



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/20/2004

Chamber Ref: FTS/HPC/EV/20/2144

Re: Property at 119 Cedar Road, Cumbernauld, G67 3AS (“the Property”)

Parties:

Mr Kevin McMail, 12 Birch Road, Cumbernauld, G67 3PA (“the Applicant”)

Mr Jamie Moonie, Prisoner Number 93667, HM Prison Barlinnie, 81 Lee Avenue, Glasgow, G33 2QX (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the orders for possession should be granted in each application.

Background

1. Three separate applications had been lodged by the applicant. Two applications seek an eviction order in respect of a private residential tenancy (FTS/HPC/EV/20/2004 and FTS/HPC/EV/20/2144). The third application sought an order for payment of rent arrears arising from that tenancy (FTS/HPC/CV/20/2003).

2. By application dated 18 September 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 6 October 3020 2020 the application was accepted by the tribunal and referred for determination by the tribunal. This application was given reference number FTS/HPC/EV/20/2004 . In this application the order sought was based on ground 10 of schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016, namely that the respondent was not occupying the property as his home.
3. By application dated 12 October 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 14 October 2020 the application was accepted by the tribunal and referred for determination by the tribunal. This application was given reference number FTS/HPC/EV/20/2144. In this application the order sought was based on ground 14 of schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016, namely that the respondent had engaged in relevant antisocial behaviour.
4. The applications have not been formally conjoined but have been linked and a Case Management Discussion (“CMD”) in respect of all applications took place on 20 November 2020.
5. The respondent was not able to attend the CMD but his reason for non-attendance was accepted by the tribunal. The tribunal decided to fix a hearing in relation to all three applications which was set to take place on 11 December 2020. Appropriate intimation of that hearing was given to both parties.

The Hearing

6. The hearing took place on 11 December 2020 via telephone case conference The applicant took part in the telephone case conference and was represented

by Mr Michael Muir. The Respondent also took part in the telephone case conference.

7. The tribunal explained the purpose of the hearing and the powers available to the tribunal to determine matters.
8. The tribunal had noted that the respondent was presently remanded within HM Prison Barlinnie. The tribunal asked whether the respondent wished to put forward any defence to either of the applications against him for eviction.
9. The respondent indicated that he has now left the property and has no intention of returning there. He indicated to the tribunal that he does not expect to be released from prison until July 2021 at the earliest. He is currently an untried prisoner and is on remand.
10. The respondent confirmed that he was content for the tribunal to issue the orders for possession in respect of the two applications which had been lodged. He did not wish to offer any opposition to either application.
11. The landlord's representative noted the respondent's position and confirmed that the landlord wished to recover possession of the property and wished the orders to be granted.
12. The tribunal explained to the parties that the eviction orders would therefore be granted.
13. The tribunal explained to the parties that the new regulations (*The Health Protection (Coronavirus) (Protection from Eviction) (Scotland) Regulations 2020 SSI 2020/425*) which had been introduced on 11 December which prevent evictions in certain circumstances from 11 December 2020 until 22 January 2021 will not apply to the order granted in respect of the application based on antisocial behaviour. Parties confirmed that they understood this information.

14. Given that the respondent accepted that the orders for eviction should be granted the tribunal did not make any further enquiries of the parties but confirmed that the orders would be granted in respect of each application based on the respondent's consent to the orders being granted.
15. The tribunal accordingly does not make any formal Findings in fact or law nor does it set out any reasons for its decision. Should the respondent subsequently decide that he is dissatisfied with this decision then the tribunal will at that stage provide full findings in fact and full reasons for its decision.
16. The tribunal notes that the orders being sought were based on two separate grounds contained within the Act. The tribunal had reviewed the information provided by the applicant in both applications and confirms that the applications contained sufficient information and evidence to justify the eviction orders being granted on both grounds being pursued by the applicant. The tribunal also notes that relevant Notices to Leave were prepared and served upon the respondent and that in each case the Notice to Leave complies with the relevant statutory requirements in place at the date of service of the notices.
17. The basis for the orders for possession was accordingly established and the tribunal grants the order in respect of each application.

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.

Jim Bauld

11 December 2020

Legal Member/Chair

Date