceed in the absence of the Respondent as per Rule 29.

The Tribunal noted that a Notice to Leave had been submitted in respect of the relevant ground of eviction. This Notice to Leave was dated 10 September 2021 and provided that no Application would be made for an Eviction Order before 13 March 2022. The Application was submitted to the Tribunal on 14 March 2022. The Tribunal considered that the Notice to Leave appeared competent but there was no proof of it having ever been served on the Respondent. The Tribunal adjourned and the Applicants were able to produce a copy of the email which attached the Notice to Leave which was sent to the Respondent on 10 September 2021. The Tenancy agreement also confirmed that email was an authorised method of the communication of notices under the tenancy.

The Applicants also produced evidence from a firm of solicitors of having taken steps to have the Property sold as soon as vacant possession was obtained.

The Tribunal also discussed directly with the Applicants their reasons for wanting to sell the Property. They explained that they are sisters who had inherited the Property and were now disenchanted with being landlords and wanted to remove themselves from

the sector with no intention to return. The Applicants came across as being entirely candid and genuine.

The Tribunal considered the reasonableness or otherwise of making an Eviction Order. The Tribunal was informed that the Applicant may live in the Property with a 15 year old child. The Tribunal was however also aware from the previous CMD in respect of the Payment Order Application that the Respondent was accruing significant arrears and had acknowledged that she owed the sums claimed in that Application which were considerable. It was plain that the Respondent could not afford to rent the Property. The Tribunal conducted a balancing exercise in the assessment of reasonableness which involved weighing the competing factors as far as known to the Tribunal.

Having heard from the Applicants, and having considered the Application, the Tribunal made the following findings in fact.

Findings in Fact

- I. The Parties entered into a tenancy which commenced on 1 March 2019;*
- II. The Applicants were the landlords and the Respondent was the tenant;*
- III. The Applicants competently served a Notice to Leave on the Respondent by email on 10 September 2021 which was based on Ground 1 of Schedule 3 and which provided the Respondent with the correct period of notice;*
- IV. The Applicants have complied with s11 of the Homelessness Etc. (Scotland) Act 2003;*
- V. The Applicants genuinely wish to sell the Property;*
- VI. It is reasonable to grant the Eviction Order.*

Reasons for Decision

Having made the above findings in fact, the Tribunal decided to grant the Application and made 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: Andrew McLaughlin

Date: 05/05/2022