



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

Chamber Ref: FTS/HPC/EV/23/2455

Re: Property at 45 Craigmill Wynd, Caldercruix, Airdrie, ML6 8UY (“the Property”)

Parties:

Kaleigh Bingham, 40 Arisaig Place, Glasgow, G52 1PY (“the Applicant”)

John McGurk, 45 Craigmill Wynd, Caldercruix, Airdrie, ML6 8UY (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 21 July 2023 the Applicant’s representatives D J Alexander Lettings Limited, Edinburgh, applied to the Tribunal for an order for the eviction of the Respondent from the property under Grounds 4 and 5 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement, a copy of the Notice to Leave, a copy of a Section 11 Notice to the local authority together with proof of service and a statement from the Applicant in support of the application.
2. By Notice of Acceptance dated 15 September 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 30 October 2023.
4. By email dated 12 November 2023 the Applicant's representatives sought to introduce an additional ground of eviction namely Ground 12A of Schedule 3 of the 2016 Act.
5. By email dated 28 November 2023 the Applicant's representatives submitted an Affidavit sworn by the Applicant. They also advised the Tribunal that Mr John McKeown of Jackson Boyd LLP, Solicitors, Edinburgh would be representing the Applicant.

The Case Management Discussion

6. A CMD was held by teleconference on 6 December 2023. The Applicant attended in person and was represented by Mr John McKeown from Jackson Boyd Solicitors, Edinburgh. Ms Gwennan White from Jackson Boyd was also in attendance. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation had been given to the Respondent determined to proceed in his absence.
7. By way of a preliminary matter the Tribunal asked Mr McKeown to confirm the position with regards to the application to add the additional ground 12A to the application. Mr McKeown advised the Tribunal that the Applicant was no longer insisting on the amendment and the application was proceeding only on the original grounds contained in the Notice to Leave.
8. The Tribunal noted that the parties had entered into a Private Residential Tenancy that had commenced on 1 November 2019 at a rent of £900 .00 per month. Mr McKeown confirmed that the Applicant and her brother now wished to live in the property and that a Notice to Leave had been served on the Respondent by email on 4 April 2023. The Notice to Leave was served under Grounds 4 and 5 of Schedule 3 of the 2016 Act. The Tribunal also noted that a Section 11 Notice had been sent to North Lanarkshire council by email on 24 July 2023.
9. The Tribunal confirmed it had seen the Applicant's affidavit and asked the Applicant to confirm where she was presently based. The Applicant said that she was currently stationed near Salisbury but could apply for a transfer to barracks in Edinburgh. She said she would need to apply for a move but that it was feasible. The Applicant confirmed that in her current role she had to remain in a single room on the base even at weekends as she had nowhere else to go. She explained that if she could move back into her own property then she would be able to live there at weekends and when on leave. She said that her brother was permanently stationed in Edinburgh and he too would be able to live in the property at weekends and when on leave. The Applicant also said that the Respondent had stopped paying rent since June and now owed £5400.00 in rent.

10. Mr McKeown confirmed that no rent had been paid since June and that this appeared to be linked to the Respondent being asked to leave the property.
11. In response to a query from the Tribunal the Applicant confirmed that the Respondent's wife also lived at the property with two children at least one of which was at school. The Applicant said that although her letting agent had been told that the Respondent was no longer living at the property, they had noticed that the Respondent's work van was still parked at the property. The Applicant said that the Respondent was a self-employed painter and decorator.
12. In response to a further question from the Tribunal the Applicant confirmed that her mortgage over the property cost her £600.00 per month and that in addition she had to pay for her camp accommodation. The Applicant said that the loss of rental income was a worry for her.

Findings in Fact

13. The parties entered into a Private Residential tenancy that commenced on 1 November 2019 at a rent of £900.00 per calendar month.
14. The Applicant and her brother intend to live in the property as their principal home.
15. The Applicant is currently stationed near Salisbury but can transfer to Edinburgh and intends to do so once she regains possession of the property.
16. The Applicant's brother is stationed permanently in Edinburgh and could use the property at weekends and when on leave.
17. The Respondent was served with a Notice to Leave by email under Grounds 4 and 5 of Schedule 3 of the 2016 Act on 4 April 2023.
18. The Respondent has paid no rent for the property since June 2023.
19. Intimation of the proceedings was sent to North Lanarkshire Council by virtue of a Section 11 Notice on 24 July 2023.
20. The Respondent lives at the property with his wife and two children.

Reasons for Decision

21. The Tribunal was satisfied from the written representations and documents produced together with the oral submissions that the parties entered into a Private Residential tenancy that commenced on 1 November 2019 at a rent of £900.00 per month. The Tribunal was also satisfied that the Respondent had been properly served with a valid Notice to Leave and that North Lanarkshire Council had been given proper notice of the proceedings.

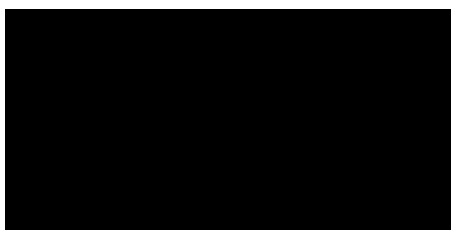
22. The Tribunal fully considered the Applicant's affidavit and the oral submissions made by her and on her behalf at the CMD. The Tribunals found the Applicant to be credible and reliable and had no reason to doubt that she would in due course be able to transfer to a post in Edinburgh and that her brother was in a permanent post there also and that it was their intention to use the property as their principal home.
23. In reaching its decision the Tribunal took account of the fact that since June 2023 the Respondent had not paid any rent whilst the Applicant still had to meet the mortgage costs. The Tribunal also took account of the fact that despite being given the opportunity to submit written representations and to attend the CMD the Respondent had chosen to do neither. Although the Tribunal was aware that the Respondent's family was also living in the property, given the failure to pay rent and taking account of the Applicant and her brother's circumstances the Tribunal was satisfied that it was reasonable to grant the order which would be subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022. This meant that the implementation of any order would be postponed for six months or the expiry or suspension of the regulations made under the Act whichever was the earlier and would therefore give the Respondent and his family sufficient time to find alternative accommodation.

Decision

24. The Tribunal having carefully considered the information before it and being satisfied it had sufficient information to make a decision without the need for a hearing determined that the Applicant was entitled to an order for the eviction of the Respondent from the property under grounds 4 and 5 of Schedule 3 of the 2016 Act.

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.



Legal Member/Chair

6 December 2023

Date

