



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) 2016

Chamber Ref: FTS/HPC/EV/22/2402

Re: Property at 28 Willowdale Crescent, Glasgow, G69 7NL (“the Property”)

Parties:

Mrs Christine Mcnamee, 12 Woodland Way, Santry, Dublin, D17 NY30, Ireland (“the Applicant”)

Miss Victoria Harvey, Mr Gareth Rogerson, 28 Willowdale Crescent, Glasgow, G69 7NL; 13 Dryborough Street, Millfield, Sunderland, SR4 6BL (“the Respondents”)

Tribunal Members:

Alison Kelly (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondents)

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

On 20th July 2022 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondents from the property.

Lodged with the application were: -

1. Copy Private Residential Tenancy Agreement showing a commencement date of 9th March 2020 and a rent of £625 per month

2. Copy Notice to Leave dated 25th April 2022;
3. Copy email dated 25th April 2022 to the Respondents serving the Notice to Leave;
4. Section 11 Notice;
5. Email from the Applicant dated 15th August 2022 confirming that she intends to move back in to the property.

The Application was served on the Respondent by Sheriff Officers on 30th November 2022.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss Shields of the letting agent, Belvoir Glasgow North. There was no attendance by the Respondents or any representative on their behalf. The Tribunal were satisfied that notice of the CMD was duly served on the Respondents and it decided to proceed in their absence".

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.

Miss Shields sought an order for eviction in terms of ground 4 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. She said that the Applicant had been residing in Dublin but her circumstances had changed and she required to occupy the property again as her only or principal home. She referred to the email from the Applicant.

The Tribunal were satisfied that the ground had been established, and asked Miss Shields to address the Tribunal on reasonableness. Miss Shields stated that the Applicant was currently having to sleep on her daughter's sofa. She was undergoing treatment, including surgery, for back and shoulder issues, and it was therefore reasonable to evict the Respondents so that the Applicant could have somewhere to live.

Miss Shields said that the Respondents were currently in rent arrears in the amount of £5912, although payment of rent was now being received direct by way of Housing Benefit. The last payment direct from the Respondents had been on 11th October 2021. There had also been calls to the police about drug usage in the property, and Miss Shields understood that Mr Rogerson had already vacated the property due to being assaulted by Miss Harvey. There were no children living in the property, Miss Shields understood that Miss Harvey's child had been removed by the local authority. She also confirmed that the property had not been adapted to accommodate any disability.

Findings in Fact

1. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
2. The tenancy commenced on 9th March 2020;
3. A Notice To Leave, dated 25th April 2022, was served timeously and correctly;
4. The Application was served on the Respondents by Sheriff Officer on 30th November 2022;
5. The Applicant intends to occupy the property as soon as the Respondents vacate;
6. The Applicant is currently accommodated temporarily with her daughter;
7. The Respondents are in rent arrears in the amount of £5912;
8. There have been issues with drug use in the property.

Reasons for Decision

It is usually mandatory to grant an application under Ground 4 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

Private residential tenancies: discretionary eviction grounds

(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2)In section 51(2) (First-tier Tribunal's power to issue an eviction order), the words "or must" are repealed.

(3)In schedule 3 (eviction grounds)—

(a)in paragraph 1(2) (landlord intends to sell)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (a), the word "and" is repealed,

(iii)after paragraph (b) insert " , and

"(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(b)in paragraph 2(2) (property to be sold by lender)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (b), the word "and" is repealed,

(iii)after paragraph (c) insert " , and

"(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",

(c)in paragraph 3(2) (landlord intends to refurbish)—

(i)in the opening words, for "must" substitute "may",

(ii)after paragraph (b), the word "and" is repealed,

(iii)after paragraph (c) insert " , and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d)in paragraph 4(2) (landlord intends to live in property)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “3 months” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i)for “must” substitute “may”,

(ii)the words from “the landlord” to “home” become paragraph (a),

(iii)after paragraph (a) insert “, and

“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f)in paragraph 7(2) (property required for religious purpose)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (b), the word “and” is repealed,

(iii)after paragraph (c) insert “, and

“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g)in paragraph 8 (not an employee)—

(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii)for sub-paragraph (2)(c) substitute—

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii)sub-paragraph (3) is repealed,

(iv)in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h)in paragraph 10(2) (not occupying let property)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(i)in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,

(j)in paragraph 13(2) (criminal behaviour)—

(i)in the opening words, for “must” substitute “may”,

(ii)after paragraph (a), the word “and” is repealed,

(iii)after paragraph (b) insert “, and

“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(k)in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—

“(ba)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case. that the Applicant had established Ground 4 by provision of the email from the Applicant.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal accepted that the Applicant was sleeping on her daughter’s sofa. In the absence of challenge from the Respondents the Tribunal accepted that the rent arrears stood at £5912 and there had been difficulties with drug use at the property. The Tribunal considered in those circumstances that it was reasonable to grant the order.

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.

16th January 2023

Legal Member/Chair

Date

