



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/22/1363

Property : Loanhead Cottage, Fisherie, Turriff AB53 5QN (“Property”)

Parties:

Peter Robertson and Lucilla Robertson, Grainhill House, New Deer, Aberdeenshire AB53 6XH (“Applicant”)

Stewart & Watson, Solicitors, 65 High Street, Banff, Aberdeenshire AB45 1AN (“Applicant’s Representative”)

Terry Mace, Loanhead Cottage, Fisherie, Turriff AB53 5QN (“Respondent”)

Tribunal Members:

**Joan Devine (Legal Member)
Jane Heppenstall (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 26 October 2021 ("Notice to Leave"); Royal Mail proof of delivery on 27 October 2021; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering letter dated 5 May 2022; copy tenancy agreement between the Applicant and the Respondent dated 1 May 2018; copy emails from the Respondent to the Applicant’s Representative dated 9 and 26 March 2022; quotation for fees and outlays for the sale of the Property and sheriff officer's execution of service certifying service of the Application on 14 June 2022. The Tribunal had sight of a search showing that the Applicant holds title to the Property.

Case Management Discussion

A case management discussion (“CMD”) took place before the Tribunal on 3 August 2022 by teleconference. Alan Duffill of the Applicant’s Representative and the Respondent were in attendance.

Mr Duffill told the Tribunal that the Applicant currently lived abroad and that Mr Robertson had Parkinson’s disease. He said that the Applicant wished to sell the Property in order to fund the purchase of another property in Scotland where they would live. He said that the Respondent was in considerable arrears of rent. He said that the Applicant did not own any other property in Scotland. He said that the Applicant could not have a home report or marketing materials prepared for the Property until they had vacant possession of the Property. He said that the quote for fees and outlays to sell the Property was prepared at the same time as the Notice to Leave. He said that his Firm would market the Property.

The Respondent told the Tribunal that he did not oppose the grant of an order for possession. He said that he decided not to oppose the application as he was terminally ill with heart disease. He said that he also had coronary thrombosis, diabetes and his mental health had deteriorated. He said that his financial position had deteriorated during lockdown. He was being supported by Step Change to apply for bankruptcy. The Respondent told the Tribunal that because the Property was in a poor condition and because of intimidation by the Applicant, he no longer felt safe in the Property. He also said that he had lost faith in the legal system and felt he had no rights as a tenant.

The Respondent told the Tribunal that he did not believe that the Applicant intended to sell the Property. He believed they would rent the Property out again once they had possession. He said that he believed that the Notice to Leave was served in retaliation for him asking for repair works to the Property to be rescheduled in October 2021. He said that the repairs had been outstanding for 2 years but it would not be suitable for them to be carried out in the winter months particularly as he had just come out of hospital. He said that the Applicant had told him that they owned another property in Elgin.

The Respondent told the Tribunal that he lived in the Property with his partner who is his carer. He said that the local authority had been of little help as regards housing him if he was evicted from the Property. He said that he had bid for various properties without success. He had been told he was only eligible for a one bedroom property. That was not suitable due to his ill health. He said that he had now paid for his consultant to provide a report in support of the need for a two bedroom property. He would submit that to the local authority once received. He said that the Housing

Options Team had told him not to vacate the Property on expiry of the Notice to Leave but to remain in the Property and follow the eviction process until its conclusion.

As regards the rent arrears, the Respondent said he had offered to pay £150 per month which he had maintained for two months. Step Change had however told him he had to pay only £1 per month which was the same as he was paying his other creditors.

The Respondent said to the Tribunal that he wanted to be very clear that he did not oppose the application and he hoped things would improve once he left the Property. He said that the stress, strain and anxiety of fighting the application was too great. He said that emergency accommodation would be better than living in the Property which was in poor condition.

Mr Duffill told the Tribunal that he was convinced that the Applicant intended to sell the Property. As regards repairs, he said that the Applicant had tried to carry out repairs on a number of occasions but the Respondent did not allow access due to his medical condition.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement which commenced on 1 May 2018 ("Tenancy Agreement").
2. A Notice to Leave was served on the Respondent by recorded delivery post on 27 October 2021. It stated that an application for an eviction order would not be submitted to the Tribunal before 30 April 2022.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 5 May 2022.
4. Notice of the date of the case management discussion had been given to the Respondent on 23 June 2022.
5. The Applicant holds title to the Property and is entitled to sell the Property.
6. The Applicant intends to sell the Property or at least put it up for sale within 3 months of the Respondent ceasing to occupy it..

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier 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.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 1 which is that the landlord intends to sell. The evidence lodged with the application of intention to sell was a copy of a quotation for fees and outlays for the sale of the Property. The Applicant's Representative had told the Tribunal that the Applicant would market the Property with their Firm once they had vacant possession and would sell to enable them to buy another property in Scotland where they would live. In those circumstances the ground for eviction had been established. In light of the clear submission from the Respondent that he did not oppose the application and wished to vacate the Property, it was reasonable to grant an order for eviction.

Decision

The Tribunal determined to grant an order for possession of the Property.

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.

A black rectangular redaction box covers the signature area. To the left of the box, there is a faint blue handwritten mark that appears to be the number '4'.

**Joan Devine
Legal Member**

Date : 3 August 2022