



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/23/2095

Re: Property at 28 St Peters Terrace, Buckie, AB56 1QN (“the Property”)

Parties:

Mr Iain McIntosh, 6 Seatown, Buckie, AB56 1JR (“the Applicant”)

Mr Craig Grant, Miss Chelsea Barron, 28 St Peters Terrace, Buckie, AB56 1QN (“the Respondents”)

Tribunal Members:

Alison Kelly (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction should be granted.

1. On 26th June 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondents from the property.

2. Lodged with the application were: -
 - a. Copy Private Residential Tenancy Agreement showing a commencement date of 28th October 2018;
 - b. Copy Notice to Leave dated 28th March 2023;
 - c. Copy proof of service of b;
 - d. Section 11 Notice;
 - e. Proof of service of d;
 - f. Letter from estate agent dated 27th March 2023 confirming they had been instructed to market the property.

3. The Application was served on the Respondents by Sheriff Officers on 24th August 2023.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference on 28 September 2023. The Applicant was represented by Miss McCullough of Stewart & Watson, Solicitors. The Respondents both dialled in to the call.
5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
6. Both Respondents confirmed that they were not opposed to the order being granted.
7. Miss McCullough sought an order for eviction in terms of ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 on the basis that the Applicant wished to sell the property, as evidenced by the letter from the estate agent.
8. The Tribunal were satisfied that the ground had been established, and asked Miss McCullough to address the Tribunal on reasonableness.
9. Miss McCullough said that the Applicant was clear that the Respondents had been good tenants. They had always paid their rent on time and there had been no issues with their tenancy. She explained that the Applicant was 75 years of age and needed to sell the property as part of his retirement planning. He had had other rental properties which had been sold, this was the last remaining rental property which he owned. She said that he did not want to be a landlord anymore. He was concerned that the property would not meet the repairing standard once the legislative changes on that came in to force, and he did not want to have the stress and expense of bringing the property up to that standard. He also needed the funds from the sale to finance his retirement.
10. Both the Respondents said that the house was not suitable for their needs any more. The family consists of them and their five year old daughter. The house is a three bedroom house, with two of the bedrooms being upstairs. There is a bathroom upstairs which has a shower, the bathroom downstairs does not. Miss Barron said that she suffers from a health condition which can have a fluctuating effect on her mobility. She cannot use the bath in the downstairs bathroom and is often finding it difficult to go upstairs to take a shower.
11. The Respondents said that they are on the waiting list for re-housing with both the local authority and several housing associations. Their applications cannot be advanced until an order for eviction in this case has been granted. Miss

Barron said that the family were finding the whole process incredibly stressful and they wished for it to be over.

Findings in Fact

1. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
2. The tenancy commenced on 28th October 2018;
3. A Notice To Leave, dated 28th March 2023, was served timeously and correctly;
4. The Application was served on the Respondents by Sheriff Officer on 24th August 2023;
5. The Applicant intends to market and sell the property once it is vacant;
6. The Applicant is 75 years of age and is retiring;
7. The Applicant requires to sell the property to fund his retirement;
8. The property is no longer suitable for the Respondents due to the Second Respondent's health condition.

Reasons for Decision

It is usually mandatory to grant an application under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal's power to issue an eviction order), the words "or must" are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (a), the word "and" is repealed,

(iii)after paragraph (b) insert " , and

"(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (b), the word "and" is repealed,

(iii)after paragraph (c) insert " , and

"(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii)sub-paragraph (3) is repealed,

(iv)in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h)in paragraph 10(2) (not occupying let property)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i)in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(k)in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(ba)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case. that the Applicant had established Ground 1 by provision of the estate agent’s letter and the submissions made by Miss McCullough.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal accepted the Applicant’s arguments that he is retiring and needed to fund that retirement. They accepted that he did not wish the stress and expense of renovating the property. The Tribunal also accepted that the property was no longer suitable for the Respondents for the reasons given. The Tribunal considered that in all those circumstances that it was reasonable to grant the order.

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.



28th September 2023

Legal Member/Chair

Date