



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/22/0893

Re: Property at 49J Market Street, Musselburgh, EH21 6PS (“the Property”)

Parties:

Ms Sarah Bayne, 11/1 Restalrig Square, Edinburgh, EH7 6HA (“the Applicant”)

Ms Megan Bernard, 49J Market Street, Musselburgh, EH21 6PS (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Frances Wood (Ordinary Member)

Decision

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 under Ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

Background

1. By application dated 28 March 2022 the Applicant’s representatives MHD Law LLP, Solicitors, Edinburgh applied to the Tribunal for an order for eviction of the Respondent from the property under Ground 4 of Schedule 3 of the 2016 Act as the Applicant intended to live in the property. The Applicant’s representatives submitted a copy of the tenancy agreement, Notice to Leave, Section 11 Notice and the Applicant’s affidavit in support of the application. Following further correspondence between the Tribunal administration and the Applicant’s representatives a further Section 11 Notice was submitted.
2. By Notice of Acceptance dated 14 June 2022 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 26 July 2022.
4. By email dated 18 August 2022 the Applicant's representatives submitted further written representations to the Tribunal.

The Case Management Discussion

5. A CMD was held by teleconference on 24 August 2022. The Applicant attended in person and was represented by Mr Raymond Fairgrieve of MHD Law LLP. The Respondent also attended in person.
6. The Respondent confirmed that the parties entered into a Private Residential Tenancy that commenced on 25 October 2019 at a monthly rent of £625.00. She also confirmed that a Notice to Leave dated 22 December 2021 had been served on her advising that the Applicant intended to live in the property.
7. The Respondent went on to explain that she had been to the local authority homeless unit but had been advised that they would not help until an eviction order had been granted. Once an order was granted the council would carry out an assessment of her needs for housing. The Respondent advised the Tribunal that she lived in the property with her daughter who was aged three and a half.
8. The Respondent confirmed that she was not opposing the order being granted. She understood the Applicant's need to return to her home and was in agreement so that she could move forward. The Respondent confirmed she had sought advice from the Citizens Advice Bureau and the Crisis Team who had advised her that once the order was granted the council should move pretty fast but that she and her daughter might be put into homeless accommodation to begin with until permanent accommodation could be found. She said she did not know how long the process would take.
9. For the Applicant Mr Fairgrieve moved that the order be granted and suggested that the Applicant would try to arrange a date for the Respondent's removal as she had no intention of putting the Respondent out on the street.

Findings in Fact

10. The parties entered into a Private Residential tenancy that commenced on 25 October 2019 at a rent of £625.00 per calendar month.
11. The Respondent was served with a Notice to Leave under Ground 4 of Schedule 3 of the 2016 Act by recorded delivery post on 22 December 2021.
12. East Lothian Council was given notice of the proceedings by way of a Section 11 Notice sent by email on 14 February 2022 and a further version sent on 27 May 2022.

13. The Applicant intends to live in the property following the breakdown in her relationship with her partner and is unable to purchase another home for herself or rent other suitable accommodation.
14. The Respondent lives in the property with her three-and-a-half-year-old daughter.
15. The Respondent does not oppose the order being granted.

Reasons for Decision

16. The Tribunal was satisfied from the documents produced and the oral submissions that the parties entered into a Private Residential Tenancy that commenced on 25 October 2019 at a rent of £625.00 per calendar month.
17. The Tribunal was also satisfied that the Respondent had been properly served with a valid Notice to Leave and that proper intimation of the proceedings had been given to East Lothian Council by way of a Section 11 Notice.
18. Were it not for the Coronavirus (Scotland) Act 2020 and the Coronavirus (Recovery and Reform) (Scotland) Act 2022 Ground 4 of Schedule 3 of the 2016 Act would have been a mandatory ground for eviction. However, in light of the provisions of these acts the Tribunal has to consider whether in all the circumstances it would be reasonable to grant an order for the eviction of the Respondent.
19. In reaching its decision the Tribunal has carefully considered the circumstances of both parties and concluded that on balance it is appropriate that the Applicant should be able to return to live in her home. It does not seem reasonable to expect the Applicant to remain living on a temporary basis with her mother for an indefinite period with no prospect of being able to afford to buy or rent another property. Although the Respondent has a three-and-a-half-year-old daughter living with her it seems likely that once an order for eviction is granted, she might be given some priority for local authority housing and in any event she did not seek to oppose the application. Taking everything into account the Tribunal is satisfied that it is reasonable that it should grant the order.

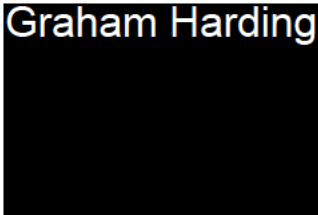
Decision

20. The Tribunal being satisfied it had sufficient information before it to reach 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 Ground 4 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.

Graham Harding

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Legal Member/Chair

24 August 2022

Date