



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/21/1398

Re: Property at 100 Drumachlie Park, Angus, Brechin, DD9 7BT (“the Property”)

Parties:

Ms Linda Jamieson, Dunlin, Melgundburn, Aberlemno, Forfar, DD8 3PD (“the Applicant”)

Mr Brian Chalmers, Ms Sharon Senkiw, 100 Drumachlie Park, Angus, Brechin, DD9 7BT; 100 Drumachlie Park, Brechin, Angus, DD9 7BT (“the Respondents”)

Tribunal Members:

Rory Cowan (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Eviction Order should be granted.

- Background

By application dated 10 June 2021 (the Application), the Applicant seeks an Eviction Order relative to the Property in terms of Ground 5 of schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act). In support of the Application various documents were lodged which included:

- 1) Copy lease dated 9 December 2019.
- 2) Notice to Leave dated 16 November 2021.
- 3) Affidavits from the Applicant and her son.
- 4) Affidavit from a Glen Steer of Thyme Property Developments.

- The Case Management Discussion

Following acceptance of the Application a Case Management Discussion was fixed for 29 September 2021 to be dealt with by way of conference call. The Applicant was

represented by a Jay Lawson, solicitor and the Respondents both appeared and represented themselves.

Mr Lawson moved that the Application be granted. He confirmed that service of the Notice to Leave had been affected personally on the Respondents by Mr Steer on 16 November 2021. Both Respondents confirmed that this was correct, that Mr Steer had attended at the Property and handed them each a copy of the NTL. This was followed up by way of sending a further copy by email to the Respondents. Mr Lawson confirmed that it was the personal service on 16 November 2021 that was relied upon for the purpose of the Application. The NTL was set to expire on 17 February 2021.

Reference was then made to the terms of the affidavits provided in support of Ground 5 of Schedule 3 of the 2016 Act. The Respondents confirmed they did not dispute that the Applicant's son wished to reside in the Property as his only or principal home.

The Respondents were asked about their circumstances, and they indicated that they lived in the Property with 2 young children aged 7 and 4 years. The eldest of which had special needs. That the disruption surrounding their removal from the Property had caused her and the younger child some distress. That they had been in contact with the relevant local authority, but until an Eviction Order was granted, the local authority would not assess or escalate their application for social housing. They also indicated that they did not wish to oppose the application or dispute that, in the circumstances it was not reasonable to grant the order sought. Their reason being that, whilst the children may be suffering distress as a result of the Application, they felt it was in their best interests to have the issue resolved sooner rather than later so that they could get to a point sooner where the children had a stable home.

On behalf of the Applicant, it was submitted that the Applicant's son required the Property to live in following a marital breakup and would, in effect, be rendered homeless once the marital home was sold, which was understood to be actively marketed at present with an offer having been made recently.

- Findings in Fact and Law

- 1) That the Applicant is the heritable proprietor of the Property.
- 2) That the Applicant and Respondents, through the Applicant's agents, entered into a tenancy for the Property which commenced on 11 December 2019.
- 3) By Notice to Leave dated 16 November 2020 and delivered personally to the Respondents the Applicant gave notice to the Respondent of her intention to recover possession of the Property in terms of Ground 5 of the Private Housing (Tenancies)(Scotland) Act 2016 and confirmed that proceedings would not be raised before 17 February 2021.
- 4) The Notice to Leave was in the prescribed format.
- 5) That a family member of the Applicant (her son) intends to occupy the Property as their only or principal home for a period of not less than 3 months following the Respondents vacating same.

- 6) That the Applicant has complied with all notice requirements in terms of the Private Housing (Tenancies)(Scotland) Act 2016 and that Ground 5 of Schedule 3 has been made out.
- 7) That, in the circumstances, it is reasonable to grant an Eviction Order against the Respondents.

- Reasons for Decision

The Applicant has complied with the notice requirements of the 2016 Act. Standing the terms of the supporting documents, the requirements of Ground 5 of Schedule 3 were also made out. The only issue remaining for the Tribunal was whether it was reasonable to grant an Eviction Order in the circumstances. Having heard both parties and having considered the relevant circumstances, the Tribunal was satisfied that it was reasonable to grant an Eviction Order. The Respondents made it clear that they did not dispute the basis of recovery and, despite their circumstances, did not wish to advance an argument that it was not reasonable to grant the order.

- Decision

That an Eviction Order 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.

R. Cowan

Rory Cowan

Legal Member/Chair

29 September 2021

Date