



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/4089

Re: Property at 225 Mill Road, Cambuslang, Glasgow, G72 7YT (“the Property”)

Parties:

Allan Love, Pamela Love, 21 Anderson Street,, Hamilton, ML3 0QN (“the Applicant”)

Greg Morrison, 225 Mill Road, Cambuslang, Glasgow, G72 7YT (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 16 November 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 5 of Schedule 3 to the 2016 Act (landlord’s family member intends to live in the property). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same and evidence in support of the ground, namely an Affidavit from the son of the Applicant who is the family member concerned.

2. Following initial procedure, on 6 December 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 14 March 2024 was served on the Respondent by way of Sheriff Officer on 25 January 2024. In terms of said notification, the Respondent was given the opportunity to lodge written representations. No written representations were lodged by or on behalf of the Respondent prior to the CMD.

Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference call on 14 March 2024 at 2pm, attended only by Ms Alexandra Wooley of Bannatyne, Kirkwood, France & Co, Solicitors on behalf of the Applicant. The Respondent did not attend. The commencement of the CMD was delayed for 5 minutes to allow the Respondent an opportunity to join late but he did not do so.
5. Following introductions and introductory remarks by the Legal Member, Ms Wooley was asked to present the application. She confirmed that the Respondent used to reside in the Property with his sister but this is no longer the case. Her firm was instructed to seek an eviction order by the Applicant whose son intends to live in the Property. Notice to Leave was served on the Respondent by the Applicant’s letting agent on 23 June 2023, giving a notice period of 84 days, required for this ground. They have been unable to ascertain if the Respondent is still there as there has been no communication from him, either to the Applicant direct, the letting agent or Ms Wooley’s firm. There have also been several failed attempts to gain access to the Property for purposes of inspection. As far as she is aware, the rent is still being paid and there have been no other issues with the tenancy, other than the lack of communication and engagement from the Respondent. Ms Wooley does not know the Respondent’s age or anything else regarding his circumstances.
6. As to the ground of eviction, Ms Wooley made reference to the Affidavit lodged from Jamie Alexander Love, the son of the Applicant who intends to move into the Property and live there as his long-term home. The background is that Jamie’s grandparents formerly owned the Property and bequeathed it to him. However, they died when he was too young to take on the Property so his parents took it on and let it out. It was intended that he would take on the Property when he was 21 but, at that time, Jamie was still happy living with his parents and there was now a tenant in the Property. However, since then, relations between Jamie and the Applicant have become strained with them all living together and he is now ready to move out of the parental home into the Property and live on his own. It is local to where he lives at the moment and is handy for his work. Ms Wooley confirmed that he will live there as owner-occupier as the title is to be transferred to him. He will not be paying rent to the

Applicant. Ms Wooley does not know what the arrangements are going to be regarding the mortgage over the Property. This is the only Property that the Applicant lets out.

7. In summing up, Ms Wooley submitted that it was reasonable in the circumstances for an eviction order to be granted and the ground is met. She also stated that, if an order is granted, the local authority will be under an obligation to provide housing to the Respondent if he applies to them.
8. The Tribunal adjourned briefly to consider the application and, on re-convening, the Legal Member advised that the eviction order sought would be granted today. Ms Wooley was thanked for her attendance and the CMD brought to a close.

Findings in Fact

1. The Applicant is the landlord of the Property, owned by the first-named Applicant.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 22 May 2021.
3. The Respondent is understood still to be in occupation of the Property and to live there alone.
4. The Applicant's son intends to reside in the Property as his long-term home once vacant possession is obtained.
5. The Property was previously owned by the grandparents of the Applicant's son, who bequeathed the Property to him, although they died when he was still a child.
6. A Notice to Leave in proper form and giving the requisite period of notice (84 days) was emailed to the Respondent on 23 June 2023.
7. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 18 September 2023.
8. The Tribunal Application was submitted on 16 November 2023.
9. There has been no communication from the Respondent to the Applicant, nor their representatives, since notice was served.
10. There have been several unsuccessful attempts by the Applicant's representatives to gain access to the Property for purposes of inspection, due to the Respondent failing to engage with them.

11. The Respondent has not engaged or lodged any representations with the Tribunal and nor did he attend the CMD.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral information provided at the CMD by the Applicant's representative, Ms Wooley.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the requisite period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the terms of the ground of eviction, that a family member of the landlord intends to live in the Property (Ground 5 of Schedule 3 to the 2016 Act, as amended) which are as follows:-

"Family member intends to live in property

5(1) It is an eviction ground that a member of the landlord's family intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and

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

(3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—

(a) the family member is incapable of having, or expressing, that intention, and

(b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.

(4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—

(a) in a qualifying relationship with the landlord,

(b) a qualifying relative of the landlord,

*(c) a qualifying relative of a person who is in a qualifying relationship with the landlord,
or*

(d) in a qualifying relationship with a qualifying relative of the landlord.

(5) For the purposes of sub-paragraph (4)—

(a) two people are in a qualifying relationship with one another if they are—

(i) married to each other,

(ii) in a civil partnership with each other, or

(iii) living together as though they were married,

*(b) “a qualifying relative” means a parent, grandparent, child, grandchild, brother or
sister,*

*(c) a relationship of the half blood is to be regarded as a relationship of the whole
blood,*

(d) a person's stepchild is to be regarded as the person's child,

*(e) a person (“A”) is to be regarded as the child of another person (“B”), if A is being
or has been treated by B as B's child.*

*(6) In a case where two or more persons jointly are the landlord under a tenancy,
references to the landlord in this paragraph are to any one of them.*

*(7) Evidence tending to show that a member of the landlord's family has the intention
mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the
person has that intention.”*

The Tribunal was satisfied in that all elements of Ground 5 were met in that the family member here is the landlord's son and he had provided an Affidavit confirming the background circumstances, his reasons for wishing to reside in the Property and that he intended to live there as his long-term home.

4. The Tribunal was also satisfied that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal considered that the background circumstances regarding the Property and the fact that it had been bequeathed to the grandson some years ago by his grandparents added weight to the reasonableness considerations in favour of the Applicant. The Respondent has not engaged with the Applicant's letting agents in recent times, having been served with notice around 9 months ago, in June 2023. He has not allowed them access to the Property for purposes of inspection. He has not entered into the Tribunal process nor made the Tribunal aware of his personal circumstances or his position in respect of the application. The Tribunal accordingly has no information before it contradicting the information put forward on behalf of the Applicant.

5. The Tribunal determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

Nicola Weir

Legal Member/Chair

Date 14 March 2024