



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/23/0246

Property : 29/5 West Pilton Gardens, Edinburgh EH4 4EF (“Property”)

Parties:

Fawcett and Madge Limited, 34 Muir Wood Drive, Edinburgh EH14 5EZ (“Applicant”)

Gregor Fortune Property Limited, Suite 27 Bonnington Bond, 2 Anderson Place, Edinburgh EH6 5NP (“Applicant’s Representative”)

Michelle Craig, 29/5 West Pilton Gardens, Edinburgh EH4 4EF (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E along with a Private Residential Tenancy Agreement dated 21 January 2019; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 24 October 2022 ("NTL"); Royal Mail proof of delivery on 26 October 2022; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 24 January 2023; copy email from Daniel Harcus to the Applicant’s Representative dated 2 March 2023 stating that his late grandmother owned 100% of the shares in the Applicant and that all assets required to be realised following her passing away and copy email from Daniel Harcus to Gillespie Macandrew dated 2 March 2023 instructing them in the sale of the Property . The Tribunal had sight of a certificate of service from sheriff officers evidencing service of the Application on the Respondent on 5 April 2023.

Case Management Discussion

A case management discussion ("CMD") took place before the Tribunal on 10 May 2023 by teleconference. The Applicant was in attendance along with Gregor Fortune of the Applicant's Representative. There was no appearance by the Respondent.

The Tribunal noted that Daniel Harcus is a director of the Applicant and that 100% of the shares in the Applicant are owned by the estate of Beryl Madge Hogarth.

Mr Fortune told the Tribunal that the Respondent continued to reside in the Property. He said that she lived with her three children. He estimated their ages at 12, 14 and 16. He said that he had spoken with the Respondent and she had been unable to find an alternative private let. He said she had been in touch with the local authority. He told the Tribunal that the Property had 3 bedrooms. He said that the rent was paid direct via housing benefits. He said there had never been an issue with rent arrears and that the Respondent had been a good tenant.

Mr Harcus told the Tribunal that his Grandmother had died in October 2022. He said that there are 3 properties in her estate that are to be sold. The estate would be divided amongst her 3 children and her grandchildren. He said that one of the beneficiaries was relying on their share of the estate to pay off a mortgage which was soon to expire.

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 21 January 2019 ("Tenancy Agreement").
2. A Notice to Leave was served on the Respondent on 26 October 2022. It stated that an application for an eviction order would not be submitted to the Tribunal before 20 January 2023.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 24 January 2023.
4. Notice of the date of the case management discussion had been given to the Respondent on 5 April 2023.
5. The Applicant holds title to the Property and is entitled to sell the Property.
6. 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.

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 evidence lodged with the application of intention to sell was two emails from Daniel Marcus dated 2 March 2023. The Tribunal considered the emails lodged and the oral submission of the Applicant and determined that the ground for eviction had also been established.

Having considered all of the circumstances, and in the absence of a submission from the Respondent, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal determined to grant an order for possession of the Property.

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

**Joan Devine
Legal Member**

Date: 10 May 2023