



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/20/1545

Re: Property at 2B St Marys Place, St Andrews, Fife, KY16 9UY (“the Property”)

Parties:

Mr Toby Smith, House 6 1/F Lot 235DD233, Clearwater Bay Road, Ha Yeung New Village, Sal Kung NT, Singapore (“the Applicant”)

Miss Alice Hougie, 2B St Marys Place, St Andrews, Fife, KY16 9UY (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted against the respondent

Background

1. By application dated 20 July 2020 , the applicant sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. On 23 September 2020 the application was accepted by the tribunal and referred for determination by the tribunal. In this application the order sought was based on ground 4 of schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016, namely that the applicant intended to live in the property
2. A case management discussion took place on 2 November 2020. At the conclusion of the case management discussion the tribunal determined that a full evidential hearing should be fixed to deal with certain issues which had

been identified at the CMD, relating to the validity of the Notice to Leave and whether it would be reasonable for the tribunal to grant the order sought..

3. A hearing was subsequently scheduled for 4 December 2020. That hearing was postponed with the consent and concurrence of both parties. A further the hearing was set to take place on 22 January 2021

The hearing

4. The hearing took place on 22 January 2021 via telephone case conference. The applicant did not take part in the telephone case conference but was represented by Mr James Martin, solicitor, Rollos Law LLP, 6 Bell Street, St Andrews, Fife, KY16 9UX. The Respondent also did not take part but was represented by her mother Mrs Alice Hougie.
5. The tribunal explained the purpose of the hearing and the powers available to the tribunal to determine matters.
6. The tribunal indicated to the parties that it had received an email from the applicant's solicitor dated 21 January 2021. In that email it was indicated that parties had agreed to a resolution of this application which involved the respondent withdrawing her defence to the application and an eviction order being granted.
7. The tribunal thereafter questioned the parties' representatives with regard to this agreement. It was confirmed that the respondent was happy to withdraw the defences which had previously been lodged and that she was happy to consent to the tribunal granting the order for eviction.
8. The applicant's solicitor confirmed that the order for eviction was to be granted but that parties had agreed that it would not be able to be enforced until 2 June 2021 at the earliest.
9. The tribunal noted that the respondent's representative was aware that she was freely consenting to the order being made. She understood the impact of the order.
10. She agreed that the tribunal could accept that the basis for the order was correct, namely that the landlord intended to live in the property. She confirmed that she was happy to consent to the order and that she was happy to agree that the tribunal were entitled to find that it was reasonable to grant the order as currently required in the light of the amendments which had been made to the 2016 Act by the Coronavirus (Scotland) Act 2020.
11. The tribunal noted that she was aware that she was waiving any rights to appeal the decision which would be issued. She confirmed that she was aware of this position.

Findings in fact

12. The Applicant and Respondent as respectively the landlord and tenant entered into a tenancy of the property which commenced on 6 September 2019
13. The tenancy was a private residential tenancy in terms of the Act
14. The agreed monthly rental was £1450
15. On 16 April 2020 the applicant served upon the tenant a Notice to Leave as required by the Act. The Notice was served by email upon the respondent and became effective on 12 July 2020.
16. The notice informed the respondent that the landlord wished to seek recovery of possession using the provisions of the Act.

Discussion

17. In this application, parties confirmed to the tribunal that they had now agreed a resolution. Parties had agreed that the respondent would consent to the eviction order being granted on the basis that the order would not allow eviction prior to 2 June 2021.
18. The tribunal questioned the respondent's representative very fully to confirm that she understood the effect of the order which would be granted and the tribunal are satisfied that she clearly understood the situation.
19. The tribunal, based on the clear consent and concurrence of the parties, finds that the eviction ground is established. The tribunal also notes that the respondent has conceded that it would be reasonable to grant the order and the tribunal accordingly finds that it is reasonable to do so. The tribunal accedes to the request of the parties that the order for eviction should be granted based on the parties' clear agreement that the ground of eviction is established and that it is reasonable that the order should be granted
20. The tribunal accordingly grants the order for eviction

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: Jim Bauld

Date: 22nd January 2021