



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/22/2998

Re: Property at 36 Wallace Street, Galston, Ayrshire, KA4 8HR (“the Property”)

Parties:

Miss Niamh White, High Burnhouse, Galston, Ayrshire, KA4 8LJ (“the Applicant”)

Mr Raymond Stewart, 36 Wallace Street, Galston, Ayrshire, KA4 8HR (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Eileen Shand (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 Respondents from the Property should be granted.

1. This was a Case Management Discussion in respect of an application by the Applicant dated 23rd August 2022 for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application and afterwards in response to a direction from the Tribunal:-
 - A copy of the Tenancy Agreement dated 9th June 2021
 - Copy Notice to Leave dated 24th May 2022
 - Copy S 11 Notice to East Ayrshire Council
 - Evidence of receipt of notice to leave by Mr Raymond Stewart dated 25th May 2022.
 - Evidence of receipt of S11 notice.

The Case Management Discussion (CMD)

3. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant attended but there was no appearance or representation from the Respondent. The Respondent had been served with the application and papers personally by sheriff officers so the Tribunal considered it appropriate and fair to continue in his absence.
4. Ms Whyte advised that she is seeking an order for possession today. She advised that the Respondent had given verbal notice that he would be leaving the Property around 2 years ago and her plan was to move into the Property which she had inherited from her grandmother and make it her permanent home. She advised that she gave the Respondent extra time to move out but ended up having to serve the Notice to leave and raise this action as he had not left. The Applicant confirmed that she is on good terms with the tenant and that is why she hand delivered the notice and he signed to show it had been delivered. She advised that the Respondent understood she was only following the process and went on to advise that she understood he is anxious to leave and wishes to move to a neighbouring local authority area to be nearer to his family and an order would help his priority with the Council. Ms Whyte also advised the delay has caused her mental health to suffer and she is currently living with her parents and gave up accommodation in Glasgow to move back to Galston thinking she would be able to move into the Property.
5. She also advised the Respondent has lived in the Property for 6 or 7 years but a new lease was entered into in 2021 which is the current lease.
6. The Applicant confirmed that the Respondent is a single man who is unemployed and whose rent is paid from benefits and is up to date.

- **Findings in Fact**

1. The Applicant and the Respondents entered into a fresh lease of the Property with the Respondents which commenced on 11th June 2021.
2. The tenancy is continuing.
3. A notice to leave dated 24th May 2022 was served on the Respondent by hand confirming that no proceedings would be raised before 19th August 2022.
4. The notice to leave was signed by the Respondent as received on 25th May 2002.
5. These proceedings were raised on 23rd August 2022 and the application included a copy of the Notice to Leave.
6. A Section 11 notice has been served on East Ayrshire Council on 23rd August 2022.
7. The landlord inherited the Property from her grandmother and intends to live in the Property as her only and permanent residence.
8. The Applicant is currently staying with her parents and the Property is the only one the Applicant owns.
9. The Applicant's health has suffered from the delay in being able to move into the Property.
10. The Application and papers were served personally on the Respondent by sheriff officer on 11th November 2022 and no written representations have been received from the Respondent.

11. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

1. 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 4 of Schedule 3 of the Act as the relevant grounds of eviction.
2. Grounds 4 require 84 days' notice under the current rules. The Notice sets out the notice period as expiring on 19th August 2021 and so the notice period has been met.
3. The Application was lodged on 23rd August 2022 and is therefore timeous.
4. Ground 4 of Schedule 3 of the Act is entitled "the landlord intends to live in the Property" and states
 1. "It is an eviction ground that the landlord intends to live in the let property.
 - ii. The First Tier Tribunal may find that the ground applies if
 - a. the landlord's intends to occupy the let property as the landlord's only or principal home for at least 3 months and
 - b. The Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
5. The Tribunal accepted the verbal and written averments of the Applicant that she intended to move in to the Property and make it her permanent residence. The Tribunal accepted that this is the Applicants only property and that she intended to move in some time ago when the tenant had given notice that he would leave, but has been unable to do so as the Respondent remained in the Property.
6. The Tribunal then had to consider if it accepts it would be reasonable to grant an action for eviction on this ground. The Tribunal accepted the Applicant's evidence that the delay in her being able to move into the Property and having to stay with her parents while she waited for and then had to raise this action, to have the tenant leave, has had a negative effect on her mental health. The Tribunal noted that the council will have a duty to provide assistance to the Respondents with their housing needs if and when an order for eviction is granted, and noted that the Applicant has advised that the tenant wishes to move into a council property and would wish to live nearer his family in an adjoining council area. The Tribunal also noted that the Respondent is a single man with no dependents. Weighing up the needs of both parties the Tribunal was satisfied that it was reasonable for the order to be granted on ground 4.
7. The Tribunal is therefore satisfied in terms of S 51 (1) of the Act that the eviction ground specified in the application namely Ground 4 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.

Jan Todd

Legal Member/Chair

12th December 2022
Date