



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/22/4430

Property : Room 3, 2 The Avenue, Girvan KA26 9DS (“Property”)

Parties:

Ian Miller and Elizabeth Miller, Willowdene, London Road, St Ives, Cambridgeshire PE27 5EU (“Applicant”)

Thorntons Law LLP, 3rd Floor, Citypoint, 65 Haymarket Terrace, Edinburgh EH12 5HD (“Applicant’s Representative”)

Ross McAllan, Room 3, 2 The Avenue, Girvan KA26 9DS (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined not to make an order for possession of the Property and dismissed the application.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E along with an inventory of productions with productions numbered 1 - 18. The documents produced included: a Private Residential Tenancy Agreement dated 12 April 2022; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 21 July 2022 (“NTL”); sheriff officer certificate of service of the NTL on 21 July 2022; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 14 December 2022; affidavit of the first Applicant dated 30 November 2022; and certificate of service certifying service of the Application on 17 February 2023.

In advance of the CMD the Applicant’s Representative had lodged a second inventory of productions containing a further affidavit of the First Respondent dated 13 February 2023 and a copy letter from the Applicant to the Respondent dated 23 February 2023.

In advance of the CMD the Applicant's Representative had applied for the application to be conjoined with the applications proceeding under reference FTS/HPC/EV/22/4413 FTS/HPC/EV/22/4427 and FTS/HPC/EV/22/4431. This application was granted.

In advance of the CMD the Applicant's Representative had applied for permission to include ground 1A as an additional ground for eviction in terms of section 52(5) of the 2016 Act.

Case Management Discussion

A case management discussion ("CMD") took place before the Tribunal on 20 March 2023 by teleconference. Calvin Gordon of the Applicant's Representative was in attendance. There was no appearance by the Respondent. Gerry Tierney of Ayr Housing Aid was in attendance in respect of the conjoined cases. He said he had not received a mandate to act for the Respondent but he had received a call from him in which he told Mr Tierney that he had left the Property and did not wish to take part in the proceedings. Mr Gordon confirmed that he understood that the Respondent had left the Property. He sought dismissal of the application.

Reasons for the Decision

As the Respondent had vacated the Property, there was no need for further procedure in the application. In the circumstances the Tribunal determined to dismiss the application.

Decision

The Tribunal determined not to grant an order for possession of the Property and dismissed the 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.


Joan Devine
Legal Member

Date: 20 March 2023