

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/EV/21/2792

Re: Property at 42 Wood Crescent, Motherwell, ML1 1HN (“the Property”)

Parties:

Miss Catherine Brown, 10 Millfield Ave, Motherwell, ML1 1HF (“the Applicant”)

Miss Laura Gallagher, 42 Wood Crescent, Motherwell, ML1 1HN (“the Respondent”)

Lanarkshire Community Law Centre Ltd, Airdrie Citizens Advice Bureau, Resource Centre, 14 Anderson Street Airdrie ML6 0AA (“the Respondent’s Agents”)

Tribunal Members:

Karen Moore (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that Ground 4 for eviction and recovery of possession had been established and that it is reasonable to issue the Order sought and so the Tribunal granted the Application and issued the Order with an effective date of 1 September 2022.

Background

1. By application received between 10 and 29 November 2021 (“the Application”), the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on the Grounds 4 and 5 of the Act that the Applicant as Landlord intends to live in the Property and that a member of the landlord's family intends to live in the Property. The Application comprised a copy of a short assured tenancy agreement between the Parties, albeit that the tenancy commenced on 1 December 2017 and so is private residential tenancy in terms of the Act, and comprised a letter by the Applicant stating that she and her family members intend to live in the Property, copy Notice to Leave in terms of Grounds 4 and 5 of Schedule 3 to the Act dated 1 August 2021 with confirmation that it was hand delivered to the Respondent on 1 August 2021 and copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to North Lanarkshire Council, being the relevant local authority.

2. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 4 February 2022 at 10.00 by telephone conference. Prior to the CMD, the Respondent's Agents lodged written submissions. The outcome of the CMD was that a Hearing was fixed to determine the issues, being the establishment of the Ground and the reasonableness test and the Tribunal issued a Direction with which both Parties complied by submitting detailed written submissions, and, in the case of the Respondent, documentary productions.

First Hearing

3. The First Hearing was fixed for 19 April 2022 at 10.00 by video conference call but was postponed without evidence being heard due to technical issues.

Second Hearing

4. The Second Hearing took place on 1 July 2022 at 10.00 by video conference call. The Applicant took part and was not represented. The Respondent was present and was represented by Ms. Nicola Rylatt of the Respondent's Agents. The Tribunal advised the Parties that it had read and would take account of the detailed written submissions.

Applicants' Evidence

5. The Applicant gave evidence and stated that, as set out in her written submissions, her circumstances had changed since she entered into the tenancy with the Respondent as her mother was now fully dependent on her for personal care. She explained that her mother's health condition caused her extreme worry, that she had to feed her mother and attend at her mother's home during the night to make sure that her mother was safe in bed. In cross-examination, the Applicant confirmed that there was no social work involvement with her mother and explained that her own profession is as a carer and so there was no need to involve social workers. She confirmed that her current home is a three-bedroomed home in which she, her partner and her two children and their partners reside and so there is no room for her mother to reside there also. She confirmed that her mother resides in a two-bedroomed home. The Applicant accepted that she had not provided medical evidence in respect of her mother as this was private to her mother and had not provided any form of documentary evidence in respect of the layout of her and her mother's homes. She confirmed that her intention was to reside in the Property, with her two children and their partners reside continuing to reside in her current home.

Respondents' Evidence

6. The Respondent gave evidence that she has children aged 17 years, 15 years and 2 years and that the Property, which has three bedrooms, is currently suitable for her and her family but will not be for much longer as her youngest child will need her own bedroom. She stated that she does not work and relies on benefits. With regard to her health, she stated that she has been under considerable stress and anxiety for around 3 years because of the uncertainty around her right to remain in the Property.

She explained that the uncertainty is affecting her older children who cannot concentrate at school and explained that the family has packed up their belongings and are “living out of boxes”. Further, she had had a difficult birth with her youngest child which still impacted on her health. With regard to alternative accommodation, the Respondent explained that the local authority advised that she would only be offered temporary housing and that other private rented accommodation was outwith her price range and affordability at around £750.00 per month. The Respondent stressed that the current situation left her in limbo and continued to have a detrimental impact on her children who needed security and stability. The Applicant had no cross-examination for the Respondent.

Summing up

7. The Applicant advised that she had nothing further to add to her earlier statement other than, if the Application is refused, she would need to consider private rented accommodation for her, her partner and her mother. She agreed with the Respondent’s evidence that the cost would be around £750.00 and, in order to afford this, she would need to increase the Respondent’s rent. She emphasised that this was not a threat but a reality.
8. On behalf of the Respondent, Ms. Rylatt referred the Tribunal to her detailed written submissions and submitted that the Applicant had provided no further hard evidence in support of the Grounds for the Application or to support the reasonableness test. Ms. Rylatt submitted that the Applicant could have had her children corroborate her position, could have lodged medical evidence and could have lodged photographic evidence of the properties.

Findings in Fact

9. The Tribunal had regard to the Application, the written submissions lodged by both Parties and to the oral submissions and statements made at the CMD and at the Second Hearing, whether referred to in full in this Decision or not, in establishing the facts of the matter and that on the balance of probabilities.
10. The Tribunal found the following facts established:
 - i) The Parties are as set out in the Application;
 - ii) There is a private rented tenancy of the Property between the Parties;
 - iii) The Applicant’s mother requires full-time care as provided for by the Applicant;
 - iv) The Applicant currently resides in a three-bedroom home with her partner, her two children and their partners reside;
 - v) There is insufficient accommodation in the Applicant’s current home for the Applicant’s mother to reside there;
 - vi) The Applicant’s mother’s home is not suitable to accommodate the Applicant, her partner and her mother for the provision of full-time care;
 - vii) The Property is suitable to accommodate the Applicant, her partner and her mother for the provision of full-time care;
 - viii) The Applicant intends to reside in the Property with her partner and her

- mother for the provision of full-time care to her mother;
- ix) The Respondent is an unemployed, single parent with three children aged 17 years, 15 years and 2 years;
- x) The Respondent and her family have suffered stress as an impact of the current Application;
- xi) Alternative private rented accommodation is outwith the Respondent's affordability range;
- xii) Alternative social rented accommodation is likely to be temporary in the first instance.

Issues for Tribunal

11. The issues for the Tribunal are the competence of the Application in terms of the Act, the sufficiency of evidence to establish the Grounds narrated in the Notice to Leave and if it is reasonable to issue the Order sought. At the CMD on 4 February 2022, the Tribunal determined that the Application was competent in terms of statutory procedure. Therefore, the issues for the Tribunal at the Second Hearing were (i) have the Grounds been established and (ii) is it reasonable to issue the Order sought.

Decision of the Tribunal and reasons for the Decision

12. Ground 4 of Schedule 3 to the Act states:

"4(1)It is an eviction ground that the landlord 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)the landlord intends to occupy the let property as the landlord'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..... (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.

13. Ground 5 of Schedule 3 to the Act states:

"(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."

14. On the evidence before it and on its Findings in Fact, the Tribunal was satisfied that the Ground 4(1) is established.

15. The Tribunal accepted from the Applicant's written submissions which are detailed and from her oral evidence which was given in a straight-forward and truthful manner, that the Applicant is full-time carer for her mother and that their respective current homes are not suitable for the Applicant, her partner and her mother to reside

as a family unit. The Tribunal accepted that Applicant intends to reside in the Property to care for her mother and so found Ground 4(1) satisfied.

16. There being no evidence in respect of Ground 5(1), the Tribunal found that this Ground is not established.
17. The Tribunal then had regard to Ground 4(2)(a). With regard to the quality of the evidence, the Tribunal did not have the benefit of a sworn affidavit as suggested by Ground 4(3). The Tribunal had the benefit of the Applicant's detailed written submissions and her oral evidence that she intended to reside in the Property to care for her mother and, on the balance of probabilities, took the view that this intention was a permanent move. The Tribunal accepted that the duration of the Applicant's intended occupation will, on the balance of probabilities, be as her only or principal home for at least 3 months and so the Tribunal found Ground 4(2)(a) satisfied.
18. The Tribunal then had regard, as it was bound to do, to Ground 4(2)(b) and considered if it was reasonable to issue an eviction order on account of the fact of Ground 4(2)(a). In carrying out this determination the Tribunal had regard to the whole circumstances of the Application, the detailed written submissions and the evidence of the Parties. The Tribunal found the Parties' oral evidence to be truthful and there to be little discrepancy between them.
19. The Tribunal's task was to weigh up the facts of the Application and the evidence in respect of reasonableness.
20. The Applicant, in her written submissions and her oral evidence, explained the extent of the care which her mother requires and explained the impact that the current living arrangements have on the delivery of this care both in terms of physical activity and mental stress and worry. The Tribunal accepted that the current living arrangements are untenable and that residing in the Property will alleviate the situation for the Applicant, her mother and her family.
21. The Tribunal had regard to the written submissions lodged on behalf of the Respondent. The Tribunal had regard to the Respondent's personal circumstances as a single mother reliant on benefits and accepted that her choice of alternative accommodation is limited to the social rented sector. The Tribunal noted that impact of the current proceedings on her and her children's mental health. The Respondent's evidence is that the uncertainty of the situation is having an impact and she and her family require certainty and stability. She advised that the Tribunal that the Property provides suitable accommodation at present but will not provide suitable accommodation in future. The Tribunal accepts that, at present, the offer of accommodation by the local authority is likely to be temporary. However, in terms of the Housing (Scotland) Act 1987 and the Homelessness Etc (Scotland) Act 2003, the local authority has an absolute duty to provide suitable permanent accommodation.
22. The Tribunal accepts that it is bound to consider Article 3(1) of the United Nations Convention on the Rights of the Child and is bound to give primary consideration to

the best interests of the child, in this case the Respondent's three children. The Tribunal took the view that the safety net of the local authority's absolute duty to provide suitable permanent accommodation for the Respondent and her family will alleviate their current uncertainty of having a secure home in which to live and that it is in the best interests of the children that they have that secure permanent accommodation.

23. For the foregoing reasons, the Tribunal was satisfied that it is reasonable to issue an eviction order. Having made that decision, the Tribunal took the view that, with regard to the Respondent and her family's persona circumstances, it is appropriate to allow the Respondent sufficient time to secure alternative accommodation and so determined to make the Order for possession effective from 1 September 2022.

24. This Decision is unanimous.

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.

Karen Moore

Legal Member/Chair

1 July 2022

Date