



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/21/0988

Re: Property at Flat 2, Castle view, Invercloy, Isle of Arran, KA27 8AJ (“the Property”)

Parties:

Mr Colin Syme, care of Key Lets, 12 Parkhouse Street, Ayr, KA7 2HH (“the Applicant”) per his agent, Mr Tim Williamson of the said Key Lets (“the Applicant’s Agent”)

Ms Janine Orr, Flat 2, Castle View, Invercloy, Isle of Arran, KA27 8AJ (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Order be granted bringing the private residential tenancy agreement between the Parties to an end on 1 November 2021 in terms of Section 51(1)(4) of the Act.

Background

1. By application received between 23 April and 10 May 2021 (“the Application”), the Applicant’s Agent applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for an eviction order arising from a private residential tenancy agreement between the Parties. The Application was accepted by the Chamber and a Case Management Discussion (“CMD”) was held on 2 July 2021 at 14.00 by telephone conference call. The outcome of the CMD was that a Hearing to determine whether or

not it is reasonable to grant an eviction Order on account of the facts of the Application was fixed for 30 July 2021 at 10.00 am.

Hearings

2. The Hearing took place on 30 July 2021 at 10.00 by telephone conference call. The Applicant, the Applicant's Agent and the Respondent were all present. During the Hearing, the Parties negotiated and advised the Tribunal that they had agreed a date of 1 October 2021 for the Respondent to vacate the Property. In the circumstances and to protect the positions of both Parties, the Tribunal adjourned the Hearing to Tuesday 14 September 2021 at 10.00 am to allow the Parties to formalise their agreement and withdraw the Application, if appropriate.
3. The adjourned Hearing took place on 14 September 2021 at 10.00 by telephone conference call. The Parties confirmed that they remained in agreement that the Respondent would vacate the Property by 1 October 2021. In response to the Tribunal's questions, the Respondent stated that although she had been given and accepted an offer of housing from North Ayrshire Council, she had no firm entry date though she expected this to be in the month of October.
4. The Tribunal explained that the options open to it were to ask the Respondent to agree to the grant of an Order to evict, to ask the Applicant if he wished to withdraw the Application, to proceed with the Hearing today or to adjourn to a further date. The Respondent reaffirmed that she intended to vacate the Property and wished to consent to the Order being granted. The Applicant and the Applicant's Agent confirmed that the Applicant did not wish to withdraw the Application.
5. The Tribunal adjourned briefly to consider the appropriate course of action. The Tribunal reconvened and explained to the Parties that it was mindful of the Parties' positions but was also mindful of its statutory duty in terms of the Act that it must be satisfied that it is reasonable to grant an Order. As the Respondent does not yet have an entry date for her new accommodation, as the likely entry date will be during October 2021 and as the Respondent indicated that she is likely to vacate the Property by 1 October 2021, the Tribunal explained that its view is that it is reasonable for the Tribunal to accept the Respondent's agreement to granting an Order if the Order took effect after the end of October 2021. The Tribunal, therefore, proposed to grant an Order with an effective date of 1 November 2021. The Parties agreed with this proposal.

Findings in Fact

6. From the Hearings and the Application, the Tribunal made the following findings in fact: -
 - i. There is a private residential tenancy agreement between the Parties;
 - ii. The Applicant issued a Notice to Leave dated 21 September 2020 citing Ground 1 of Schedule 3 to the Act;
 - iii. The Notice to Leave was received on 22 September 2020 and came into effect on 24 March 2021;

- iv. The Applicant evidenced his intention to sell the Property in terms of Ground 1 of Schedule 3 to the Act by sworn Affidavit;
- v. The Applicant issued notice in terms of Section 11 Notice of the Homelessness etc., (Scotland) Act 2003;
- vi. The Respondent works on the Isle of Arran and requires to be housed on the Isle of Arran for that purpose;
- vii. The Respondent has secured alternative accommodation with North Ayrshire Council which is likely to be available by the end of October 2021;
- viii. The Respondent intends to vacate the Property by 1 October 2021 and so agreed to an Order being granted.

Decision and Reasons for Decision

- 7. The Tribunal had regard to the whole matter before it and to the position of the Parties. The Tribunal had regard to the Respondent's position in respect of vacating the Property and agreeing to the Order. Nevertheless, the Tribunal has a duty to be satisfied that it is reasonable to grant an Order on account of that facts before it. The Tribunal took the view that it is reasonable to grant an Order and that the Order should come into effect on 1 November 2021 by which time it is reasonable to expect that alternative accommodation will be available for the Respondent to occupy.

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.

Karen Moore

Legal Member/Chair

Date 14 September 2021