

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/23/1337

Re: Property at F1/2, 179 Cumloden Drive, Maryhill, Glasgow, G20 0JJ (“the Property”)

Parties:

Mrs Susan Colquhoun Gordon, 15 Colston Gardens, Bishopbriggs, G64 2BJ (“the Applicant”)

Miss Claire Reid, F1/2, 179 Cumloden Drive, Glasgow, G20 0JJ (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 18 April 2023 and as amended by application dated 26 August 2023 the Applicant applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of a tenancy agreement, Notice to Leave, Section 11 Notice, Letter from Estate Agents together with other documents in support of the application.
2. By Notice of Acceptance dated 6 December 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 15 December 2023.

The Case Management Discussion

4. A CMD was held by teleconference on 31 January 2024. The Applicant and the Respondent attended in person.
5. The parties were in agreement that the Respondent had commenced her tenancy of the property on 18 December 2021 and that although the original tenancy agreement had purported to be a Short Assured Tenancy there had in fact been a Private Residential Tenancy created. The parties were also agreed that a further Private Residential Tenancy agreement had been prepared and was dated 18 December 2021.
6. The Respondent confirmed that she had been served with a Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act on 16 January 2023 that provided that the Applicant would not raise proceedings for her eviction before 19 April 2023.
7. The Applicant confirmed that her letting agents had sent a Section 11 Notice by email to Glasgow City Council on 24 August 2023.
8. The Applicant also confirmed that she had instructed Pacitti Jones Legal Limited, Glasgow, to market the property for sale once vacant possession had been obtained.
9. The Applicant explained that she would be 58 this year but had to retire from work due to ill health. She said that as a result she was struggling to pay her bills and needed to raise capital from the sale of the property so that she would have money to live on. She thought that the sale would provide her with between £80000.00 to £90000.00. the Applicant confirmed that she owned no other rental properties. She explained that her initial plan had been to sell the property to Maryhill Housing Association and had contacted them last year but had heard nothing back. She said that she had therefore arranged with Pacitti Jones to market the property. She confirmed that the Respondent was up to date with her rent.
10. The Respondent explained that after being served with the Notice to Leave she had approached the Local Authority and applied to all the local Housing Associations but had been told that she would not be given any priority for housing unless and until the Tribunal granted an order for her eviction. She said that she had been told if she moved out of the property before an order was granted she would be treated as making herself voluntarily homeless and would not be given any priority for being rehoused. The Respondent confirmed she lived in the property with her son who would be 8 in March and that he attended the local school. The Respondent also said that she was in employment in a

public house but hoping to return to study later in the year. She also said that she suffered from Cyclical Vomiting Syndrome and IBS.

Findings in Fact

11. The Respondent commenced a Private Residential Tenancy of the property on 18 December 2018.
12. A new tenancy agreement was signed by the parties on 18 December 2021.
13. A Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act was served on the Respondent on 16 January 2023.
14. A Section 11 Notice was sent to Glasgow City Council on 24 August 2023.
15. The Applicant has instructed Pacitti Jones Legal Limited to market the property for sale.
16. The Applicant suffers from ill health and has been forced to give up work.
17. The Applicant is struggling to meet her financial outgoings and requires to realise the equity in the property to meet her needs.
18. The sale of the property will provide the Applicant with capital of between £80000.00 to £90000.00.
19. The Respondent lives in the property with her 8-year-old son.
20. The Respondent's son attends the local school.
21. The Respondent is in employment and her rent is paid up to date.
22. The Respondent hopes to return to study later in the year.
23. The Respondent has been told that she will not receive any priority to be rehoused unless and until an order for her eviction is granted.
24. The Respondent suffers from Cyclical Vomiting Syndrome and IBS.

Reasons for Decision

25. The Tribunal was satisfied from the documents submitted and the oral submissions of both parties that the parties entered into a Private Residential tenancy that commenced on 18 December 2018. The Tribunal was also satisfied that a valid Notice to Leave had been served on the Respondent under Ground 1 of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to Glasgow City Council by way of a Section 11

Notice. The Tribunal was also satisfied from the documents produced and the Applicant's oral submissions that she intends to use Pacitti Jones to market the property for sale if Maryhill housing Association do not wish to purchase the property.

26. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that neither party took any issue with the other party's position as stated by them. The Tribunal therefore had to balance the needs of the Applicant with the needs of the Respondent in arriving at a decision. On the one hand there was the Applicant who due to ill health was no longer able to work and was some nine years short of her entitlement to her state pension and was struggling to make ends meet financially. The Tribunal was satisfied that the release of the significant amount of equity of up to £90000.00 in the property would undoubtedly alleviate the Applicant's financial problems. On the other hand, the Tribunal also had to take account of the needs of the Respondent who had to care for her 8-year-old son who was attending the local school and who had her own health issues although these did not affect her ability to work. The Tribunal also took into account the fact that the Respondent had been told that she would only be given priority for housing if an order for eviction was granted.

27. After carefully considering the circumstances of both parties the Tribunal was persuaded that the needs of the Applicant in this application were such that although there would undoubtedly be an adverse impact on the Respondent and her son it was reasonable to grant the order. As the Cost of Living (Tenant Protection) Scotland Act 2022 regulations would apply the order for eviction would not be enforced until after 31 March 2024 at the earliest and the Tribunal would hope that would give the Respondent sufficient time for her to obtain alternative accommodation and that having granted an order for eviction, she would receive priority for rehousing given that she has her son living with her.

Decision

28. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicant entitled to an order for the eviction of the Respondent from the property.

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

31 January 2024
Date