



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/22/2109

Re: Property at 71 Ogilvy Street, Tayport, Fife, DD6 9NG (“the Property”)

Parties:

Lawson Property Group Ltd, 13 Westwater Place, Wormit, DD6 8NS (“the Applicant”)

Ms Anna Millar, 71 Ogilvy Street, Tayport, Fife, DD6 9NG (“the Respondent”)

Tribunal Members:

Jan Todd (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 an order for eviction in favour of the Applicant of the Respondent from the Property should be granted.

1. This was a Case Management Discussion in respect of an application by the Applicant dated 28th June 2020 for an order for eviction against the Respondents. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application:-
 - A copy of the Tenancy Agreement dated 14th and 19th May 2020 commencing on 25th May 2020
 - Copy Notice to Leave dated 4th November 2021
 - Copy S 11 Notice to Fife Council
 - Copy quote for works to be done on the property dated 22nd June 2022 .
 - Copy e-mail from the Respondent acknowledging receipt of the Notice to Leave.

The Tribunal also had a copy of the title to the property showing the Applicant are the owners of the Property having bought it in 2020.

The Case Management Discussion (CMD)

3. The CMD proceeded today by way of teleconference due to the continued requirement at the current time due to the global pandemic for social distancing. The Convener made introductions, and explained how the CMD would be conducted. The Applicant's legal representative Mr Blaine Rutherford attended. The Respondent did not attend nor was she represented. She has not lodged any written representations.
4. The application and related papers, along with details of the CMD and how to join were served on the Respondent by sheriff officer on 10th August 2022 and so the Tribunal was content it was fair and appropriate to proceed in her absence.
5. Mr Rutherford advised that the Applicant was seeking an order for possession on the basis of Ground 3 of the Act in order that the Applicant can carry out a major refurbishment of the Property particularly installing a new kitchen and bathroom. He advised that the current landlords bought the Property around 2 years ago and would normally have refurbished immediately but the Respondent was desperate to stay in the property and so they let it to her at a slightly reduced rent to reflect the condition. He advised that the refurbishment would be significant, there would be no cooking facilities or washing facilities while it was being done and under questions from the Tribunal about whether this could be done with the Respondent remaining in the property he advised that he did not believe from what his clients have told him that it could be done. Mr Rutherford also advised that he understood the Respondent has no family living close by who could support her or assist and that the Respondent has advised his clients verbally that she is not opposed to the eviction and that she wishes to be housed by the Council and would indeed like to live in the Dundee area.
6. The Applicant has lodged a Notice to Leave which Mr Rutherford advised was served on the tenants by hand on 4th November 2021. He confirmed that it was delivered by Mrs Linda Lawson the general manager of the Applicants who manages the Property. He also confirmed that although it doesn't relate to the ground of eviction there are substantial rent arrears and again confirmed that it is his understanding that the Respondent does not wish to remain in the Property.

- **Findings in Fact**

1. The Applicant and the Respondents entered into a lease of the Property with the Respondents which commenced on 25th May 2020.
2. The Applicant is the owner of the Property.
3. The tenancy is continuing.
4. A notice to leave dated 4th November 2021 was served on the Respondent by hand confirming that no proceedings would be raised before 14th May 2022.
5. The notice to leave provides details of the ground of eviction as "your landlord intends to refurbish the Property" and "The landlord wishes to carry out major upgrading to the let property that are to be so disruptive that the tenant would not be able to live there at the same time."

6. A Quote for refurbishment of the kitchen and bathroom is provided by Calum Donald joinery dated 22nd June 2022.
7. The Applicant intends to refurbish the Property and has the right to do so as owner.
8. The intended refurbishment will be disruptive and it would be impracticable for the tenant to live there during the refurbishment.
9. These proceedings were raised on 28th June 2022 and the application included a copy of the Notice to Leave.
10. A Section 11 notice has been served on Fife Council
11. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

7. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 3 Schedule 3 of the Act as the relevant grounds of eviction.
8. The Notice to Leave was also accompanied by evidence of how the ground was met namely that the Applicant intends to carry out substantial refurbishment works to the property which include removing the kitchen and bathroom and which will leave, the Applicant's agent advised no cooking or washing facilities for the tenant for a period of time.
9. Grounds 3 requires 6 months' notice under the rules which apply in terms of the Coronavirus (Scotland) Act 2020. The Notice sets out the notice period as expiring on 14th May 2022. The Notice was served on 4th November by hand and the tenant has acknowledged receiving this so the Tribunal accepts it was served appropriately.
10. The Application was lodged on 28th June 2022. It was therefore lodged after the expiry of the Notice period and therefore complies the 2016 Act.
11. Ground 3 of Schedule 3 of the Act is entitled "the Landlord intends to refurbish" and states
 - i. "It is an eviction ground that a the landlord intends to carry out significantly disruptive works to or in relation to the Property.
 - ii. The First Tier Tribunal may find that the ground applies if
 - a. The landlord intends to refurbish the let property
 - b. The landlord is entitled to do so and
 - c. It would be impracticable for the tenant to continue to occupy the Property given the nature of the refurbishment intended by the landlord.
 - d. The Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
12. The Tribunal accepted the verbal averments of Mr Rutherford and the written evidence provided that the landlord intends to carry out refurbishment and that the refurbishment will be significantly disruptive. Mr Rutherford advised that the works would be over a period of time and would cause issues with cooking and washing during this period. The Tribunal accepted this evidence in the absence of any response or challenge from the Respondent.

13. The Tribunal then had to consider if it accepts it would be reasonable to grant an action for eviction on this ground. The Tribunal heard that there are substantial rent arrears incurred by the Respondent and that she is not opposed to the eviction and in fact wishes to be rehomed away from this area. Mr Rutherford submitted that in these circumstances it would be reasonable for the order to be granted. The Tribunal would have liked to have heard from the Respondent directly but given the Respondent was served with the application and details of today's CMD and could have attended or made written representations but has not done so, the Tribunal felt that it was in accordance with the overriding objective to deal with matters efficiently that they make an order today.
14. The Tribunal found Mr Rutherford to be credible and convincing in his submissions and is therefore satisfied in terms of S 51 (1) of the Act that the eviction ground specified in the application namely Ground 3 is met, and that it is reasonable for the Tribunal to grant the application.

Decision

The Tribunal determined that the order for eviction sought by the Applicant should be granted.

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/Chair

27th September 2022
Date