

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/3620

Property: Viewfield, 1 The Square, Kintore, Inverurie AB51 0UA (“the property”)

Parties: John Ross (Chemist) Ltd, 39 Station Road, Ellon, Aberdeenshire AB49 9AR (“the applicant”)

Ms Claire Johnston, Mr Martin McHendry, Viewfield, 1 The Square, Kintore, Inverurie AB51 0UA (“the respondent”)

Tribunal Members:

Mark Thorley (Legal)
Mr Gordon Laurie (Ordinary)

Decision

The First Tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that an order for eviction be granted but suspended for a period of 2 months

Background

- The applicant applied to the First Tier Tribunal for Scotland (Housing and Property Chamber) by application dated 3 October 2022.

- Accompanying the application were the following documents:
 - Statements regarding the respondent's alleged behaviour
 - Copy Notice to Leave
 - Copy Notice given to Local Authority
- The applicant also submitted a lengthy paper apart detailing allegations of antisocial behaviour.
- The application was received on 5 October 2022 by the tribunal. Certain further information was sought. On 21 November 2022 the application was passed for determination. On 15 December 2022 the application was accepted.
- The application was served by sheriff officers on 13 February 2023. The respondent submitted a written response on 1 March 2023. On 2 March 2023 the applicant sought to introduce two further grounds of removal namely under Ground 6 that the applicant intended to use the let property for non-residential purposes and in addition under Ground 12 in that the respondent was in rent arrears over three consecutive months.

Case Management Discussion

- A case management discussion took place by telephone conference call on 14 March 2023. At the case management discussion Mrs Law solicitor attended on behalf of the applicant. The respondent attended.
- It was accepted that in terms of Ground 12 that the respondent was no longer in rent arrears over three consecutive months and that with one further payment there would be no arrears. The applicant through their solicitor was prepared to accept that and withdraw Ground 12.
- The respondent indicated that they wished to move out of the property but were being restricted in doing so by the allegation of antisocial behaviour. Accordingly they would not concede any form of order in relation to antisocial behaviour.
- There was then a discussion as to whether the respondent would accept Ground 6 namely that the applicant wished to use the let property for non-residential purposes. The property was above a premises used as a chemist. The respondent's position is that they would be prepared to accept an order under Ground 6 if the Ground 14 antisocial behaviour ground was withdrawn.

- The applicant sought instructions in relation to this and confirmed that, on the basis that the respondent conceded Ground 6 that Ground 14 would be withdrawn.
- That position was then accepted by the respondent and parties agreed that there be an order.
- The tribunal did consider the issue of reasonableness. There are two children involved here as well but the respondent is confident about securing accommodation nearby to schools they currently attended.

Findings in Fact

- The parties entered into a Private Residential Tenancy Agreement for the lease of the premises at Viewfield, 1 The Square, Kintore, Inverurie AB51 0UA.
- The private residential tenancy was to start on 1 February 2020.
- Rent was payable in the sum of £650 per calendar month payable monthly and in advance.
- The applicant runs a chemist business. They operate from below the property. They wish to recover that property in order to provide additional space for the operation of the chemist business.
- The respondent was not opposed to the granting of an order for the recovery of the property.

Reasons for Decision

The parties had a lengthy discussion at the case management discussion. It was clear from the discussion that the respondent was not opposed to moving out of the premises and indeed wished to remove from the premises. The issue was that they did not want to do so on the basis of an allegation of antisocial behaviour. That would restrict their ability to obtain alternate Local Authority accommodation.

The respondent accepted that they lived above the chemist business. They accepted that the applicant wished to recover the property to use as part of that business.

The applicant had already withdrawn Ground 12 namely rent arrears being due over three consecutive months. The applicant then agreed to withdraw Ground 14 namely the allegation of antisocial behaviour on the basis that the respondent accepted Ground 6. The respondents did that.

The tribunal accepted the evidence provided by the applicant's solicitor regarding the proximity of the property and the use that could be made of it by the chemist business.

In addition it appeared to be reasonable. The respondent was clear that they would be rehoused in the locality keeping their children at their current schools.

The tribunal took into account the period of time that it may take for the respondent to obtain accommodation and allowed a period of two months from the date of the order before enforcement could take place.

Decision

To grant an order of eviction suspended for a period of 2 months

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: 

Date: 14 March 2023