



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/22/0992

Re: Property at 49 Forest Avenue, Aberdeen, AB15 4TU (“the Property”)

Parties:

Mrs Allyson Conacher, Firbank, Wartle, Inverurie, AB51 5AA (“the Applicant”)

Mrs Bamidele Nzonlie Fosso, 49 Forest Avenue, Aberdeen, AB15 4TU (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Elizabeth Williams (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.

1. An application was received by the Housing and Property Chamber dated 5th April 2022. 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) Act 2016.
2. The application included:-
 - a. Private Residential Tenancy Agreement with commencement of tenancy being 9th February 2018;
 - b. Notice to Leave signed 11th May 2021 stating an application would not be submitted to the Tribunal before 14th November 2021;
 - c. Section 11 notice noting proceedings would not be raised before 5th April 2022;
 - d. Copy email dated 11th May 2021 serving Notice to Leave upon the Respondent; and

- e. Letter of engagement and terms of business from Aberdeen Considine solicitors regarding the sale of the Property dated 9th May 2023
3. On 14th May 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 29th June 2022 at 2pm. The letter also requested all written representations be submitted by 4th June 2022.
4. On 18th May 2022, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 18th May 2022

The Case Management Discussion

5. A CMD was held on 29th June 2022 at 2pm by teleconferencing. The Applicant did not attend but was represented by Mr Aaron Doran, solicitor, Raeburn Christie Clerk & Wallace LLP. The Respondent was present and represented herself.
6. Mr Doran told the Tribunal that the Applicant wished to sell the Property to release equity to assist her daughter who is recently divorced. The Applicant did not lodge the application for 5 months after the Notice to Leave because she wanted to give the Respondent enough time to source alternative accommodation. The Respondent was to be allocated a property from her local council around Christmastime 2021 but it needed work done to it which meant that she could not move into it straight away. The Respondent then indicated that she hoped to get the keys to her new property on 30th May 2022 and move in or around 20th June 2022. However as this has not happened the Applicant wants an order for eviction to protect her position. Mr Doran noted that this is a no fault eviction. There are no rent arrears. It is to simply resolve on going family matters.
7. The Respondent noted that the delay in moving was due to issues with the local council. She now has the keys and has moved most of her things in. She has three children. One of her children attends a special needs school and the other two attend a local school. The school term ends on 1st July 2022 and she does not wish to upset their routine before that. The Tribunal explained that any order would not be able to be enforced for 30 days. The Respondent said she objected to the term ‘Order for eviction’ but did not object to the Applicant having her property back. It is her intention to move out at the weekend then clean the Property before returning the keys the following week.
8. The Tribunal noted the points and was satisfied that it was appropriate to grant an order for eviction given that there was no objection and no issues of reasonableness

Findings and reason for decision

9. A Private Rented Tenancy Agreement commenced 9th February 2018.
10. The Applicant intends to sell the Property. This was evidenced by the letter of engagement and terms of business lodged.
11. The Respondent has the keys to her new property is in the process of moving out.
12. There are no issues of reasonableness.

Decision

13. The Tribunal found that ground 1 has been established and the 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.

G. Miller

29th June 2022

Legal Member/Chair

Date