



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/23/2886

Re: Property at 6 Windford Road, Aberdeen, AB16 6NQ (“the Property”)

Parties:

Graham Brooks, 16 Bellfield View, Aberdeen, AB15 8PG (“the Applicant”)

Charmaine Bruce, 6 Windford Road, Aberdeen, AB16 6NQ (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Elizabeth Williams (Ordinary Member)

This was a Case Management Discussion to consider an application for an Eviction Order in respect of a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The discussion took place by teleconference. The purpose of the hearing being to explore how the parties dispute may be efficiently resolved.

1. Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent.

2. Attendance and Representation.

The Applicant was not present and was represented by Rosaleen Doyle, McEwan Fraser Legal, Claremont House, 130 East Claremont Street, EH7 4LB.

The Respondent was present and not represented.

3. Preliminary Matters.

The Tribunal noted the Applicant had lodged on 23rd November 2023 excel spreadsheets showing the financial hardship of the Applicant in terms of income and rental costs. The Respondent confirmed she had had sight of same.

The Respondent said she was not opposed to the Application and had no preliminary matters to raise.

There were no other preliminary matters raised.

4. Case Management Discussion

For the Applicant

The Applicant's representative sought in terms of Rule 109 an order for eviction in terms of Grounds 4 and 4A, in that the Applicant intends to live in the property as his principle home, on a permanent basis and this is also to alleviate financial hardship. The submission was that the Respondent was running the rental property not at a loss. She submitted further that an order for eviction was reasonable.

The Applicant's representative set out that the parties entered into a Private Residential Tenancy on 1st April 2021 and this tenancy was lodged as production number 1. A Notice to Leave was served on the Respondent by sheriff officer on 4th May 2023. A section 11 notice was sent to the local authority on 24th August 2023 by email.

The Applicant's representative set out that the Applicant is a small business owner and is a roofer. He has operated as a self-employed roofer for a number of years, lives alone and has financial support of a 9 year old daughter. He also shares responsibility for his 67 year old mother who has dementia with his elderly father. The Applicant seeks to return to reside in the property as it would also fit the needs of his mother to provide respite for his father. He is in a private rent at present and the rent for same has increased whilst his mother's condition has deteriorated.

The Applicant's representative had also sought to establish that he sought to reside in the property to alleviate financial hardship. As a tradesman running a small business the Applicant has been effected by covid and then by cost of loving crisis. The cost of providing his service has increased significantly such as building material and petrol costs. The Applicant's personal income breakdown lodged during August 2022 and November 2023 show his has been less than his outgoings. The total income of rent during that period for the property was £6780 and with the outgoings including mortgage, landlord and

life insurance the cost of renting the property has been £7240, which is a loss of £460. The Applicant seeks to recover to balance his own finances and to switch from a buy to let mortgage.

For the Respondent

The Respondent explained she was not opposed to an order for Eviction. She resides with her 2 young children. She is 27 years and she has a 3 year old son and 5 year old daughter. Her daughter's School is nearby, her son's nursery is too and her placement for college is also close. She has tried to get a move from the council but they won't give her priority in the absence of an order. She has secured some priority but she has been advised she requires to obtain an order for eviction to prioritise her application further.

5. Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondent did not challenge the application and there were no material facts in dispute. The Application was full, contained statements showing evidence of financial hardship and an affidavit of the Applicant. The Tribunal in doing so was satisfied it had all of the necessary information required to allow a decision to be made.**
- 2. The Applicant sought an Order for Eviction on the grounds of Ground 4 and Ground 4A that the landlord intends to live in the let property and to do so to alleviate financial hardship.**
- 3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties dated 1st April 2021. A Notice to Leave was served on the Respondent on 4th May 2023.**
- 5. The Tribunal was satisfied on balance that the Applicant did seek to in terms of Schedule 3, Part 1, Grounds 4 and 4A of the 2016 Act that the Landlord seeks to reside in the property to alleviate financial hardship.**
- 6. Further the Tribunal was satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.**
- 7. The Tribunal noted the Local Authority under the Homelessness etc (Scotland) Act 2003 Act had been notified.**
- 8. The Respondent was 27 yrs of age, had a 3 years child and a 5 year old child. She is a college student. The Applicant is running the property at a financial loss due to changing costs, the cost of living crisis and seeks to provide respite to his elderly mother. He has evidenced financial hardship and a need to reside in the property to alleviate same. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.**

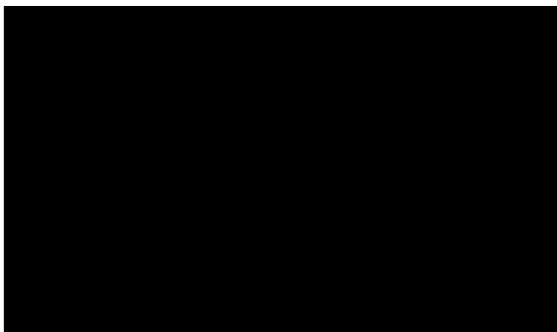
9. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondent. The Application will not be affected by the Cost of Living (Protection for Tenants)(Scotland) Act 2022. However the Tribunal considered they had to apply the overriding objective and weigh the interests of both parties and in the interests of natural justice due to the presence of 2 young children in the property the Tribunal decided to delay enforcement of the order until on or after 22nd January 2024. The Tribunal delayed execution of the order until 22nd January 2024, in terms of Regulation 16A of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Amendment Regulations 2018.

6. Reasons for Decision

The Tribunal had before it extensive evidence showing the financial position in detail of the Applicant. Excel spreadsheets showing income and rental costs for the Applicant including an Affidavit were lodged. The Tribunal had the benefit of hearing from both parties. The Tribunal noted the Respondent sought alternative accommodation. Both parties had a good relationship as landlord and tenant. The Tribunal was satisfied that Grounds 4 and 4A of the Act were met and proceeded to grant an order, with a delay in execution for the reasons given.

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/Chair

30 November 2023

Date