

Housing and Property Chamber

First-tier Tribunal for Scotland



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/23/3318

Re: Property at 64 Lime Crescent, Cumbernauld, G67 3PQ (“the Property”)

Parties:

Mr Martin O’Reilly and Mrs Gillian O’Reilly, 204 Chryston Road, Chryston, G69 9NA (“the Applicants”); and

The Property Store EK Ltd, 6 Hunter Street, East Kilbride, G74 4LZ (“the Applicants’ Representative”) and

Ms Marisa Da Maia-McAree, 64 Lime Street, Cumbernauld, G67 3PQ (“the Respondent”);

Tribunal Members:

G McWilliams- Legal Member

A Khan - Ordinary Member

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determine as follows:

Background and Case Management Discussion on 8th February 2024

1. The Application has been brought in terms of Rule 109 (Application for an eviction order) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).
2. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call, at 2.00pm on 8th February 2024, in respect of this Application. The Applicants’ Representative’s Ms R. Trevithick and the Respondent Ms Da Maia-McAree attended.

3. Ms Trevithick stated that the Property is the only one the Applicants rent out. She said that they sold their other buy-to-let property in 2020. Ms Trevithick stated that Mr and Mrs O'Reilly had incurred considerable expense in carrying out repairs to the Property and can no longer sustain the costs of maintaining a rented property. Ms Trevithick said that Mr and Mrs O'Reilly sympathise with the position of Ms Da Maia-McAree and her family but want to sell the Property for financial reasons. Ms Trevithick referred to the Application and stated that Village Estate Agents, Cumbernauld, remain ready to market the Property as soon as this is allowed.
4. Ms Da Maia-McAree stated that she also sympathised with Mr and Mrs O'Reilly's position. She said that she has applied to North Lanarkshire Council and a local housing association for social housing. Ms Da Maia-McAree stated that she has been told that she will not be prioritised for a new tenancy until an eviction order has been granted. She stated that she consents to the grant of an order but requires sufficient time to have a housing application granted. Ms Da Maia-McAree said that she resides with her two children aged 15 and 13 and her partner, who has poor mental health. She said that she is working but her partner is unable to do so. Ms Da Maia-McAree stated that her elder child has just finished "prelim" exams and is due to sit National 5 principal exams in April and May 2024.

Findings in Fact and Law and Reasons for Decision

5. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") the Tribunal may issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
6. Schedule 3 (2) to the 2016 Act provides that it is an eviction ground that a landlord intends to sell the let Property.
7. The Tribunal considered all of the Application papers and the submissions of Ms Trevithick and Ms Da Maia-McAree. Having done so the Tribunal found in fact that Mr and Mrs O'Reilly have engaged estate agents and will sell the Property when they are legally entitled to do so. The Tribunal found that Ms Da Maia-McAree agrees that Mr and Mrs O'Reilly should recover possession of the Property in order to sell it. She does, however, require sufficient time for her and her family to obtain alternative social housing. The Tribunal also found that Ms Da Maia-McAree's elder daughter is due to undertake important school exams in April and May of this year. Accordingly, the Tribunal found, in law, that the ground for recovery of possession of the Property, that Mr and Mrs O'Reilly intend to sell the Property, is met. The Tribunal also found, in law, that in all the circumstances it is reasonable that Ms Da Maia-McAree and her family be allowed time to obtain alternative accommodation and that, therefore, the agreed eviction order will not be able to be enforced earlier than 1st June 2024.
8. The Tribunal verbally informed Ms Trevithick and Ms Da Maia-McAree of their decision at the CMD. Both Ms Trevithick and Ms Da Maia-McAree acknowledged that it was fair and reasonable for the enforcement of the eviction

order to be deferred until 1st June 2024. Ms Da Maia-McAree stated that she will inform Ms Trevithick, and Mr and Mrs O'Reilly, as soon as she has obtained a suitable, alternative tenancy.

Decision

9. The Tribunal therefore make an eviction order as sought in this 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.

G McWilliams



Tribunal Legal Member

8th February 2024

Date