



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 109 of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/0163

Re: Property at 6 Whinny Brae, Broughty Ferry, Dundee, DD5 2HW (“the Property”)

Parties:

Mrs Nadia Sutherland, 18A Douglas Terrace, Broughty Ferry, Dundee, DD5 1EA (“the Applicant”)

Gilson Gray LLP, 29 Rutland Square, Edinburgh, EH1 2BW (“the Applicant’s Representative”)

Mr Jason Kevin Kelly, 6 Whinny Brae, Broughty Ferry, Dundee, DD5 2HW (“the Respondent”)

Tribunal Members:

Ms Susanne Tanner KC (Legal Member) and Mrs Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Ground 5 in Schedule 3, Part 1 to the 2016 Act was established by the Applicant, in that: (a) a member of the landlord’s family intends to live in the let property as that person’s only or principal home for at least 3 months, (b)the landlord intends that the family member will occupy the let property as the family member’s only or principal home for at least 3 months; the person is a qualifying relative of the landlord, namely a son; the tribunal is satisfied that it is reasonable to issue an eviction order; and made an order for eviction in terms of Section 51 of the 2016 Act.

The decision of the tribunal was unanimous.

Statement of Reasons

1. A Case Management Discussion (CMD) took place on 3 April 2024. A CMD in a related civil application involving the same parties (CV/23/4402) also took place today.
2. The Applicant's Representative attended both CMDs on behalf of the Applicant.
3. The Respondent did not attend the CMDs. He made no contact with the tribunal after service of the Application paperwork in each case on 26 February 2024 and did not state any defence to the eviction Application.
4. The tribunal decided to proceed with the eviction Application in the absence of the Respondent. The tribunal was satisfied that the requirements of rule 24(1) of the 2017 Rules regarding the giving of notice of a CMD had been duly complied with and proceeded with the Application upon the representations of the party present and all the material before it.
5. The tribunal heard from Ms Gray in relation to the Application. He sought an order for the Respondent's eviction from the Property.
6. Mr Gray has taken a statement from the Applicant, information from which appears in the paper apart to the Application. The Applicant's son intends to live in the property as his principal residence for at least three months. The Applicant intends for him to do that. Her son is a teacher in his 30s. Her son has been living in his Housing Association property since 2015. The original arrangement was for him to stay in that property for five years paying rent, while saving a deposit and to buy the property in 2020. In March 2020, the arrangement was put on hold as a result of the pandemic. By the time the pandemic finished the property price had gone up by £30,000 and it was not affordable for the Applicant's son. She intends to let him live in the Property at a reduced rent so that he can save further deposit money to buy a home in the future.
7. Mr Gray submitted that it would be reasonable to make the order for eviction.
8. The Applicant has two properties, her own home and this Property. This is a two bedroomed flat. She is not a professional landlord. She is a project coordinator for a charity and earns £26,000 per annum. She is funding the property from income. The mortgage is £236pcm. She has to pay communal maintenance fee and a £10,000 loan taken for a roof repair at the Property. The outgoings are £658.60pcm and the rent is £875.50. She is only making a nominal amount of money when she gets rent. In fact, the Respondent has not paid rent for months, since the Notice to Leave was served. The shortfall is causing her financial hardship. She has also been caused stress and upset. She decided last year to give the property to her son before the rent problems began with the Respondent.

9. The Respondent has substantial rent arrears which are the subject of the related civil application. As at today's date the rent arrears are £7063.49. The landlord's agents have tried to contact the Respondent and have sent pre-action protocol letters. He has not replied. The Applicant's agents have not had any contact with the Respondent as to why he has got into arrears.
10. Mr Gray stated in relation to the Respondent's circumstances that he is understood to be in his mid 40s, living in the Property alone. He has been the sole tenant since 2019. He is self-employed as a joiner with JMK joinery. He has a van and is prominent in the local community. The Applicant sees him out and about in the town. The Applicant and her agents are not aware that the Respondent has any benefits issues. He has never made any contribution towards the rent from benefits at any time during the tenancy. He is not considered to be vulnerable in any way.
11. The Respondent has not opposed the Application for eviction.

Findings in Fact

12. The Applicant and Respondent entered into a Private Residential Tenancy agreement in respect of the Property.
13. The Respondent has lived in the Property since on or about 21 November 2019.
14. The rent due under the tenancy agreement was £850 and is now £875.50 per calendar month.
15. The Applicant's son intends to live in the Property as his principal residence for at least three months.
16. The Applicant intends for her son to live in the Property as his principal residence for at least three months.
17. The Applicant's son is a teacher.
18. The Applicant's son currently lives in a Housing Association property which he has lived in since 2015.
19. The Applicant's son intended to buy the Housing Association property in 2020 but it was put on hold because of the pandemic. Post pandemic the purchase price had increased to an amount which is now beyond his financial means.
20. He intends to move into and live in the Property, pay reduced rent to the Applicant and save a deposit for the purchase of another property.
21. The Applicant's outgoings for the Property are £658.60 per calendar month and the rent is £875.50 per calendar month.

22. The Respondent has accrued rent arrears in respect of the tenancy, which were £7063.49 as at 3 April 2024.
23. A Notice to leave was served in terms of Ground 5 of Schedule 3 of the 2016 Act on or about 12 October 2023. The ground of eviction was that the landlord's family member intends to live in the let property.
24. The Respondent has not made any contact with the Applicant or her agents since the Notice to Leave was served.
25. The Notice to leave expired on 5 January 2024.
26. The Application was made to the Tribunal on 11 January 2024.
27. The Respondent has not made payment of any arrears since the Notice to Leave was served or provided any proposals for payment.
28. The Respondent is a self-employed joiner who lives alone in the Property.
29. The Respondent has never paid any part of his rent via Housing Benefit.
30. The Property is a two bedroomed flat.
31. The Respondent has not opposed the Application for eviction.

Discussion

32. The tribunal was satisfied after considering submissions from the Applicant's Representative that the requirements of Ground 5, Schedule 3 of the 2016 were met, in that (a) a member of the landlord's family, namely the Applicant's son, intends to live in the let property as that person's only or principal home for at least 3 months, (b) the landlord intends that her son will occupy the let property as the family member's only or principal home for at least 3 months; her son is a qualifying relative of the landlord; and the tribunal is satisfied that it is reasonable to issue an eviction order in the circumstances in the findings of fact.

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

3 April 2024