



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/19/1159

Re: Property at 7B Balloch View, Cumbernauld, Glasgow, G67 1HF (“the Property”)

Parties:

Mrs Carol Forrest, 3 Queen Street, Fallin, Stirling, FK7 7JG (“the Applicant”)

Miss Jodie Finnigan, 7B Balloch View, Cumbernauld, Glasgow, G67 1HF (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision (in absence of the Respondent)

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

Background

The Applicant lodged an application on 16th April 2019 under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) seeking eviction of the Respondent from the property under Ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 “the 2016 Act”).

Lodged with the Application were;

1. Copy Tenancy Agreement beginning 17th August 2018
2. Affidavit of Michael Hapka dated 12th April 2019
3. Affidavit of Carol Forrest dated 12th April 2019
4. Affidavit of Carol Forrest dated 12th April 2019
5. Copy Notice To Leave

6. Proof of Service of Notice To Leave
7. Copy section 11 Notice
- 8.

Case Management Discussion

At the Case Management Discussion ("CMD") the Applicant was represented by Victoria Taylor, Jardine Donaldson, Solicitors. The Respondent did not appear and was not represented.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. She enquired as to whether there had been any contact from the Respondent. Ms Taylor told the Chairperson that she had written to the Respondent as the Applicant needed access for a boiler check. Ms Taylor produced an email she had received from the Respondent in reply, in which the Respondent confirmed that she would vacate the property at the end of June 2019.

The Chairperson then asked Ms Taylor to present the case. She said that the parties had entered in to a Private Residential Tenancy for the property, commencing on 17th August 2018. She confirmed that eviction was sought in terms of Ground 4 of Schedule 3 of the 2016 Act, which states:

Landlord intends to live in property

4(1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

Ms Taylor referred to the Affidavits which had been lodged and narrated the main terms. She explained that the Applicant had occupied the property as her principal home for 7 years. She was diagnosed with a medical condition, at the end of 2017, which required her to undergo several surgeries and follow up treatment. It was decided that while she was undergoing the treatment she would move in with her

fiance, who had also provided an affidavit, so that he could care for her. She rented out her property to assist with the financial cost of travelling to and from hospital for treatment, and other expenses. The plan was that she would move back to her own home when she was strong enough to care for herself, and also because ongoing monitoring of her condition would take place at Monklands Hospital, which is only 10 minutes from the property.

Ms Taylor said that the Applicant was now strong enough to move back, and wished to do so, and would reside there for in excess of three months.

The Applicant instructed her Agents to serve a Notice To Leave on the Respondent. This was done by Recorded Delivery post, and a copy of the Track and Trace Receipt was produced.

Ms Taylor submitted that the content of the affidavits met the test in Ground 4, and it was therefore mandatory to grant the order.

Findings In Fact

1. The parties entered in to a lease of the property, commencing on 17th August 2018;
2. Notice to Leave was competently and timeously served on the Respondent;
3. The contents of the Affidavits are unchallenged and are accepted;
4. The Applicant intended to return to live in the property for a period in excess of three months.

Reasons For Decision

In terms of Ground 4 the Applicant has produced three Affidavits, which are unchallenged, and which show that she intends to occupy the let property as her

only or principal home for at least three months. Granting of the order is therefore mandatory.

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.

Alison J Kelly

Legal Member/Chair

J

Date

13/6/19