



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/22/4413

Property : Room 1, 2 The Avenue, Girvan KA26 9DS (“Property”)

Parties:

Ian Miller and Elizabeth Miller, Willowdene, London road, St Ives, Cambridgeshire PE27 5EU (“Applicant”)

Thorntons Law LLP, 3rd Floor, Citypoint, 65 Haymarket Terrace, Edinburgh EH12 5HD (“Applicant’s Representative”)

Lee McAllan, Room 1, 2 The Avenue, Girvan KA26 9DS (“Respondent”)

Ayr Housing Aid Centre SCIO, 7 York Street, Ayr KA8 8AN (“Respondent Representative”)

Tribunal Members:

Joan Devine (Legal Member)

Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property and to dispense with the requirement to serve a charge for eviction in terms of section 216(4) of the Bankruptcy and Diligence etc (Scotland) Act 2007 .

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E along with an inventory of productions with productions numbered 1 - 18. The Application was conjoined with the applications proceeding under reference FTS/HPC/EV/22/4430, FTS/HPC/EV/22/4427 and FTS/HPC/EV/22/4431. A Case Management Discussion (“CMD”) took place on 20 March 2023. Reference is made to the Note of the CMD. A Direction was issued. In response to the Direction the Applicant lodged a third inventory of productions containing items 20 to 34 and a list of witnesses. The Respondent did not respond to the Direction. A Hearing was fixed for 5 September 2023. By email dated 6 July 2023 the Applicant asked the Tribunal to

fix an urgent CMD; to grant an order for eviction under ground 1A; to dispense with the charge for removing under section 216(4) of the Bankruptcy and Diligence etc (Scotland) Act 2007 and to dispense with the notice of removal in terms of rule 41C(3) of the Procedure Rules. The Respondent did not oppose part 1 of the application and a CMD was fixed for 7 August 2023.

CMD on 7 August 2023

A CMD took place before the Tribunal on 7 August 2023 by teleconference. The Applicant and Calvin Gordon of the Applicant's Representative were in attendance. Gerard Tierney of the Respondent's Representative was also in attendance. Mr Tierney told the Tribunal that the Respondent had keys for an alternative property and consented to an order for eviction being granted. Mr Gordon submitted that it would be reasonable to dispense with service of a charge for eviction and with the notice of removal due to the length of time that had elapsed since commencement of the eviction process and the additional cost that would be incurred in having these served by sheriff officer.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement dated 12 April 2022 ("Tenancy Agreement").
2. A Notice to Leave was served on the Respondent by sheriff officer on 21 July 2022. It stated that an application for an eviction order would not be submitted to the Tribunal before 14 October 2022.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 11 December 2022.
4. The Applicant holds title to the Property and is entitled to sell the Property.
5. The Applicant intends to sell the Property or at least put it up for sale within 3 months of the Respondent ceasing to occupy it.
6. The Applicant intends to sell the Property to alleviate financial hardship.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, 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.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 1 which is that the landlord intends to sell the let property. The evidence lodged with the application of intention to sell was the affidavit of the First Applicant, the letter from National Auctions, the letter from Kilpatrick & Walker and email from Thomas Murray being productions number 15, 7, 9 and 6 respectively. In those circumstances the ground for eviction had been established.

The Applicant also sought recovery of possession of the Property on the basis set out in Ground 1A which states :

"(1) It is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship"

Having considered the third inventory of productions lodged in response to the Direction issued, the Tribunal determined that this ground for eviction was established. In those circumstances the protections afforded by the Cost of Living (Tenant Protection)(Scotland) Act 2022 would not apply.

Having considered all of the circumstances the Tribunal determined that it was reasonable to issue an eviction order and that cause had been shown to dispense with service of a charge for removal. The Tribunal determined not to dispense with service of the notice of removal in terms of rule 41C(3).

Decision

The Tribunal determined to grant an order for possession of the Property and to dispense with the requirement to serve a charge for eviction in terms of section 216(4) of the Bankruptcy and Diligence etc (Scotland) Act 2007 .

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.

Joan Devine

Legal Member

Date : 7 August 2023