



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) In respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/23/1639

Re: Property at 13 Mayfield Court, Armadale, EH48 2JN (“the Property”)

Parties:

Mrs Diane Graham and Mr Gordon Graham, CALLE ACQUARIO NO.53, J5 LA FLORIDA, ORIHUELA COSTA, 03189, Spain (“the Applicants”)per their agents Lothian Homes, Unit C/2, Linbar House, 48 North Bridge Street, Bathgate, EH48 4PP (“the Applicants’ Agents”)

Miss Nicola Leslie, 7 Limefield Gardens, West Calder, EH55 8UF (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, the Tribunal granted the Order.

Background

1. By application received between 19 May 2023 and 22 June 2023 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 10 of Schedule 3 to the 2016 Act, that the tenant is not occupying the Property.
2. The Application comprised the following:
 - i) copy private residential tenancy agreement between the Parties;
 - ii) copy Notice to Leave in terms of Ground 10 of Schedule 3 to the Act dated 28 March 2023;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to West Lothian Council being the relevant local authority;

- iv) copy letter from the Respondent's daughter dated 27 March 2023 stating that the Respondent no longer resides at the Property and
 - v) copy trace report from sheriff officers advising that the Respondent resides at 7 Limefield Gardens, West Calder, EH55 8UF.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 26 October 2023 at 10.00 by telephone conference. The CMD was intimated to both Parties, and, in particular, was intimated to the Respondent by Sheriff Officer service on 19 September 2023.

CMD

4. The CMD took place on 26 October 2023 at 10.00 by telephone. The Applicants were not present and were represented by Ms. Casey of the Applicants' Agents. The Respondent was not present and was not represented. She did not submit written representations.
5. Ms. Casey confirmed that the Applicants sought an eviction Order. She advised that the Respondent's daughter remained in the Property and was in the process of being rehoused by West Lothian Council.

Findings in Fact

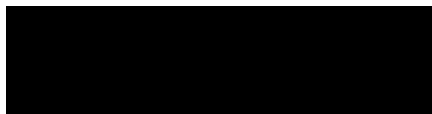
6. From the Application and the CMD, the Tribunal made the following findings in fact: -
- i) There is a private residential tenancy of the Property between the Parties;
 - ii) The Respondent no longer resides in the Property and
 - iii) The Respondent resides at another address.

Decision and Reasons for Decision

7. The Ground on which the Application proceeds is Ground 10 which states "*It is an eviction ground that the tenant is not occupying the let property as the tenant's home. (2)The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if (a) the let property is not being occupied as the only or principal home of (i)the tenant, or (ii)a person to whom a sub-tenancy of the let property has been lawfully granted, and (b)the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006. (3)In sub-paragraph (2), the reference to a sub-tenancy being lawfully granted is to be construed in accordance with section 46(3).*"
8. The Tribunal had regard to all the information before it and to its Findings in Fact and was satisfied that Ground 10 is satisfied.
9. The statutory ground and procedure being established, and the Application not being opposed, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussionincluding making a decision*". The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application and grant the Order as sought.

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.



Legal Member/Chair

26 October 2023.

Date