

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/21/2022

Property : 12 Stoney Flatt Road, Dumbarton G82 3HN (“Property”)

Parties:Gavin Bonner, 4 Erskine View, Old Kilpatrick G60 5JF (“Applicant”)

Finnieston Franchi and McWilliams, 24 St Enoch Square, Glasgow G1 4DB (“Applicant's Representative”)

Chris Jackson and Kelly Jackson, 12 Stoney Flatt Road, Dumbarton G82 3HN (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined not to make an order for possession of the Property and refused the application.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Private Residential Tenancy Agreement dated 16 May 2019 ("Tenancy Agreement"); Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 27 April 2021 ("Notice to Leave"); Royal Mail proof of Delivery of the Notice to Leave on 30 April 2021; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering letter dated 17 August 2021; copy affidavit signed by the Applicant dated 17 October 2021 and sheriff officer's execution of service certifying service of the Application on 21 December 2021.

Case Management Discussion on 24 January 2022

A case management discussion ("CMD") took place before the Tribunal on 24 January 2022. The Applicant was in attendance along with his Representative. There was no appearance by or on behalf of the Respondents. The outcome of the CMD was that

the Tribunal determined to fix a further CMD for 5 April 2022 and to issue a Direction to the Parties. The Applicant responded to the Direction by producing a rent statement. There was no response to the Direction by the Respondents. Reference is made to the note of the CMD and to the terms of the Direction.

CMD on 5 April 2022

A continued CMD took place before the Tribunal on 5 April 2022. The Applicant was in attendance along with his Representative, Paddy O'Donnell. Kelly Jackson of the Respondents was also in attendance.

Ms Jackson told the Tribunal that if an order for eviction was granted she had no alternative accommodation. She said that the local authority had offered her a 3 bedroom property but she was not yet able to view the property as it was awaiting repairs. She said that there was a backlog for repairs and a viewing could not be arranged until the repairs had been carried out. She said that she had 3 children aged 24, 13 and 8. She said that her 24 year old son suffered from Asperger's, an eating disorder and depression. She said that he would need to live independently in a 1 bedroom property as the local authority could not offer her a 4 bedroom house. She said that she was not sure if he would be able to live independently. She said that her younger children were at school which was a short walk from the Property. She said that the 3 bedroom flat that she was hoping to view was on the other side of Dumbarton and would require her younger children to take a bus to and from school. She said that she would accompany them on the journey. She said that if she was evicted from the Property she had no options for alternative accommodation. Ms Jackson said that it may be that an order for eviction being made would speed up the process of finding accommodation but it may mean accommodation much further away or accommodation in a bed and breakfast or a hotel which she found terrifying.

On behalf of the Applicant Mr O'Donnell said that the Applicant wanted possession of the Property so that he could have more overnight contact with his daughter. He wanted to provide her with a stable and suitable home. That was not possible in his current 1 bedroom flat. He said that the Property was bought as a family home but when the Applicant's relationship broke down he rented the Property. He said that the Applicant was having to take on additional work to ensure the mortgage on the Property was paid.

The Tribunal asked about the other properties owned by the Applicant. Mr O'Donnell said that aside from the Property the Applicant had the 1 bedroom flat in which he lives; a 2 bedroom flat that is let to his brother and nephew and a 1 bedroom flat that is let to a third party. He said that the rent is paid timeously by the Applicant's brother and the third party.

The Tribunal asked the Respondent about the rent arrears shown on the rent statement. She said that her husband was shielding at the beginning of the covid pandemic and could not work. She said that she was a student with exams the first 2 weeks in May. She said that she obtained universal credit which was paid towards the rent. She said that she withheld rent of £750 in December 2021 as she was upset after sheriff officers had attended the Property on 22 December 2021. She said that she had paid the rent on time the past few months and would pay the rent arrears.

On behalf of the Applicant Mr O'Donnell said that the Applicant had been trying to get the Property back since 2020. It had been bought as a family home. He wanted the Property back as he wants to rebuild his life and his relationship with his daughter. He said that the rent arrears had made it difficult for the Applicant. He was having to take on more work and travel further away for work. He said that this was not sustainable. He said that if an eviction order was not granted the Applicant would have to consider selling the Property. He said that the Applicant had been very fair with the Respondents. He had not increased the rent although it was below market value.

The Tribunal expressed the view that there were no factual issues in dispute between the Parties and that the Tribunal had enough information to allow them to consider the question of reasonableness and whether to grant an order for eviction. The Parties confirmed there was no issue to be taken forward to a Hearing.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondents had entered into a Private Residential Tenancy Agreement which commenced on 16 May 2019.
2. The agreed monthly rent was £750.
3. The Property is a 4 bedroom house and is occupied by the Respondents and their 3 children aged 24, 13 and 8.
4. A Notice to Leave dated 27 April 2021 was served on the Respondents by recorded delivery post on 30 April 2021.
5. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 17 August 2021.

Reasons for the Decision

The Tribunal considered whether to grant an eviction order. In terms of section 51 of the Act, the First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the

eviction grounds named in schedule 3 has been established and if it is reasonable to grant the order for eviction.

The Applicant sought an order for eviction on the basis of ground 4 which is that the Applicant intends to live in the Property. The Tribunal determined that the ground for eviction had been established.

As regards the question of reasonableness the Tribunal considered the submissions made by the Parties and determined that it was not reasonable to grant an order for possession of the Property. The Respondent had no available alternative accommodation. They had sought assistance from the local authority. Whilst an offer of possible alternative accommodation had been made, the property identified was not yet available to be viewed and as it was a 3 bedroom flat, moving there would mean that the Respondent's son, who had various health issues, would require to move into a 1 bedroom property and live independently. Ms Jackson did not know whether it would be possible for him to live independently in light of his various health issues. In addition, a 1 bedroom property had not yet been identified for the Respondent's eldest son. If the Respondent was made homeless, the local authority would provide emergency alternative accommodation but this may well be bed and breakfast accommodation or accommodation some distance from the school attended by the Respondent's younger children. The level of disruption to the Respondent's children would be significant. Whilst the Tribunal was sympathetic to the Applicant's position and understood his desire to obtain possession of the Property in order to provide a suitable home for his daughter during periods of access, the Tribunal determined that in light of the various uncertainties that the Respondent would face in the event of an order for eviction being granted, it would not be reasonable to grant such an order. The Tribunal noted the rent arrears and the assertion by Ms Jackson that the arrears would be paid. The Tribunal encourages the Respondent to pay the arrears as soon as possible.

Decision

The Tribunal refuses to grant an order for possession of the Property.

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.

J Devine

**Legal Member:
5 April 2022**