



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/23/1680

Re: Property at 22 Holmston Gardens, Ayr, KA7 3AS (“the Property”)

Parties:

Mrs Heather Dunbar, 8 Oswald Place, Ayr, KA8 8PJ (“the Applicant”)

Mrs Sharon Linwood, Barry Linwood, Mr James Linwood, 22 Holmston Gardens, Ayr, KA7 3AS (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Janine Green (Ordinary Member)

Decision

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

1. On 24th May 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondents from the property in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) 2016.

2. Lodged with the application were: -
 - a. Copy Private Residential Tenancy Agreement showing a commencement date of 6th December 2020 and a rent of £550 per month
 - b. Copy Notice to Leave dated 21st January 2023;
 - c. Section 11 Notice;

The Applicant’s agent was asked to provide further information in support of the application. The Agent lodged further documentation as follows:

- d. Email from the Applicant dated 26th June 2023 outlining her reasons for wishing to sell
 - e. Email from the Agent dated 31st July 2023 confirming that he hand served the Notice to leave on 21st January 2023.
 - f. Email from Montgreenan Property Group, dated 27th June 2023, confirming that they have received instructions to sell the property once it has been vacated.
3. The Application was served on the Respondents by Sheriff Officers on 14th September 2023.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Mr Uriarte of Rozelle Letting Services. The Respondents were represented by the First Respondent, Mrs Sharon Linwood.
5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
6. Mr Uriarte sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. He referred to the Lease, the Notice to Leave, the email from the Applicant and the email from the prospective estate agent to establish the ground.
7. In relation to reasonableness, Mr Uriarte said that the Applicant had recently given birth to her third child. She was living in a small three bedroom flat with her husband and three children, which was overcrowded. It was her intention to sell that property, and the property currently tenanted by the Linwoods, and buy a bigger home for the family.
8. Mrs Linwood said that the Respondents were not opposing the order, as they understood the Applicant’s situation, but they were finding it extremely difficult to find alternative accommodation. Mrs Linwood said that she resided in the property with her husband and thirty year old son. None of them claimed benefits and they paid their rent on time every month. She said that they had been preparing to move since the Notice to Leave was served, but the rental market was extremely difficult at the moment. Mrs Linwood said that the family had applied to let a number of properties but the competition was fierce, and sometimes they would phone for a viewing and be told that at least one hundred other people had also applied. Mrs Linwood said that the family had rented privately for 22 years and had never known it this bad.
9. Mr Uriarte confirmed that he knew the Linwoods as this was the second property he had rented to them as agent. He said that they had always been excellent tenants and had never had any rent arrears.

Findings in Fact

1. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
2. The tenancy commenced on 6th December 2020;
3. A Notice To Leave, dated 21st January 2023, was served timeously and correctly;
4. The Application was served on the Respondents by Sheriff Officer on 14th September 2023;
5. The Applicant is living in a three bedroom flat with her husband and three young children;
6. The Applicant intends to sell the property, and the property she currently resides in, and purchase a family home;
7. The Respondents are not opposed to the order being granted.

Reasons for Decision

It is usually mandatory to grant an application under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal's power to issue an eviction order), the words "or must" are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (a), the word "and" is repealed,

(iii)after paragraph (b) insert "; and

"(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (b), the word "and" is repealed,

(iii)after paragraph (c) insert "; and

"(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii)sub-paragraph (3) is repealed,

(iv)in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h)in paragraph 10(2) (not occupying let property)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i)in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(k)in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(ba)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case that the Applicant had established Ground 1 by provision of the email from the Applicant and the email from the estate agent.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Applicant needed to sell the property to allow her to obtain a larger property to accommodate her family. The Respondents were not opposed to the granting of the order, but they were finding it difficult to secure alternative accommodation. The provisions of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 apply in this case, meaning that the order for eviction will not be enforceable for a period of six months. The Tribunal considered in all those circumstances that it was reasonable to grant the order.

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.

Alison J Kelly

23rd October 2023

Legal Member/Chair

Date