



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/22/3643

Re: Property at Mill Of Skelmuir, Mintlaw, Peterhead, AB42 5AD (“the Property”)

Parties:

Mr Andrew Buckley, Gilkorn Farm Maud, Peterhead, AB42 5RR (“the Applicant”)

Ms Kelly Anne Webster, Mill Of Skelmuir, Mintlaw, Peterhead, AB42 5AD (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This was an application for an eviction order dated 4th October 2022 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought an eviction order in relation to the Property against the Respondent, and provided with his application copies of the private residential tenancy agreement, notice to leave and proof of service, section 11 notice and proof of service, and various correspondence.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, the

Coronavirus (Scotland) Act 2020, and the *Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses)(Notice Periods) Modification Regulations 2020*, and the procedures set out in those Acts and that Regulation appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 8th February 2023, and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held at 14:00 on 13th March 2023 by Tele-Conference. The Applicant did not participate, but was represented by Mr Mackey, solicitor. The Respondent did not participate, nor was she represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Mr Mackey advised the Tribunal that the Applicant wished to sell the Property, and referred to the correspondence provided with the application. The Applicant is elderly, and the tenant had accumulated substantial rent arrears, not having made any payment for over one year save for one payment of housing benefit made direct for a sum less than the monthly rental amount.

After that one direct payment, the Department of Work and Pensions advised that no further direct payments would be made due to a change of circumstances. The monthly rental was £1,000.00. The ongoing non-payment of rent was causing the Applicant financial difficulties. He did not let out any other properties so far as Mr Mackey was aware.

So far as the Applicant was aware, the Respondent was not elderly, and did not reside at the Property with any dependants. The Applicant was not aware of the Respondent suffering any significant health issues.

The notice to leave dated 9th March 2022 relied on ground 1 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* (“the Act”) as amended by the *Coronavirus (Scotland) Act 2020*, the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Para 1 of Schedule 3 to the Act provides that it is an eviction ground that the landlord intends to sell the let property. The Tribunal may find that this ground applies if the landlord (1) is entitled to sell the let property, (2) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and (3) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

The Tribunal was satisfied that ground 1 had been established. The landlord was entitled to sell the Property, and intended to sell it. The arrears of rent were substantial. The Respondent has failed to respond or engage with the Applicant to agree a reasonable plan to make payments to the landlord.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that “Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.”

In this application, the Respondent had not responded to this application advancing any arguments that it was not reasonable to issue an eviction order, and had not participated in the Case Management Discussion. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order.

Having considered the whole circumstances and those of the parties, the Tribunal was satisfied that it was reasonable to issue an eviction order.

Decision

In these circumstances, the Tribunal made an eviction order against the Respondent in this application.

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.

Neil Kinnear

14/03/2023

Legal Member/Chair

Date

