



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/23/3208

Re: Property at 60 Abbotsford Road, Cumbernauld, G67 4BW (“the Property”)

Parties:

Ms Kristin Mills, Mr William Mills, 109 Binnie Hill Road, Balloch, G68 9DT (“the Applicants”)

Miss Carole Macleod, 60 Abbotsford Road, Cumbernauld, G67 4BW (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Janine Green (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 made in favour of the Applicant on the basis of paragraph 5 of schedule 3 of the 2016 Act

1. Background

- 1.1 This is an application under rule 109 of the Chamber Rules being an application for an eviction order in respect of a property let on a private residential. The application was accompanied by copies of the written tenancy agreement and notice to leave given to the Respondent.
- 1.2 Following a request by the Tribunal for further information, the Applicants provided an affidavit of the family member intending to move in to the property. No representations had been received from the Respondent.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 2 February 2024 by teleconference. The Applicants were represented by Miss Rachel

Trevithick of The Property Store EK Ltd. The Respondent was neither present nor represented.

2.2 Miss Trevithick confirmed that the application was insisted upon. The Tribunal noted that intimation of the application and Case Management Discussion had been given to the Respondent. Accordingly, the Tribunal determined it was appropriate to proceed in the Respondent's absence, as permitted by rule 29 of the Chamber Rules.

2.3 Miss Trevithick confirmed that the Applicant's son was to move into the property following a separation from his partner. He required a permanent residence to exercise contact with his children and was currently living with the Applicants. She advised that the Respondent resided with a child at the property however, she believed that the Respondent had sourced alternative accommodation and would likely be in a position to vacate the property and return the keys by 9 February 2024. The Tribunal proceeded to grant the application.

3. Reasons For Decision

3.1 Section 51 of the 2016 Act requires the Tribunal to issue an eviction order if it finds that one of the grounds contained with schedule 3 applies. In the present application, the Applicants rely on paragraph 5 of schedule 3. In light of the material provided and that which was said by Miss Trevithick, the Tribunal considered that a member of the Applicant's family intended to occupy the property for at least three months.

3.2 The Tribunal then required to consider whether it was reasonable to grant the order. The Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made. The Applicant's son required accommodation in which to reside. Most importantly, it appeared that the Respondent had found alternative accommodation and was to vacate the property in advance of the Applicants being able to take steps to enforce any order.

3.3 In the absence of any representations to the contrary, the Tribunal found that it was reasonable in the circumstances 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.



Legal Member/Chair

2 February 2024
Date