



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/1591

Re: Property at 16 McNeil Crescent, Armadale, Bathgate, West Lothian, EH48 2NH (“the Property”)

Parties:

Mrs Linda McKenzie, 2 School House, School Wynd, Quarrier's Village, Bridge of Weir, PA11 3NQ (“the Applicant”)

Ms Melanie Watson, 16 McNeil Crescent, Armadale, Bathgate, West Lothian, EH48 2NH (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Mary Lyden (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 recovery of possession of the property be granted.

Background

1. By application received on 17 May 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 1 of Schedule 3 to the 2016 Act (landlord intends to sell). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave and proof of service of same and the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003 and proof of service of same.

2. Following initial procedure, on 22 August 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 16 November 2023 was served on the Respondent by way of Sheriff Officer on 13 October 2023. In terms of said notification, the Respondent was given until 2 November 2023 to lodge written representations. No written representations were lodged by or on behalf of the Respondent.

Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference call on 16 November 2023 at 10am, attended only by Ms Caitlyn Gillon, Paralegal, of Kingsley Wood & Co, Solicitors on behalf of the Applicant. The commencement of the CMD was delayed for 5 minutes to give the Respondent an opportunity to join late, but she did not do so.
5. Following introductions and introductory remarks by the Legal Member, there was discussion regarding the eviction application. The Legal Member explained that, although the application does not appear to be opposed, the Tribunal still requires to be satisfied that the application was technically in order, that the ground for eviction had been established and that it is reasonable in all the circumstances for the Tribunal to grant the eviction order.
6. Reference was made to the application and supporting documentation lodged. Ms Gillon advised that the Applicant is looking to put the Property on the market and sell in order to free up some resources. The application to the Tribunal is required as the Applicant has been having some problems with her tenant, the Respondent, in that she has not been cooperative with the Applicant regarding her wish to sell. Ms Gillon clarified that there was not really anything in the background with the Respondent that was problematic, such as rent arrears. The Applicant has been thinking about selling for a while and had previously obtained some guidance from Remax Estate Agents about likely sale prices in the area. The Applicant is now intending to market through Newman Properties and reference was made to the supporting documentation lodged from Remax and Newman Properties, as well as the letter of instruction between the Applicant and Ms Gillon’s firm, Kingsley Wood in relation to recovery of the Property and thereafter, its sale. Ms Gillon advised that the Property is not being actively marketed yet as they are waiting to recover possession first. The Notice to Leave was served by Sheriff Officer on the Respondent on 9 January 2023 and when the Respondent did not vacate at the end of the notice period, the application to the Tribunal followed. In response to questions from the Tribunal Members, Ms Gillon confirmed that, although the Respondent had occupied the Property for a number of years, since around 2012, this Private Residential Tenancy only commenced on 1 December 2022. Ms Gillon thought that the reason had been simply to formalise the tenancy with an up to date version. As to the Applicant’s circumstances, there are not thought to be financial difficulties as such, but that the Applicant does require to free up some resources. Ms

Gillon advised that her understanding is that the Respondent lives at the Property with an older son. She is not aware of the Respondent's financial circumstances or if she is working and is not aware of any health issues or anything of that nature. As far as she is aware, the rent account is up to date. She is not aware of the Applicant and Respondent having had any recent discussions but the Applicant's understanding from earlier contact is that the Respondent has made contact with the local authority regarding alternative housing but that nothing will happen until an eviction order is in place. The Applicant is aware that one of the issues is that the Respondent is concerned about what area she will be offered by the local authority. When asked to sum up, Ms Gillon asked the Tribunal to grant the eviction order today and made the point that the Respondent is aware of these proceedings but has chosen not to attend. Ms Gillon also confirmed that the Applicant is aware of the current delay in eviction orders being implemented as a consequence of The Cost of Living (Tenant Protection)(Scotland) Act 2022 ("COLA").

7. The Tribunal adjourned briefly to discuss the application and, on re-convening, advised Ms Gillon that the eviction order is being granted, the process which will now follow and thanked Ms Gillon for her attendance.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 1 December 2022.
3. The Respondent is still in occupation.
4. The Applicant intends to sell the Property once she obtains vacant possession.
5. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by Sheriff Officer on 9 January 2023.
6. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 13 April 2023.
7. The Tribunal Application was submitted on 17 May 2023.
8. The Respondent did not lodge any written representations and nor did she attend the CMD.

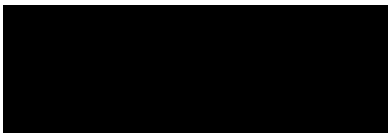
Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral information provided at the CMD by the Applicant's representative, Ms Gillon.

2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered that the ground of eviction, that the landlord intends to sell (Ground 1 of Schedule 3 to the 2016 Act, as amended) was satisfied in that all elements of Ground 1 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal had noted that there was supporting documentation with the application from two estate agents and the Applicant's solicitors showing that the Applicant was intending to market the Property for sale as soon as she obtains vacant possession. Ms Gillon had confirmed that the background reason for the Applicant's wish to sell is financial, given that she wishes to free up some resources from the sale. The Respondent did not appear to wish to oppose the application and the Applicant's understanding is that the Respondent has been in contact with the local authority regarding seeking alternative accommodation. The Tribunal is aware that, in granting the order today, that there will be a delay of some months before the order can be enforced in terms of the COLA protections which may well provide the Respondent with an opportunity to secure alternative accommodation meantime. In all these circumstances, the Tribunal considered it reasonable to grant the eviction order.
4. The Tribunal did not have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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

16 November 2023
Date