



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/23/4051

Re: Property at 80 Moorpark Avenue, Glasgow, G52 4EU (“the Property”)

Parties:

Ms Mandira Guragain, 23 Yew Tree Lane, Yardley, Birmingham, B26 1BE (“the Applicant”)

Mrs Karen Lindsay and Mr Derek Lindsay, both 80 Moorpark Avenue, Glasgow G42 4EU (“the Respondents”)

Tribunal Members:

George Clark (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondents.

Background

1. By application dated 14 November 2023, the Applicant sought an Eviction Order against the Respondents under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2026. The Ground relied on was Ground 4 of Schedule 3 to the Act, namely that the landlord intends to live in the Property.
2. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 28 February 2023, a Notice to Leave dated 28 February 2023 advising the Respondent that an application to the Tribunal under Ground 4 would not be made before 26 May 2023, with evidence of service of that Notice by sheriff officers on 2 March 2023, and an Affidavit dated 12 December 2023 from the Applicant, regarding her reasons for making the application and stating her intention to live in the Property.

3. The Applicant stated in her Affidavit that she had rented the Property as she had gone overseas for a while. The Property was not available immediately on her return, so she moved to rented accommodation in Birmingham as she has friends there, She now wishes to move to her residential property with two children.
4. On 15 March 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 5 April 2024. The Respondents did not make any written representations to the Tribunal.

Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the morning of 24 April 2024. The Applicant and the Respondents were all present.
6. The Applicant told the Tribunal that she has two daughters, aged 14 and 12. Her husband is presently in Nepal, caring for a family member. She is paying £556 per month in respect of the mortgage over the Property and £1,100 per month for a rented property in Birmingham. She does not own any other properties and is struggling financially. She wants to be able to stop paying rent and to return to her Property with her children.
7. The Respondents told the Tribunal that they live in the Property with their three daughters, aged 20, 17 and 13. The eldest daughter works in the care sector and the Respondents both work for the NHS. The middle daughter, who has autism, is at college. Their youngest daughter is still at school, a 10-minute walk from the Property. The Property has three bedrooms, but two of them are too small to allow sharing, so one of their children sleeps on the sofa. The local authority have noted that the Property is overcrowded and that has given the Respondents more points in the assessment for re-housing, but the Homelessness Team are unable to help in the absence of an Eviction Order. They do not have the ability to raise the deposit for another property in the private rented sector. They are presently paying £550 per month in rent. They understand the Applicant's situation and would have no issue with moving, but have nowhere to go.

Reasons for Decision

8. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.
9. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in Schedule 3 to the 2016 Act applies.

10. Ground 4 of Schedule 3 to the 2016 Act provides that it is an eviction ground that the landlord intends to live in the let property and that the Tribunal may find that Ground 4 applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months and the Tribunal is satisfied that it is reasonable to issue an Eviction Order on account of that fact. Ground 4 goes on to state that evidence tending to show that the landlord has that intention includes an Affidavit that the landlord has that intention.
11. The Tribunal was satisfied that the Applicant intends to live in the Property. Accordingly, the only matter for the Tribunal to decide was whether it would be reasonable to issue an Eviction Order.
12. The Tribunal noted that the Applicant's mortgage payments exceed the monthly rent and that she is also having to pay rent on her property in Birmingham. The Property is not large enough to allow each of the Respondents' children their own bedroom or to allow two of them to share a bedroom. It is clearly unsatisfactory that one of them has to sleep on a sofa and the view of the Tribunal was that it would be in the family's best longer-term interests to move to a larger house. They would be unable to achieve this without help from the local authority and that help would not be forthcoming unless an Eviction Order was made against them.
13. Accordingly, having considered carefully all the evidence before it, the Tribunal decided that it would be reasonable to issue an 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.

George Clark

Legal Member/Chair

24 April 2024

Date