



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) Act 2016

Chamber Ref: FTS/HPC/EV/23/1605

Re: Property at 29 Murraysgate Cres, Whitburn, EH47 0QH (“the Property”)

Parties:

Mrs Jacqueline Meechan, 61 Hamilton Gardens, Armadale, West Lothian, EH48 2JA (“the Applicant”)

Ms Tracy Bain, 29 Murraysgate Cres, Whitburn, EH47 0QH (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

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

Introduction

This is an application under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application seeks an eviction order.

Service of the proceedings and intimation of the Case Management Discussion (CMD) took place upon the respondent by Sheriff Officers on 2 October 2023.

The CMD took place by teleconference on 3 November 2023 at 2.00 pm. The applicant represented her own interests. The respondent failed to participate in the hearing. There was no known reason for her failure to do so.

Findings and Reasons

The property is 29 Murraysgate Crescent, Whitburn EH47 0QH. The applicant is Mrs Jacqueline Meechan who is the heritable proprietor of the property and the registered landlord. The respondent is Ms Tracy Bain.

The parties entered into a private residential tenancy in respect of the property which commenced on 9 July 2018. The rent was stipulated at £550 per month.

The applicant relies upon ground 5 contained within part 1, schedule 3 to the 2016 Act. This specifies that it is an eviction ground where the landlord's family member intends to live in the let property.

The notice to leave is dated 12 February 2023 and stipulates that the earliest an application be submitted to the tribunal would be 8 May 2023. The applicant personally served the notice through the letterbox of the let property for the respondent on the day that it is dated. The relevant notice period was given to the respondent and accordingly the notice to leave is valid.

The applicant's older brother, William Meechan, intends to live in the let property. He currently lives in a rented property in Torquay. He has no dependents, is unemployed after recently being made redundant, and wishes to relocate to Whitburn to provide care for his father who has cancer.

No documentary evidence of the applicant's brother's intention to live in the let property has been provided but the tribunal accepted the applicant's oral evidence which was found to be credible and reliable. The tribunal found ground 5 to be established and found that it is the genuine intention of the applicant's brother to live in the let property.

The tribunal proceeded to consider the issue of reasonableness on the making of an eviction order.

The respondent is unemployed. She lives in the three bedroomed property with her teenage son. She has no known disabilities. She has been in constant rent arrears for some time and has not paid any rent now for a number of months. The rent arrears outstanding as at the date of the hearing is £2,000. It is unreasonable to expect the let property to continue to be made available to the respondent in these circumstances. She is receiving benefits to pay the rent but is not paying her rent with these funds.

A relevant Section 11 notice has been issued to the relevant local authority. The tribunal was satisfied that it is most likely that the respondent will be provided with alternate accommodation in the event of an eviction order being made against her. The applicant is aware that she has already been in communication with the council about alternative accommodation.

Weighing up the respective circumstances of the parties, the tribunal concluded that it was reasonable to grant the eviction 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.

R Mill

3 November 2023

Legal Member/Chair

Date