



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 (Act)

Chamber Ref: FTS/HPC/EV/22/1558

Re: Property at 10 Cross Street, Carmyle, Glasgow, G32 8JS (“the Property”)

Parties:

Miss Jane McGivern, 5 Toronto Walk, Glasgow, G32 8HA (“the Applicant”)

Mr Joseph Jones, Miss Gemma Clark, 10 Cross Street, Carmyle, Glasgow, G32 8JS (“the Respondent”)

Austin Lafferty Solicitors (“Applicant’s Representative”)

Tribunal Members:

Alan Strain (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted but that execution of the order should be postponed to 18 November 2022.

Background

This is an application under Rule 109 and section 51(1) of the Act in respect of the Applicants’ intention to live in the Property and for eviction and recovery of possession on Ground 4 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application dated 20 May 2022;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 30 September 2019;
3. Notice to Leave dated 17 January 2022 and served personally;
4. Section 11 Notice to Local Authority;
5. Email dated 20 May 2022 to Local Authority serving Section 11 Notice;

6. Affidavit of Applicant dated 16 May 2022;
7. Sheriff Officer Certificate of Service of Tribunal CMD Notification on Respondent dated 14 July 2022.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 17 August 2022. The Applicant did not participate but was represented by her solicitor. The Respondents participated and represented themselves.

The Respondents did not seek to oppose the order for recovery of possession but due to their personal circumstances sought further time to obtain alternate accommodation. They had been in contact with the local housing department without success. The Respondents' 8 year old son had just restarted school on the locality and would face considerable disruption and upset if he was required to move at this stage. Mr Jones also needed access to his local support team for health issues he had.

The Applicant's position was that she needed the Property to live in, she was living at a friend's house and also there were significant rent arrears.

The Respondents disputed the amount of the rent arrears and argued that the Applicant had said any increase in rent would only be payable if Housing Benefit paid it.

Decision and Reasons

The Tribunal then considered the eviction application before it.

The Tribunal had regard to the terms of Ground 4 which are in the following terms:

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 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.

(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.

The Tribunal then considered the documentary and oral evidence it had received from the Parties and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 30 September 2019;
2. The Applicant is the owner of the Property and intends to occupy the let property as her only or principal home for at least 3 months;
3. Notice to Leave had been served on the Respondents on 17 January 2022;
4. Section 11 notification had been served on the local authority;
5. The Respondents are experiencing difficulties in sourcing alternate accommodation despite making all reasonable attempts to do so;
6. The grant of the eviction order would potentially occasion disruption to their 8 year old son's schooling and the support network necessary for Mr Jones;
7. The Applicant needs the Property for accommodation for herself;
8. The Applicant is currently residing in a friend's house and asserts there are rent arrears.

The Tribunal considered all of the evidence and submissions. The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought. The Tribunal were satisfied that the Applicant clearly needed the Property to live in. The Tribunal were also satisfied that the Respondents were trying but having difficulties in sourcing alternate accommodation. Granting the order would occasion further stress, anxiety and disruption to the Respondents and their son. The Tribunal sought to balance the competing interests of the Parties and determined that it would be reasonable to grant the order but to postpone execution of the order to 18 November 2022 under Rule 16A of the Tribunal Procedure Rules. This would allow the Respondents further time to source alternate accommodation. The Tribunal did not require to hear any further evidence.

The Tribunal was satisfied that Ground 4 had been established and accordingly granted the application for eviction and recovery of possession.

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.

A Strain

17 August 2022

Legal Member: Alan Strain

Date