



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/22/4463

Re: Property at Flat 6 1 Robson Grove, Glasgow, G42 7PN (“the Property”)

Parties:

Mr Khurram Kamal, 141 Gladstone Road, Watford, Hertfordshire, WD17 2RA (“the Applicant”)

Mr Mosleh Rahimnezhad, Flat 6 1 Robson Grove, Glasgow, G42 7PN (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Eileen Shand (Ordinary Member)

Decision

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

Background

1. By application (made on form E) dated 21 December 2022, the applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for an order for repossession of the property from the respondent relying on ground 5 of schedule 3 to The Private Housing (Tenancies) (Scotland) Act 2016. The applicant says his mother intends to live in the property for at least 3 months.

2. By interlocutor dated 17 March 2023, the application was referred to this tribunal. On 21 April 2023 the First-tier Tribunal for Scotland (Housing and Property Chamber) served notice of referral on both parties, directing the parties to make any further written representations.

3. A case management discussion took place on 1 June 2023. The respondent was represented by Ms R Moon, solicitor. The appellant was neither present nor represented. The respondent relied on written submissions dated 1 June 2023. The

tribunal continued the application to a further Case Management Discussion to allow the applicant an opportunity to pursue his application.

4. A further Case Management Discussion took place before the Tribunal by telephone conference at 10.00am on 17 August 2023. The applicant was present but unrepresented. The respondent was not present but was represented by Ms L McBride, solicitor, of Govan Law Centre.

5. The tribunal found that the applicant and the respondent entered into a private residential tenancy agreement on 5 December 2017 and that the applicant served a notice to leave on the respondent on 20 September 2022 by email. The tribunal also found that a Section 11 Notice was served on both the respondent and Glasgow City Council by the Applicant and that the respondent had continued to remain in the property.

6. The tribunal determined that there were two areas of dispute namely whether ground 5 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) had been established and also whether it was reasonable to grant an order for repossession of the property. The tribunal gave the applicant an oral direction to provide

- (a) A copy of his mother’s EUSS Family Permit
- (b) A copy of his mother’s application for leave to remain.
- (c) A written statement summarising his family’s composition and circumstances.

The application was continued to a hearing.

7. By email dated 17 August 2023 the applicant submitted a copy of the Certificate of Application under the EU Settlement Scheme in respect of his mother.

The Hearing

8. A hearing was held by teleconference on 16 November 2023. The Applicant attended in person. The Respondent did not attend but was represented by Ms L McBride of Govan Law Centre.

9. By way of preliminary matters the tribunal firstly queried with the applicant if the Home Office had made a final decision on the applicant’s mother’s application for leave to remain in the UK. The applicant said that no decision had been made and that he had been told by his solicitor that there were so many applications that no indication could be given as to when a decision would be made. The tribunal also queried with the applicant why he had failed to fully comply with the oral direction given at the Case Management Discussion on 17 August to provide a written statement summarising his family’s composition and circumstances. The applicant said he thought that the document he had produced would have been sufficient but was happy to provide any further information required. The tribunal indicated that this was not particularly helpful as it did not give the Respondent’s representative notice of the applicant’s circumstances however Ms McBride said she was prepared to agree to the applicant providing the information during the hearing.

10. The applicant explained that he lived in Watford in a rented studio apartment consisting of a single room with kitchen and bathroom. He said he lived there with his

wife and there were no children. He went on to say that his mother was not living with him and his wife but was staying with a friend in Watford who received a goodwill payment. He explained that his friend owned his own home and that his mother had her own room there and could use the kitchen and bathroom and he said was treated like a family member.

11. The applicant said that he was employed as a labourer doing food deliveries and that his wife was employed by a sub-contractor at Watford Football Club.

12. The applicant went on to say that his intention was to move his mother into the property if the order was granted and if she liked the property, he and his wife were planning most probably to join her immediately after. He said there was a greater chance of he and his wife moving to Glasgow and he thought they might settle there. The applicant said the property was a two bedroom flat and would have enough room for himself his wife and his mother.

13. The applicant said that his mother did not speak English. He said that he was an only child and there was no family in Glasgow. The applicant said that he did have some friends in Glasgow and spoke of knowing a couple of people who had shops there. He said that he was sure he would find work as a delivery driver without any difficulty and that his wife was not wanting to do much work.

14. In response to a question from Ms McBride the applicant said he was sure that his mother would move to the flat in Glasgow but that he and his wife would not move there at the same time but would move later once everything had been sorted out.

15. In reply to a further question from Ms McBride the applicant confirmed that it had always been his intention to move to Glasgow. He said the cost of renting property in Watford was high at £2500.00 per month. When asked by the tribunal if that was the rent he was paying the applicant said that was the cost of a one-bedroom flat and that his wife paid the rent for their studio which was £1000.00 per month.

16. In reply to a further question from the tribunal the applicant explained that he thought it was his responsibility to support his mother financially and emotionally and to make her happy.

17. For the respondent Ms McBride explained that he lived in the property with his wife and nine-month-old son. She said that the respondent was in full time employment at a barber shop. Ms McBride went on to say the respondent's wife was not currently working and was looking after the baby. Ms McBride went on to say that when the respondent received the Notice to Leave, he had applied to local housing associations but had not received any offers of housing and the Local Authority Homeless Team would not actively assist him if an order was granted until nearer any eviction date. Ms McBride confirmed that the respondent's rent was paid up to date.

18. In summary Ms McBride queried why if the applicant had always intended to live in the property and if he had issues with the cost of living why had he not also used Grounds 4 and 4A of Schedule 3 of the 2016 Act. She went on to say that in terms of reasonableness if the order was granted and the respondent was not offered housing association accommodation and had to be housed in temporary accommodation, as

he was in full time employment, he would be liable for payment of a very high rental charge for any such temporary accommodation. Ms McBride asked the tribunal to refuse the application.

19. The applicant submitted that due to the high cost of living everyone was struggling but his position was that he wished to be more responsible for his family than for the respondent's and the order should be granted.

Findings in Fact

20. The parties entered into a Private Residential Tenancy agreement that commenced on 5 December 2017.

21. The respondent was served with a Notice to Leave under Ground 5 of Schedule 3 of the 2016 Act on 20 September 2022.

22. The applicant's mother entered the UK on 28 November 2022 on an EU Settlement Scheme Family Permit that was valid from 26 September 2022 until 26 March 2023.

23. The applicant's mother has applied for leave to remain in the UK and has been granted a Certificate of Application under the EU Settlement Scheme dated 1 March 2023.

24. No decision has been made on the applicant's mother's application and no indication has been given by the Home Office as to when a decision will be made.

25. The property consists of two bedrooms, living room, kitchen and bathroom.

26. The property is currently occupied by the respondent, his wife and their nine-month-old son.

27. The respondent is living in a studio apartment in Watford. That property is not large enough to accommodate his mother as well.

28. The applicant's mother is living in Watford with a family friend who receives a goodwill payment. She has a room of her own and the use of all the facilities in the home and is treated as a member of the family.

29. The applicant is employed as a food delivery driver in Watford and the applicant's wife works at Watford Football Club.

30. The applicant's mother does not speak English.

31. The applicant does not have any family in Glasgow.

32. The applicant has some friends or acquaintances in Glasgow.

33. It is the applicant's intention that his mother would live in the property on her own initially and he and his wife would probably move at a later date.

34. The respondent has applied for housing from local housing associations but has received no offers.

35. If offered temporary homeless accommodation the respondent will be liable for a high rental charge as he is in full time employment.

Reasons for Decision

36. The Tribunal at the CMD on 17 August made it clear that parties must produce evidence to prove what they say. It is for the applicant to satisfy the tribunal on the balance of probabilities that it is his intention to move his mother into the property for at least a period of three months. The applicant spoke of placing his mother in the property and if she liked it then he and his wife would probably move themselves to Glasgow to be with her. At one point the applicant spoke of moving immediately and at another of moving later once everything had been sorted out. Whilst ultimately it is a matter for the applicant to decide how to present his case the tribunal was surprised that neither the applicant's wife or mother were listed as witnesses and the tribunal therefore had to rely on the oral evidence of the applicant. Had the applicant requested it an interpreter would have been provided.

37. The Tribunal was left not knowing what the applicant would do if his mother was unhappy living in Glasgow. The tribunal was told that the applicant had no family there and although the applicant said he had friends in Glasgow this seemed to be more some acquaintances rather than close friends. Although the applicant was confident that he would be able to find employment in Glasgow without difficulty and that it would not matter if his wife reduced her working hours the tribunal was not persuaded that the applicant had given this much thought.

38. The applicant was clear that his mother could not live with him in the studio apartment in Watford but the tribunal was told that his mother had her own room at his close family friend's home where she was treated like one of the family. It therefore did not seem that there was any pressure on the applicant for his mother to move.

39. The tribunal was told that the applicant was unable to say when the Home Office would make a final decision on his mother's application to remain. If an order for eviction was granted it would not come into effect until at least 31 March.2024. During that time the Home Office might grant the applicant's mother's application or might refuse it or might make no decision. If it was refused the applicant's mother would potentially, subject to any appeal, have to leave the country. There are therefore significant unknown factors for the tribunal to consider when making its decision.

40. The applicant mentioned briefly that everyone was struggling with the cost of living and implied that it would be beneficial for him to move to the property in Glasgow given the rental costs in Watford. However, he also spoke of his wife then not working much if they moved to Glasgow and given that he had said that it was his wife who was currently paying the rent on their current property it was difficult to see how a move to Glasgow would be of any financial benefit as the applicant would

lose the income from the respondent and most if not all of his wife's income. Furthermore, although he was confident of finding a job himself, he had not any confirmed employment offers.

41. The tribunal also had to rely on the submissions of Ms McBride with regards to the circumstances of the Respondent and his family. However, the applicant did not take any issue with what was said on behalf of the Respondent and the tribunal accepts that the rent is paid up to date and that he is living in the property with his wife and nine-month-old son. The tribunal is also aware that the local authority homeless unit will not assist the respondent unless an order is granted and that if the respondent is unable to find other accommodation and is placed in temporary rental accommodation, he may face high rental charges as he is in full time employment.

42. The tribunal was satisfied that at the time of service of the Notice to Leave it would not have been appropriate for the applicant to have included Grounds 4 or 4A of Schedule 3 of the 2016 Act as even now there still seems to be some hesitation on the part of the applicant to make a final decision to move to Glasgow. His evidence was couched in terms such as "most probably" and "might". The tribunal was therefore not convinced that it was the applicant's definite intention to move to Glasgow although that might well be a possibility

43. If the order was granted it seems likely that the applicant would then move his mother into the property assuming she still has temporary leave to remain in the UK but the tribunal is not satisfied that the applicant's mother would remain in the property for three months if she did not like living there on her own given that there are no other family members there and as far as the tribunal was told no close friends either and it was not the applicant's intention to move to Glasgow at the same time as his mother.

44. Furthermore even if the tribunal was satisfied that the applicant's mother would live in the property for at least three months it still has to be satisfied that it is reasonable to grant the order. The tribunal was not told that the current arrangements for the applicant's mother were causing her or the applicant any difficulty. On the contrary the tribunal was told that she had her own room at the applicant's friend's house and was treated like a member of the family. The Tribunal could understand that the applicant would prefer to have his mother live with him but was not advised of any steps the applicant had taken to obtain more suitable accommodation in Watford or that such accommodation was unavailable or unaffordable.

45. As explained above the tribunal has to be satisfied on the evidence that the applicant has proved his case. The Tribunal is not so satisfied. The applicant has failed to show on the balance of probabilities that the applicant's mother would remain living in the property for a period of three months and furthermore taking all of the circumstances of both parties into account the impact of rendering the respondent and his wife and nine-month-old baby homeless is in the tribunal's view greater than impact on the applicant and his mother who can continue to reside where they are at present.

Decision

46. The tribunal having considered the evidence presented on behalf of both parties refuses the application.

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
Legal Member/Chair**

**16 November 2023
Date**